ETTA FAY MCCOY, .

.

Grievant, .

.

.

v. . Docket No. 94-29-062

.

.

.

.

MINGO COUNTY BOARD OF EDUCATION, .

.

Employer. .

D E C I S I O N

Etta McCoy (hereinafter Grievant) filed this grievance pursuant to West Virginia Code 29-6A-1 et seq., on November 12, 1993, against her employer, the Mingo County Board of Education (hereinafter Board). After receiving adverse decisions at the lower levels, she appealed to level four by form dated February 22, 1994, whereby she requested that a decision be issued based upon the record developed from all of the lower levels. Upon receipt of the record in the case, a briefing schedule was established and the parties' briefs were received by the Undersigned on or about April 21, 1994 and the case became mature for decision. The relevant and material facts in the case are undisputed and are set forth below.

Findings of Fact

1. Grievant is a teacher employed by the Board to teach one of two third-grade classes at Matewan Grade School.

2. The Board has an established practice wherein it allows the principal at Matewan Grade School to determine teacher assignments for children in the elementary grade levels based, in some degree, on the wishes of the students' parents who express their opinions and preferences on the matter prior to the beginning of each school year.

3. As a result of the Board's practice described in finding number 2, elementary classroom assignments are often segregated with the "better" students being assigned to one teacher while the rest of the students in the same grade are assigned to other teachers.

Discussion

Grievant asserts that the Board's practice is both discriminatory toward the teachers involved and unreasonable given the mandate that administrative decisions should be made with the best interests of all the students as a guide. Further, she contends that her job has been made substantially more difficult by the Board's practice of allowing parents to influence the student-teacher assignments. The Board denies any wrongdoing in this case.

Pursuant to W.Va. Code §18-5-13, county boards of education have the discretionary authority to control and manage all of their schools and school interests for all school activities. Further, county boards of education have substantial discretion in makingteacher assignments pursuant to W.Va. Code §18A-2-7 as long as such action is taken in good faith and for the benefit of the school system and is not arbitrary or capricious. State ex rel. Hawkins v. Tyler County Bd. of Educ., 275 S.E.2d 908 (W.Va 1981). The evidence presented in the very limited record in this case does not establish that the Board has abused its discretion in allowing the principal at Matewan Grade School to determine student assignments within grade levels.

According to W.Va. Code §18A-1-1, the term "principal" is defined as follows:

> The professional educator who as agent of the board has responsibility for the supervision, management and control of a school or schools within the guidelines established by said board. The major areas of such responsibility shall be the general supervision of all school and school activities involving pupils, teachers and other school personnel.

The proper inference to be drawn from Grievant's testimony is that the principal of Matewan Grade School makes student assignments based in part upon the parents' vocalized wishes. The evidence does not establish that the principal has relinquished his responsibility in making such assignments or

that he has exercised his discretion arbitrarily or capriciously.

While Grievant's concern for the welfare of all of the students within the public school system is laudable, she has not established by a preponderance of the evidence that the Board or the principal at Matewan Grade School have abused their discretion by the manner in which student-teacher assignments are made. The fact is that in all areas of education, students of differentability levels, students with different career goals and students with different degrees of motivation are often segregated for the benefits of each "group" of students in order for education to be delivered effectively. In the instant case, Grievant has done little more than to disagree with the methodology used at Matewan as to how student assignments are made. Without further evidence on her behalf, there can be no finding that the Board has acted arbitrarily or capriciously or acted in such a manner as to substantially interfere with her ability to teach. In general, Grievant is employed as a teacher and her major responsibility is to teach the students she is assigned. She has not established that the Board has treated her any differently than any other teacher with regard to the students she is assigned to teach.

The foregoing discussion of the facts of the case and of the law applicable to those facts is hereby supplemented by the following appropriate conclusions of law.

Conclusions of Law

1. Grievant has failed to establish by a preponderance of the evidence that either the Board or its agent have abused their discretion by the manner in which student-teacher assignments are made at the beginning of each new school year.

2. Grievant has failed to establish a prima facie case of discrimination as she has not presented evidence to allow the undersigned to conclude that she has been harmed in any significant manner as a result of being assigned a particular "group" of students to teach.

3. Grievant has failed to establish by a preponderance of the evidence that either the Board or its agent has substantially interfered with her ability to perform her job functions and responsibilities.

Therefore, this grievance is hereby **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Mingo County and such appeal must be filed within thirty (30) days of receipt of this decision. W.Va. Code §18-29-7. Neither the West Virginia Education and State Employees Grievance Board

nor any of its Administrative Law Judges is a party to such appeal and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

_____

ALBERT C. DUNN, JR.

Administrative Law Judge

July 20, 1994