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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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LINDA TRAVINSKI

vs.

Docket No. 30-86-094

MONONGALIA COUNTY BOARD OF EDUCATION

DECISION

The grievant, Linda Travinski, is employed by the Monongalia County Board of Education in the position of teacher of the educable mentally impaired at Morgantown High School. Ms. Travinski filed this grievance at level one on September 27, 1985 and has pursued her administrative remedy thorough an appeal to level four.

Both parties have agreed to waive an evidentiary hearing and to submit this matter for a decision based on the record supplemented with briefs.

FINDINGS OF FACT

1. That the grievant, Linda Travinski, is employed by the Monongalia County Board of Education as a teacher

of the educable mentally impaired.

2. That on September 27, 1985 Ms. Travinski filed a grievance with J. Edwin Jenkins, Principal of Morgantown High School alleging a violation of the W.Va. Department of Education regulation 2.71 which limits the caseload of EMI teachers without a full-time aide, to eight students.

3. The grievant's caseload consists of ten EMI students in a self-contained classroom and that she has not been provided with a full-time aide.

4. The grievant requests that she be assigned only eight students, or in the alternative, be provided a full-time aide.

Ms. Travinski's grievance was denied at level one by the building principal who stated in part: "I cannot see anyway to reduce your class enrollment without additional staff assigned to Morgantown High School."

In response to grievant's appeal to level two a hearing was scheduled with Superintendent Jack Dulaney.

At this hearing Dr. Barbara Ritchie, Assistant Superintendent of Curriculum and Personnel in Monongalia County, testified that during the interim since the filing of the grievance

at level one efforts had been made to resolve the situation. Options which had been explored included making application to the State Department of Education for a waiver of the regulation and the possibility of changing the EMI class from self-contained to resource allowing the students to be mainstreamed for a part of the school day. Further investigation indicated that teachers and materials were available for the immediate mainstreaming of students in the areas of industrial arts and vocational agriculture. Ms. Travinski was involved in this planning and agreed that mainstreaming was a viable possibility not inconsistent with the priorities of the EMI program.¹

Dr. Ritchie further stated that she had not gone further in seeking a solution to the situation pending the outcome of the grievance.

Although both parties agreed in theory that the mainstreaming of several students could alleviate the excessive caseload of Ms. Travinski, her representative pointed out that any such changes would have to be made through the PACIEP process. This would entail the changing of the student's Individual Education Program through the Parent Advisory Conference

¹ Ms. Travinski indicated that two priorities for instruction existed; 1) the meeting of graduation requirements as set forth in the student's IEP and 2) vocational training including life skills and prejob skills training.

process. Ms. Travinski, other Special Education Department officials and parents would have to determine whether the mainstreaming program and available materials would be appropriate for the individual students.

As no decision regarding the mainstreaming was reached, the grievant filed an appeal to level three. In a letter to Ms. Travinski dated January 28, 1986 Joseph P. Talerico, President of the Monongalia County Board of Education, stated that her level three grievance had been discussed at the January 15, 1986 board of education meeting and both parties agreed that in compliance with state regulations regarding the definition of resource teacher, a number of grievant's students would be mainstreamed into a vocational agriculture class to begin January 28, 1986. Both parties further agreed that if this change did not occur by January 28, 1986 that the grievant would retain her right to appeal to level four of the grievance procedure. By letter dated January 28, 1986 this matter was appealed to level four by Steven Benson, WVEA UniServ Consultant and grievant's representative.

On April 9, 1986 this examiner was notified that Monongalia County Schools had received approval of the request for an exemption of regulation 2.71 in application to Ms. Travinski's educable mentally impaired class for the 1985-86 school year. The exemption was dated March 4, 1986 and signed

by Tom McNeel, State Superintendent of Schools. This exemption issued pursuant to State Board Policy 2419.11 is temporary, valid only for the 1985-86 school year with the school system providing documentation at the end of the year indicating that a plan of action to eliminate the circumstances which necessitated the exemption had been implemented. An on-site review may be conducted to verify compliance with the regulations.

The receipt of this waiver apparently nullifies the issue raised by this grievant. It is extremely unfortunate that the exemption which was requested in October, 1985 did not receive a response until March, 1986. Had this request been processed in a more timely manner there would have been no need for a grievance being filed and a great deal of time spent by the individuals involved in the processing of this matter could have been better directed to the education of the children in Monongalia County.

CONCLUSIONS OF LAW

1. The education of exceptional children has been mandated by the W.Va. Legislature as set forth in W.Va. Code, Chapter 18, Article 20, Sections 1-6.

2. The State Superintendent of Schools is responsible for the organization, promotion and administration of this program including the promulgation of rules and regulations regarding funding, reporting forms and procedures and the

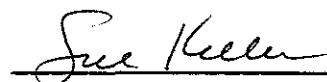
employment of qualified teachers. W.Va. Code, 18-20-5.

3. W.Va. Dept. of Education regulations for the Education of Exceptional Students 2.71 (Educable Mentally Impaired) (B)(1) states that the caseload of a self-contained special education class shall be no more than eight students without a full-time teachers aide or fifteen students with a full-time aide.

4. State Board Policy 2419.11 permits a temporary exemption from special education regulations upon application by a county board of education showing the existence of extenuating circumstances.

5. The Board of Education's request for an exemption of regulation 2.71 in application to the grievant's classroom was approved by Tom McNeel, State Superintendent of Schools, thereby rendering this grievance moot.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Monongalia 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.



SUE KELLER
Hearing Examiner

Dated: 6/16/86