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**WEST VIRGINIA EDUCATION  
EMPLOYEES GRIEVANCE BOARD**

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JOYCE ANDREWS

v.

Docket No. 40-87-330-1

PUTNAM COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Joyce Andrews, is employed by the Putnam County Board of Education and has been assigned as an Educational Diagnostician since 1978. On August 6, 1987 she filed a level one grievance alleging that school officials wrongfully rescinded a board approved agreement to pay her a supplemental salary of ten dollars for each Placement Advisory Committee (PAC) meeting she conducted. The grievance was denied at level one and full evidentiary hearings were conducted at levels two and three with subsequent decisions adverse to grievant. The level four appeal filed on December 21, 1987 indicated a desire for a hearing and by way of written response on December 30, 1987, the board stated its desire to present evidence at level four. Consequently a hearing was scheduled for February 10, 1988; when the hearing convened both parties agreed to submit the matter for decision based upon the existing record and submission of proposals, the last of which was received on March 24, 1988.

The facts in this grievance are not in dispute. Grievant has held her professional position for approximately ten years. She presently holds certification in secondary English, elementary education, specific learning disabilities, behavior disordered and mentally retarded, as well as both the elementary and secondary administrator certificates. In the past, the special education department was organized so that the several educational diagnosticians would observe and test students in special education on a countywide basis. Another department staff person, Teresa Learmont, had been assigned to chair the Placement Advisory Committee (PAC) meetings for each student from 1981 until early 1985 for which she received a salary supplement or stipend. Apparently grievant had assisted Ms. Learmont with the task from time to time but did not join Ms. Learmont in the effort to obtain the yearly supplemental salary.

When Ms. Learmont became ill in the spring of 1985, grievant assumed the duties and conducted the PAC meetings herself; she eventually asked for the additional compensation accorded Ms. Learmont. The arrangement was approved by the board on April 23, 1985 and the oral agreement taken from the minutes states in part: "...approve the supplemental compensation of Joyce Andrews for extra time worked on PAC...meetings, assignments and monitoring for the 1984-85 school term on a needs basis...(for) \$10.00 per day."<sup>1</sup>

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<sup>1</sup>Grievant stated the daily figure was calculated by dividing Learmont's \$2000 salary supplement by the 200 day teaching term to arrive at \$10.00 per day.

When Ms. Learmont came back to work the PAC meetings had increased to such a degree that grievant continued to perform the extra work on an as needed basis, upon the terms and conditions to which the parties had previously agreed, and she continued to do so until the end of the 1986-87 school year; Ms. Learmont transferred to another position at that time. Flora Francis, Director of Special Education, reorganized the special education department in August 1987. The new structure was patterned after that utilized by several other State school systems. Ms. Learmont's position would not be filled and, instead, the plan was to add to the staff so the department would have four educational diagnosticians. Duties were to be streamlined and each diagnostician would be assigned a specific student population personally conducting the PAC meeting for each student in his or her area of responsibility. The organizational change obviated the need to have one person perform all of the PAC meetings and, consequently, grievant was to perform the PACs for her group of students only and she was told she would no longer receive additional compensation to chair a PAC meeting.

Grievant contends that the board cannot modify her supplemental contract without following the procedural requirements of W.Va. Code, 18A-2-7 and that the reorganization necessitated notice and hearing before any decision could be made concerning her "reassignment." She requests that she be paid \$10.00 per day for each day she chairs a PAC meeting and back wages to the onset of the 1987-88 school year. She has additionally

requested that her job description be modified to include all of the duties she performs that are not listed on the county prepared document.<sup>2</sup>

The board contends that the reorganization allocated the PAC meetings in a manner so that no one person would have to work extra or longer hours than the other, that educational diagnosticians are itinerent teachers subject to the daily assignment by the director of special education and the assignment to conduct the PAC meetings is well within the realm of the duties that a educational diagnostician would perform in accordance with the job description of the position. The board contends that grievant was not required to be placed on a transfer list because all of the duties that she performed under the reorganization were performed by her in the past and her job title and site did not change, thus she was not "reassigned" as contemplated by W.Va. Code, 18A-2-7.

It is clear that grievant had an oral agreement with the board to receive compensation for extra time worked on PAC meetings on a needs basis, entered into in 1985 and continued for the 1985-86 and 1986-87 school years. This Board has previously determined that properly executed oral contracts between a board

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<sup>2</sup> Grievant states that her job description does not include the duties of (1) chairperson of PAC meetings, (2) chairperson for textbook selections, and (3) assists new special education teachers in the classroom.

of education and its employees are valid and enforceable and the board is bound by the practices and policies it properly establishes to conduct its affairs. Moore v. Ohio County Board of Education, Docket No. 35-87-027-3; Steele v. Wayne County Board of Education, Docket No. 50-87261-1; Powell v. Brown, 238 S.E.2d 220 (W.Va. 1977); W.Va. Code, 18A-2-2. Moreover, non-extracurricular contracts between a board and its employees which directly relate to and/or extend the principal employment must remain in force until such time as the board properly modifies or terminates the continuing (oral) contract following the notice and hearing mandates of W.Va. Code, 18A-2-2. Williams v. Gilmer County Board of Education, Docket No. 11-87-182-3.

