LISA SMITH, ET AL,

v.

Docket No. 96-41-206

RALEIGH COUNTY BOARD OF EDUCATION

DECISION

The grievants, Lisa Smith, Rene Shiflett, and Kay Chastain, are employed by the Raleigh County Board of Education (Board) as instructors assigned to the Academy of Careers and Technology (ACT). On or about October 5, 1995, they and another group of ACT teachers filed grievances at Level I, alleging violations of the requirement in W.Va. Code §18A-4-14, that they be afforded a planning period of the "length of the usual class period" at ACT.

At Level II, the Hearing Evaluator specifically found that during the first semester of school year 1995-96, the grievants herein taught in ninety-minute "blocks" and were afforded daily uninterrupted planning periods of the same duration. Ruling on the remaining grievants' claims, the Evaluator found that, while they had been treated differently, i.e., their planning was interrupted, they were not entitled to any relief. The statute was construed to permit athirty-minute planning period in a school which operated on the block schedule system. Both groups appealed to Level III and then Level IV.

Subsequently, and prior to a Level IV decision, the ACT Principal complied with the Evaluator's directive, and altered schedules so that all instructors were given thirty-minutes of planning for the second semester of school year 1995-96; she also issued at least a tentative schedule for school year 1996-97, which reflected the same arrangement. The grievants were permitted to amend their Level IV appeal to encompass these changes.

In Tate, et al, v. Raleigh County Bd. of Educ., Docket No. 96-41-067 (Aug. 30, 1996), the undersigned agreed with the Level II Evaluator's finding that the statute was flexible enough to permit something less than a ninety-minute planning period in a block schedule arrangement, but disagreed that a thirty-minute period was adequate. The Board has apparently complied with the directive that schedules be adjusted at ACT to reflect uninterrupted sixty-minute planning periods, and has compensated the grievants in Tate for any days during the second semester of the 1995-96 school

year on which they had only thirty minutes.

Evidently, the Board declined to afford the grievants herein any monetary compensation on the basis that they were not parties to Tate. Having no notice of an appeal of the decision, and there being no indication in the record or from the Board that there are facts or legal theory which make their circumstances during the second semester any different, the undersigned concludes that they are entitled to the same relief.

Accordingly, the grievance is **GRANTED**, and the Board is hereby **ORDERED** to compensate the grievants, Lisa Smith, Kay Chastain and Rene Shiflett, consistent with theholdings and relief awarded in Tate, supra, for any days during the second semester of school year 1995-96, on which they had less than a sixty-minute planning period.

Any party may appeal this decision to the Circuit Court of Kanawha County or the Circuit Court of Raleigh 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.

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JERRY A. WRIGHT

ADMINISTRATIVE LAW JUDGE

Dated: April 30, 1997