THE WEST VIRGINIA PUBLIC EMPLOYEES

GRIEVANCE BOARD

SHARON BYRD, et al.,

Grievants,

v.

Docket No. 2008-0749-CONS

KANAWHA COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Sharon Byrd, Mary Lazano, and Rebecca Wilson (Grievants) filed this grievance on June 29, 2007, at level one with their immediate supervisor. Their primary complaint is the supervisor's directive requiring all teachers at Weberwood Elementary School to prepare their lessons plans on a computer, and to email the completed lesson plans to him on a weekly basis. Grievants seek to have the directive of Principal Barry Bowe set aside as unenforceable.

A level one conference was held with Principal Bowe. He denied the grievance on July 26, 2007. Following that level one, the parties mutually agreed to transfer the grievance to the new Public Employees Grievance Procedure as set out at W. Va. Code §§ 6C-2-1, et seq. (See footnote 1) In accordance with that procedure, a new level one conference was held with a designee of the Superintendent. The designee denied the grievance by decision issued on November 7, 2007. Level two was waived. Grievants appealed thelevel one decision, and a level three hearing was conducted before the undersigned Administrative Law Judge at the Board's Charleston Office on June 16, 2008. Grievants appeared in person, and by William B. McGinley, Esq., West Virginia Education

Association. Respondent appeared by James W. Withrow, General Counsel for the Kanawha County Board of Education. This matter became mature for decision upon receipt of the parties' proposed findings of fact and conclusions of law on July 21, 2008.

Synopsis

Grievants are employed as teachers at Weberwood Elementary School. Their Principal advised all of the teachers he was going to require that lesson plans be prepared electronically, and the lesson plans be provided to him by email weekly. In addition, Respondent requires the inclusion in the lesson plans of specific teaching technique strategies utilized daily by all teachers. Grievants assert that lesson plans serve one purpose, to be a guide to the teacher and substitute for presentation of the curriculum. In addition, items which do not serve as a guide to the teacher and substitute for daily instruction should not be required in the lesson plans.

Respondent counters that teachers are required to demonstrate a sound understanding of technology operations and concepts, and use technology to enhance productivity and professional practice. The undersigned agrees that the inclusion of teaching technique strategies in the lesson plans is not required to serve as a guide to the teacher or substitute for daily instruction. However, requiring teachers to prepare and submit their lesson plans in electronic format does not violate any applicable provision of law, and is within the statutory authority granted to a principal. This grievance is granted in part, and denied in part. After thorough review of the record, the undersigned Administrative Law Judge makes the following Findings of Fact.

Findings of Fact

1. Grievants are employed as classroom teachers by the Kanawha County Board of Education ("Board"). Each is assigned to Weberwood Elementary School. All Grievants are considered excellent teachers, and have taught at Weberwood continuously for more than a decade.

2. Dr. Barry Bowe is the principal at Weberwood Elementary School. Principal Bowe has been principal at Weberwood for approximately three years.

3. Principal Bowe advised all the teachers at Weberwood that, beginning with the 2007-08 school year, he was going to require that all teachers' lesson plans be prepared electronically. In addition, the electronic formatted lesson plans were to be emailed to him on a weekly basis.

4. It is undisputed that Grievants' written lesson plans were exemplary, and easy for a substitute to follow.

5. The Board required that Marzano strategies be written in all lesson plans. (See footnote 2) Principal Bowe indicated that the reason that Marzano strategies needed to be specifically set out in the lesson plans was due to the Board spending thousands of dollars on staff development in the area of Marzano strategies. In addition, Principal Bowe wanted them in the lesson plan to ascertain if the teachers were utilizing them. Principal Boweacknowledged that he regularly observed all teachers, and could determine if they were utilizing Marzano strategies during those observations.

6. During the 2006-07 school year, the staff at Weberwood Elementary School was provided various templates, and examples of lesson plans prepared on a computer. The templates included various formats, pull-down menus, and other features to assist the teachers in getting their lesson plans prepared in electronic format.

7. During the 2006-07 school year, Principal Bowe arranged for an individual who is familiar with preparation of lesson plans on a computer to assist the teachers at Weberwood Elementary School in getting their lesson plans ready to be prepared in electronic format.