However, the reorganization of the special education department has logically and rationally placed the responsibility of chairing each PAC meeting with the educational diagnostician who has performed the testing upon the student and is most familiar with the needs of that student. Under those circumstances grievant is not performing "extra time worked" on a "needs" basis when she assumes a PAC meeting, thus, there is no basis to award the compensation or supplemental salary of ten dollars per day for chairing a PAC as all of the education diagnosticians are performing like duties and none receive a supplemental salary

for that duty. Should grievant be asked to conduct a PAC for students other than her own, at hours other than the regular school day or times other than the regular school year, she is to be compensated at the agreed upon rate for the extra responsibility and time worked.

With respect to grievant's second complaint, the county's current Job Description for Educational Diagnosticians states that the position will "participate" in PAC meetings when requested and chairing the PAC constitutes participation. Moreover, the Job Description states the position will perform "other duties" as assigned by the Director and inclusion of each and every duty therefore is unnecessary. Lastly, grievant does not deny that she has voluntarily worked with textbook selection and other tasks and standard job descriptions are fashioned to impart information regarding the overall duties the position requires and cannot be tailor-made in the manner of a resume for each separate employee for jobs voluntarily assumed. (See note 2, *supra*.)

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<sup>3</sup> Some question arose as to whether "extra time worked" constituted hours beyond a normal work day and grievant said her work in the past to chair a PAC would vary; sometimes she would accomplish it all in a workday and on special occasions she could not. Thus it appears that the words allude both to the significant responsibility of chairing the PACs and possible intrusion of time beyond a work day. It is also clear under Williams, supra, that grievant's duties were not those duties contemplated by W.Va. Code, 18A-4-16, extracurricular assignments, thus W.Va. Code, 18A-2-7 is not applicable. The Director of Special Education asserted that many previous duties had been eliminated under the reorganization to which grievant made no rebuttal, thus, the shared PAC meetings now conducted do not encompass the significant responsibility placed on one person in the past.

In addition to the foregoing narration, the following findings of facts and conclusions of law are appropriate.

#### FINDINGS OF FACT

1. Grievant has been employed by the board as an educational diagnostician since 1978. Grievant's duties include administering and interpreting diagnostic instruments for referred students and other tasks as assigned by Flora Frances, Director of Exceptional Education.

2. For some time in the past and prior to 1985, grievant voluntarily helped to chair the Placement Advisory Committee (PAC) meetings for various identified exceptional students. For a considerable period of time grievant has also been interested in textbook selection and has voluntarily devoted time and talent to that endeavor as well as other non-designated duties.

3. Another of the department's staff, Teresa Learmont, also chaired PAC meetings for a considerable period of time. Ms. Learmont campaigned to receive a supplemental salary for those endeavors but grievant did not join Learmont's efforts. Ms. Learmont eventually assumed all of the PAC meeting chair responsibilities and grievant continued to assist her from time to time.

4. Ms. Learmont became ill in the spring of 1985 and grievant assumed Learmont's PAC duties. Grievant eventually petitioned to receive remuneration for her extra work and an oral agreement was reached, approved by the board and memorialized by the superintendent for the 1984-85 school year that she receive \$10.00 per day for extra work she performed on a needs basis to work on PAC meetings.

5. After Ms. Learmont returned to work, grievant performed her own regular duties but was still needed to assist with the PAC meeting work, thus the oral agreement was continued for the 1985-86 and 1986-87 school years. Grievant's duties with respect to the extra work she performed chairing PAC meetings involved after school hours on many occasions. At the end of the 1987 school year, Ms. Learmont transferred to another position.

6. A reorganization of the department beginning the 1987-88 school year eliminated Ms. Learmont's position, discarded some of the educational diagnosticians' former duties and work procedures and allocated to each diagnostician a specific student population for both the testing and chairing of PAC meetings of each designated student for which the diagnostician was responsible. The board did not establish a salary supplement for educational diagnosticians who chair PAC meetings for their own designated students.



7. Ms. Frances' reorganization of the department logically and rationally utilizes the expertise of the diagnosticians to chair PAC meetings for their students and obviates the ongoing need for one or two persons to be regularly employed or assigned extra work for that duty. There was no allegation made that the present organizational structure and PAC chairing responsibilities resulted in an onerous workload or necessitated extra work for the diagnosticians.

#### CONCLUSIONS OF LAW

1. The assignment of a duty within the scope of a non-teaching professional employee's area of expertise which can be anticipated by the position's job description is not a reassignment as contemplated by W.Va. Code, 18A-2-7.

2. As per her enforceable agreement with the board, grievant is entitled to a salary supplement of \$10.00 per day for extra PAC meeting work she is assigned or agrees to perform but she has failed to establish a basis in law, policy, or practice for said remuneration when she performs the designated PAC meeting duties of her position within her workday or work year for her own assigned students.

3. A board of education's official job description for a position should ordinarily reflect the basic overall duties of the position and grievant has shown no law, policy or practice which would compel the board herein to tailor a description for an employee reflecting duties she has voluntarily assumed.

4. It is incumbent upon a grievant to prove her grievance by a preponderance of the evidence, and grievant herein has failed to establish a basis in law, policy or practice to provide the relief she requests. Richards, et al. v. Hancock County Board of Education, Docket No. 15-86-170-2; Wade v. Marion County Board of Education, Docket No. 24-86-248-3; Harrison v. Kanawha County Board of Education, Docket No. 17-87-082-2; Taylor v. Marshall University, Docket No. BOR2-87-310-1.

Accordingly, this grievance is **DENIED** in its entirety.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Putnam County and such appeal must be filed within thirty (30) days of receipt of this decision. (W.Va. 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:

June 7, 1987

Nedra Koval

NEDRA KOVAL  
Hearing Examiner