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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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SUSAN PANSMITH, et. al.

vs.

DOCKET NO. 46-86-057

TAYLOR COUNTY BOARD OF EDUCATION

DECISION

In August, 1985 Susan Pansmith was notified her assignment as a full time special education teacher at Pruntytown Grade School would be changed to instruction of special education and kindergarten, each on a half day basis, for the 1985-86 school term.

Kathleen Jones was informed that her full time assignment as a special education teacher at Hepzibah Elementary School would be changed to half time with the remaining portion of the day spent as a fifth and sixth grade teacher.

These two individuals allege a violation of W. Va. Code, 18A-2-7 as they were not placed on the transfer list or given the opportunity of a hearing before the board of education prior to the change in their assignments.

Donald Craft, also employed as a teacher by the Taylor County Board of Education, joins with Ms. Pansmith and Ms. Jones in alleging a violation of W. Va. Code, 18A-4-8b in that the half time kindergarten and fifth/sixth grade positions were not posted in a conspicuous working place for all professional personnel to observe for at least five working days.

Ms. Pansmith and Ms. Jones both state they were initially hired as special education teachers and this action constitutes a transfer as addressed in W. Va. Code, 18-2-7.

Superintendent Ronald Dellinger does not view the changes as transfers, but rather as the individuals having been re-scheduled to meet the changing needs of the school. Superintendent Dellinger notes the grievants were employed as teachers with no specific subject matter designation, and therefore, their contracts have not been altered. He further presents several interpretations and a decision rendered by the State Superintendent of Schools in support of his position.

The decision and interpretations of the State Superintendent of Schools, cited by this respondent, states that a principal may reschedule the professional staff within their areas of certification and assignment only.

The board's argument that the changes affecting Ms. Pansmith and Ms. Jones were within the grievant's area of assignment cannot be sustained in light of the decision rendered in Lavender v. McDowell County Board Of Education, 327 S. E. 2d 691 (W. Va. 1984). In that case the court held the provisions of Code, 18A-2-7 must be complied with when an employee is reassigned within the school.¹

¹In the Lavender case a counselor at a McDowell County intermediate school was transferred to the position of teacher at the same school when the counselor position was abolished.

The board distinguishes the Lavender case as that individual had been assigned to a specific position, whereas, the grievants were simply assigned as teachers, thereby allowing more flexibility in matching the available staff to the changing educational needs of the community. There is no indication in the Lavender decision as to whether that grievant's contract provided that he be assigned a specific subject matter.

Therefore, in consideration of the Lavender decision, the rescheduling of Ms. Pansmith and Ms. Jones outside their area of assignment was improper and any such transfers must be completed within statutory guidelines.

The board must also post notices of all openings in established, existing or newly created positions as is required by W. Va.Code, 18-4-8b.

FINDING OF FACT

1. The grievants are employed by the Taylor County Board Of Education as teachers.
2. In August, 1985, Ms. Pansmith and Ms. Jones were informed their assignment for the upcoming school term was to be changed from full day to half day special education with other instructional duties the remaining half day.
3. The half day kindergarten and fifth/sixth grade positions were not posted as vacancies prior to the transfers.

CONCLUSIONS OF LAW

1. Any personnel changes outside an individual's area of certification and assignment must be conducted within the statutory guidelines for transfer.

2. All openings in established, existing or newly created positions must be posted in a conspicuous working place for at least five days.

3. Altering a teacher's subject matter assignment constitutes a transfer as contemplated by W. Va. Code, 18A-2-7.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Taylor County and such appeal must be filed within thirty (30) days of receipt of this decision. (Code, 18-29-7) Please advise this office of your intent to do so in order that the record can be prepared and transmitted to the Court.

DATED: August 4, 1986

Sue Keller

SUE KELLER
Hearing Examiner