8. During the 2007-08 school year, teachers' schedules were arranged so that each teacher received additional planning time. Each teacher at the school was provided a flash drive so that files could be transferred easily between computers. In addition, Weberwood Elementary School has provided laptop computers that teachers can check out and use either at school or home.

Discussion

As this grievance does not involve a disciplinary matter, Grievants have the burden of proving their grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 . 3 (2008); *Holly v. Logan County Bd. of Educ.*, Docket No. 96-23-174 (Apr. 30, 1997); *Hanshaw v. McDowell County Bd. of Educ.*, Docket No. 33-88-130 (Aug. 19, 1988). “The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact ismore likely true than not.” *Leichliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

Grievants complain that they are required to type and submit all lesson plans to Principal Bowe electronically by email, or by the use of a USB external/removable storage device (commonly referred to as a flash/jump drive). In addition, Principal Bowe required that, for the 2007-2008 school year, all lesson plans contain specific Marzano strategies utilized daily. This information was identified on the lesson plans evaluation form Principal Bowe used to check and comment upon each

teacher's lesson plans. The Board counters that the directive issued by Principal Bowe that teachers' lesson plans are to be prepared and provided to him in electronic format does not violate any law, rule, regulation or policy which would prohibit such a directive. Curiously enough, the Board does not address the propriety of requiring inclusion of Marzano strategies in the teachers' lesson plans.

This grievance is based upon W. Va. Code § 18A-2-12, which states, in pertinent part:

> (i) Lesson plans are intended to serve as a daily guide for teachers and substitutes for the orderly presentation of the curriculum. Lesson plans may not be used as a substitute for observations by an administrator in the performance evaluation process. A classroom teacher, as defined in section one, article one of this chapter, may not be required to post his or her lesson plans on the internet or otherwise make them available to students and parents or to include in his or her lesson plans any of the following:
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> (1) Teach and re-teach strategies;
>
> (2) Write to learn activities;
>
> (3) Cultural diversity;
>
> (4) Color coding; or
>
> (5) Any other similar items which are not required to serve as a guide to the teacher and substitute for daily instruction; and
>
> (j) The Legislature finds that classroom teachers must be free of unnecessary paper work so that they can focus their time on instruction. . .

This statute was passed to give educators some relief from the increasing amount of paperwork they are required to perform. As a way to confirm that teachers were teaching to the established instructional goals or content standards, many principals were requiring teachers to include the above items, among others, in their lesson plans. As the statute suggests, some principals required that teachers color code all of these required elements so that certain items would be easy for the

principal to identify in the submitted lesson plans. The intent of the statute is clear. Lesson plans serve one purpose, to be a guide to the teacher and substitute for presentation of the curriculum. Lesson plans may not be used as a substitute for observations by an administrator in the performance evaluation process. Principals cannot use them to verify that certain specified strategies are being used, or to evaluate a teacher's technical skills.

In the instant case, Principal Bowe requires teachers to list specific Marzano strategies in their lesson plans. Principal Bowe explained this requirement was to verify that the teachers were utilizing a program that the Board had invested thousands of dollars implementing. At the same time, Principal Bowe acknowledged that this verification may be achieved through regular observation of teacher performance. This requirement does not improve the lesson plans as a guide to Grievants or substitutes for presentation of the curriculum. Accordingly, the undersigned concludes that the requirement that Grievants list specific Marzano strategies in their lesson plans contravenes the provisions of the statute, and they should not be required to include it in their lesson plans. The other issue in this case is whether or not the directive issued by Principal Bowe that teachers' lesson plans are to be prepared and provided to him in electronic format violates some law, rule, regulation, or policy which would prohibit such a directive. The principal has the administrative and instructional supervisory responsibility for the planning, management, operation, and evaluation of the total educational program of the school or schools to which he or she is assigned. W. Va. Code § 18A-2-9. Having the overall supervisory authority at the school, the principal has the right to make such rules as he or she deems appropriate for the efficient operation of the school, so long as such rules do not conflict with any law, regulation, rule, or policy.

