



**REPLY TO:**  
101 Harper Park Drive  
Suite D  
Beckley, WV 25801  
Telephone: 255-6155

**Members**  
James Paul Geary  
Orton A. Jones  
David L. White

**WEST VIRGINIA EDUCATION  
EMPLOYEES GRIEVANCE BOARD**  
ARCH A. MOORE, JR.  
Governor

**Offices**  
240 Capitol Street  
Suite 508  
Charleston, WV 25301  
Telephone: 348-3361

**RUTH CALLAHAN**

**v.**

**DOCKET NO. 41-87-026-4**

**RALEIGH COUNTY BOARD OF EDUCATION**

**DECISION**

This grievance comes before the West Virginia Education Employees Grievance Board on appeal from a written waiver by the Raleigh County Board of Education indicating that the board decided to waive participation in the grievance at level three.

Thereafter, a level four hearing was held and the matter was submitted for decision following the filing of proposed findings of fact and conclusions of law on April 11, 1987.

The grievant, Ruth Callahan, complains that her teaching assignment was changed in August 1986, without prior notice in violation of WV Code §18A-2-7. The respondent board denies any violation of WV Code §18A-2-7 and asserts that grievants' teaching duties were changed because she had been teaching seventh and eighth grade gifted students for which she was not authorized by her credentials.

The evidence reveals that the grievant has a Masters degree and holds a permanent professional teaching certificate with specialization in "early childhood and elementary education, major 1- 8".<sup>1</sup> In addition, and at the request of the respondent board, the grievant was granted a first class permit with the specialization of "gifted, major 1 - 6".<sup>2</sup>

For each of the school years 1983-84, 1984-85 and 1985-86, the grievant taught Creative Writing and Film Making to seventh and eighth grade gifted students in five different junior high schools located in the county. In May 1986, the grievant was given a continuing contract as a "gifted teacher - special education".<sup>3</sup>

By letter dated June 18, 1986, she was informed that her credentials had been reviewed and that it might be necessary to assign her to the elementary program for gifted students.<sup>4</sup> Further, the

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<sup>1</sup>The grievant has acquired thirty hours in addition to her Masters degree and is paid accordingly.

<sup>2</sup>The first class permits were issued on an annual basis at the request of the respondent board for the school years 1983-84, 1984-85 and 1985-86.

<sup>3</sup>Except for the continuing provision of the contract, the contract was the same as had been given the grievant for the past three years.

<sup>4</sup>This letter was made a part of the evidence as Grievants Exhibit #1.

letter indicated that the grievant could be given consideration to teach Creative Writing in grades 6 - 8.

In a meeting held August 1986, the grievant was informed that she would be teaching Language Arts and Social Studies to gifted students, grades 1 - 6, at Bradley Elementary and Daniels Elementary.

By way of explanation, the respondent board asserts that grievant's teaching duties were changed in order to conform with State Board Policy No. 2321, which requires that teachers be placed within areas in which they are certified and if this requirement cannot be met, then the teacher must have on file a plan to become fully certified.

At first glance, this explanation would seem to be sufficient; however, it is deficient in at least two areas, namely, (1) in order for the grievant to have taught seventh and eighth grade gifted students for the past three years, it was necessary that the respondent prepare and recommend that she be granted a permit; had the board appropriately requested a permit for gifted 1 - 8 in accordance with State Board Policy No. 2510 and filed an appropriate plan endorsed by the grievant, then her credentials would have met the requirements.<sup>5</sup> (2) The second area of respondent's deficient explanation lies with the notice/due process requirements provided in WV Code §18A-2-7. The West Virginia Supreme Court of Appeals has

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<sup>5</sup> According to the current State Board Policy No. 2510, since the grievant holds a permanent certificate 1 - 8, she may acquire the gifted specialization for 1 - 8.

held that the provisions of WV Code §18A-2-7 must be complied with strictly. Morgan v. Pizzino, 163 W.Va. 454, 256 S.E.2d 592 (1979). This board has held that a transfer/assignment involving a substantial change in duties, responsibilities and subject matter requires compliance with WV Code §18A-2-7. Burge, et al. v. Mercer County Board of Education, Docket No. 29-86-113; Pansmith, et al. v. Taylor County Board of Education, Docket No. 46-86-057.

It is uncontested that the grievant did not receive any notice that she was to be reassigned as required by WV Code §18A-2-7.

In addition to the foregoing, the following findings of fact and conclusions of law are incorporated herein.

#### FINDINGS OF FACT

1. The grievant, Ruth Callahan, is a teacher employed by the Raleigh County Board of Education. She has a Masters degree and holds a permanent teaching certificate with specialization in early childhood and elementary education, major 1 - 8.

2. For the school years 1983-84, 1984-85 and 1985-86, the grievant taught Creative Writing and Film Making to gifted seventh and eighth grade students at five different junior high schools in Raleigh County.

3. In May 1986, the grievant was given a continuing contract as a gifted teacher/special education. This, except for the continuing provision, was the same contract given the grievant for the past three years.

4. In June 1986, by letter the grievant was informed her credentials had been reviewed and that her teaching assignment/duties might be changed.

5. In August 1986, the grievant's teaching assignment was changed to teaching Language Arts and Social Studies to gifted students in elementary grades 1 - 6 at Bradley Elementary and Daniels Elementary. This was a substantial change from the grievant's previous teaching assignment.

6. Upon the recommendation of the County Superintendent, the grievant was issued a permit to teach gifted students grades 1 - 6; however, this permit was utilized to teach gifted students in the seventh and eighth grades during the school year of 1983-84, 1984-85 and 1985-86.

7. The grievant was not given notice pursuant to WV Code §18A-2-7 that her assignment was going to be changed.

#### CONCLUSIONS OF LAW

1. The provisions of WV Code §18A-2-7 are clear and unambiguous and as such will be given full force and effect. Lavender v. McDowell County Board of Education, 327 S.E.2d 691 (W.Va. 1984).

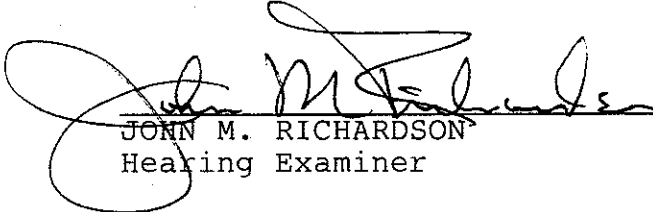
2. WV Code §18A-2-7 provides for notice and hearing before altering the positions of tenured teachers and must be complied with strictly. Morgan v. Pizzino, 163 W.Va. 454, 256 S.E.2d 592 (1979); Lavender v. McDowell County Board of Education, 327 S.E.2d 691 (W.Va. 1984).

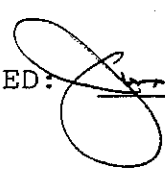
3., A transfer/assignment involving a substantial change in duties, responsibilities and subject matter requires compliance with WV Code §18A-2-7. Burge, et al v. Mercer County Board of Education, Docket No. 28-86-113; Pansmith, et al v. Taylor County Board of Education, Docket No. 46-86-057.

For all of the foregoing reasons, the grievance is GRANTED.

Accordingly, the Raleigh County Board of Education is ORDERED to reinstate the grievant to her previous teaching assignment subject to approval of the county board's request that the grievant be issued a permit to teach gifted students at the seventh and eighth grade levels.

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

  
JOHN M. RICHARDSON  
Hearing Examiner

DATED:  June 2, 1987