Teachers are required to demonstrate a sound understanding of technology operations and concepts; plan and design effective learning environments and experiences supported by technology; use technology to enhance productivity and professional practice; and understand the social, ethical, legal and human issues surrounding the use of technology in school and apply that understanding in practice. 126 CSR 142 § 14.8.1. With those directives in mind, Principal Bowe has determined that preparing and providing lesson plans in electronic format will further the goals of the school, and will enhance the teachers' productivity through the use of technology. Principal Bowe provided Grievants almost a full year to become adjusted to the requirement, and has provided training to Grievants in order that they may comply with the requirement. The fact that Grievants may not like to prepare

lesson plans on the computer, or do not agree with the Principal's decision, is not sufficient ground to overturn his decision. Grievants have failed to prove by a preponderance of the evidence that the Principal's directive violates some law, regulation, rule, or policy prohibiting such action. Accordingly, Grievants request to setaside the Principal's directive that lesson plans be submitted in an electronic format is denied.

The following Conclusions of Law support the decision reached.

Conclusion of Law

1. As this grievance does not involve a disciplinary matter, Grievants have the burden of proving their grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 . 3 (2008); *Holly v. Logan County Bd. of Educ.*, Docket No. 96-23-174 (Apr. 30, 1997); *Hanshaw v. McDowell County Bd. of Educ.*, Docket No. 33-88-130 (Aug. 19, 1988). “The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not.” *Leichliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

2. W. Va. Code § 18A-2-12 provides, in pertinent part, the following:

> (i) Lesson plans are intended to serve as a daily guide for teachers and substitutes for the orderly presentation of the curriculum. Lesson plans may not be used as a substitute for observations by an administrator in the performance evaluation process. A classroom teacher, as defined in section one, article one of this chapter, may not be required to post his or her lesson plans on the internet or otherwise make them available to students and parents or to include in his or her lesson plans any of the following:
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> (5) Any other similar items which are not required to serve as a guide to the teacher and substitute for daily instruction; and
>
> (j) The Legislature finds that classroom teachers must be free of unnecessary paper work so that they can focus their time on instruction. . .

3. The principal has the administrative and instructional supervisory responsibility for the planning, management, operation, and evaluation of the total educational program of the school or schools to which he or she is assigned. W. Va. Code § 18A-2-9.

4. Teachers are required to demonstrate a sound understanding of technology operations and concepts; plan and design effective learning environments and experiences supported by technology; use technology to enhance productivity and professional practice; and understand the social, ethical, legal and human issues surrounding the use of technology in school and apply that understanding in practice. 126 CSR 142 § 14.8.1.

5. Grievants have proven by a preponderance of the evidence that the requirement that they list specific Marzano strategies in their lesson plans does not improve the lesson plans as a guide to Grievants or substitutes for presentation of the curriculum. Accordingly, the request that this strategy not be required in the lesson plans is granted.

6. Grievants have failed to prove by a preponderance of the evidence that the Principal's directive to prepare and submit lesson plans electronically violates some law, regulation, rule, or policy prohibiting such action. This directive is within the statutory authority granted to a principal. Accordingly, Grievants' request to set aside the Principal's directive to submit lesson plans in an electronic format is denied.

Accordingly, this grievance is **GRANTED IN PART, AND DENIED IN PART**. The Board is **ORDERED** to discontinue the practice of requiring lesson plans contain Marzanostrategies. Grievants request to set aside the Principal's directive that lesson plans be submitted in an electronic format is **DENIED**.

Any party may appeal this Order to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Order. *See* W. Va. Code § 6C-2-5. Neither the West Virginia Public Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. However, the appealing party is required by W. Va. Code § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The Civil Action

number should be included so that the certified record can be properly filed with the circuit court. *See also* 156 C.S.R. 1 § 6.20 (eff. July 7, 2008).

Date: September 22, 2008

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Ronald L. Reece

Administrative Law Judge

Footnote: 1

In 2007, the Legislature, 2007 Acts ch. 207, abolished the West Virginia Education and State Employees Grievance Board, replacing it with the Public Employees Grievance Board. W. Va. Code §§ 18-29-1 to 18-29-11 and W. Va. Code §§ 29-6A-1 to 29-6A-12 were repealed and replaced by W. Va. Code §§ 6C-2-1 to 6C-2-7 and W. Va. Code §§ 6C- 3-1 to 6C-3-6 (2007). Because this grievance has been transferred to the new procedure, it is being decided pursuant to the provisions of W. Va. Code §§ 6C-2-1 to 6C-2-7 (2008).

Footnote: 2

This educational technique is based upon a compilation of classroom instructional strategies that have been shown by research to have the greatest likelihood of improving student academic achievement.