



**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

JAMES COHENOUR

v.

DOCKET NO. 13-87-058-4

GREENBRIER COUNTY BOARD OF EDUCATION

DECISION

This grievance comes before the West Virginia Education Employees Grievance Board on appeal from a waiver of consideration at level three. A level two hearing was held and decision rendered denying the grievance.

On April 2, 1987, a level four hearing was held before John M. Richardson, Hearing Examiner, at Beckley, West Virginia. At that time, the parties executed a waiver of their right to have a decision within thirty days of the hearing. Subsequently, the parties filed findings of fact and conclusions of law, all of which were considered in arriving at this decision.

For his grievance the grievant, James Cohenour, complains that the respondent board failed to follow State Board of Education Policy and County Education Policy relating to the procedures used in his evaluations and desires that those evaluations be "redone" by someone other than his principal.

The respondent denies any violation of State Board of Education Policy or County Policy and asserts that the grievance was not timely filed pursuant to WV Code §18-29-4(a)(1).

The evidence reveals that on or about December 18, 1986, the grievant's representative, Susan Hubbard, called Principal Carney concerning the grievant's recent (December 17, 1986) evaluation. At that time, Ms. Hubbard requested a conference concerning the evaluation and which Principal Carney refused to conduct on the basis that no grievance had been filed. The next contact by Ms. Hubbard with Principal Carney was on January 29, 1987, at which time she again requested a conference and was denied the opportunity on the basis that Principal Carney believed that more than fifteen days had elapsed since the evaluation had been rendered. It is for this reason that the respondent board now asserts that the grievance is untimely.

WV Code §18-29-4(a)(1), in pertinent part, provides:

(a) Level one.

(1) Before a grievance is filed and within fifteen days following the occurrence of the event upon which the grievance is based, or within fifteen days of the date on which the event became known to the grievant or within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance, the grievant or the designated representative shall schedule a conference with the immediate supervisor to discuss the nature of the grievance and the action, redress or other remedy sought. .

(Emphasis added)

An examination of the above-cited portion of WV Code §18-29-4(a)(1) reveals that a grievance need not be filed, and indeed,

before a grievance is filed it is necessary to schedule a conference. This conference may be scheduled by the grievant or the designated representative with the immediate supervisor. In the present grievance, it is uncontested that Ms. Hubbard requested a conference on December 18, 1986, the day following the rendition of the evaluation, which is the subject of this grievance. Thus, the grievance was timely and the computation of the time between December 18, 1986 and January 29, 1987 and whether or not it includes snow days or holidays as provided in WV Code §18-29-2(b), need not be determined.

The facts relating to the grievant's evaluation of December 17, 1986 reveals that Principal Carney was concerned about the number of students failing the grievant's World Cultures class, as reflected by the Principal's letter to the grievant dated April 7, 1986.<sup>1</sup>

In pursuing his concern, Principal Carney felt that grievant's instructional pattern should be changed, and therefore, concluded in his December 17, 1986 evaluation based upon his observations of the grievant's class that the grievant needed to improve in five instructional areas. The two previous evaluations had reflected

---

<sup>1</sup>This letter is part of Joint Exhibit #1 (transcript and exhibits of the level two hearing). The letter states in pertinent part: "My major concern is that instructional patterns must change to lower failure rates in your classes which are quite high. During 1984-85 at mid-semester you had a 54% failure rate, at the end of the year a 38% failure rate. This year, the failure rates in classes are as follows: first nine weeks--40%, first semester--39% and third nine weeks--47%. I feel strong action on your part to work with your students is necessary to lower failure rates which are extremely high."

that the grievant needed to improve in three areas. Since the Principal included two additional areas, he suggested that an improvement team be utilized. The grievant agreed to the utilization of the improvement team who, thereafter, observed the grievant's class and made their recommendations to the Principal.

In the instant grievance, it is uncontested that an improvement plan was not prepared by Principal Carney based upon the December 17, 1986 evaluation.<sup>2</sup> According to Principal Carney's testimony, he had prepared an improvement plan arising out of his March 1985 evaluation and believed that that plan was ongoing, even though he readily admits that State Board of Education Policy 5310 and County Board of Education Policy 6.14 went into effect during the interim period (August 1986).

Also contained in the evaluation of December 17, 1986 was the recommendation that the grievant not be recommended for continued employment. This result would appear to be inconsistent with the category marked "needs improvement" and Greenbrier County Board of Education Policy 6.14, which refers to "does not meet performance standards".<sup>3</sup>

---

<sup>2</sup>In complying with State Board of Education Policy 5310, the Greenbrier County Board of Education adopted its' Policy 6.14. In Greenbrier County Board of Education Policy 6.14(7)(c)(6), it states: "An improvement plan shall be written by the evaluator, using input from the employee, for areas in which the employee needs improvement."

<sup>3</sup>The grievant was not marked as being "unsatisfactory" in any category on the evaluation form.

It would appear from an examination of Greenbrier County Board of Education Policy 6.14 that its reference to "does not meet performance standards" would equate to the category of "unsatisfactory" on the evaluation form.

Greenbrier County Board of Education Policy 6.14 further requires that there be input on the part of the grievant in the preparation of the improvement plan, which improvement plan is admittedly nonexistent, together with specific time lines setting forth the improvement period.<sup>4</sup>

Noticeably absent from the evidence was any policy which would give guidance to the "failure rate" concern expressed by the Principal who in turn used this concern as the primary reason for believing that the grievant's instructional pattern should be changed.

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

#### FINDINGS OF FACT

1. The grievant, James Cohenour, is a Social Studies teacher employed by the Greenbrier County Board of Education and assigned to Greenbrier East High School.

2. The grievant's primary teaching duty was to teach World Cultures. He has been a teacher for fourteen years.

---

<sup>4</sup>This portion of Greenbrier County Board of Education Policy 6.14 is consistent with State Board of Education Policy 5310.

3., Charles Carney is the Principal at Greenbrier East High School, and as such, was the grievant's immediate supervisor and evaluator.

4. The grievant was evaluated on December 17, 1986 and that evaluation reveals that Principal Carney marked in the category of "needs improvement" that the grievant needed to improve in five areas.

5. Principal Carney's major concern was the grievant's rate of failures and this indicated to him a need for a change in the grievant's pattern of instruction.

6. As a result of the December 17, 1986 evaluation, Principal Carney did not recommend continued employment for the grievant.

7. The grievant was not evaluated as "unsatisfactory" in any category.

8. No improvement plan was developed as a result of the December 17, 1986 evaluation and no time lines were established as indicated by State Board of Education Policy 5310 and County Policy 6.14.

9. On March 30, 1987, Principal Carney changed his recommendation of December 17, 1986 to a recommendation that grievant be recommended for re-employment.

10. No evidence was offered which tended to prove that the evaluation of December 17, 1986 itself was improper and the questionable recommendation on that evaluation has been corrected.

### CONCLUSIONS OF LAW

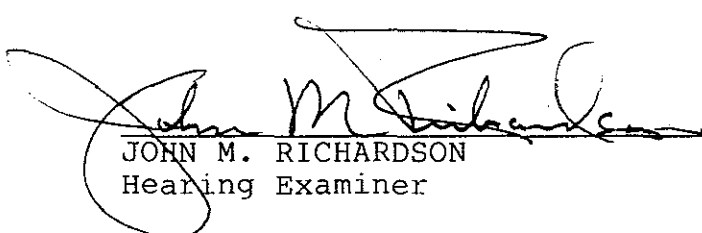
1. West Virginia Board of Education Policy 5310, section D, 7(c)(6), requires that an improvement plan be written by the evaluator using input from the employee and the failure to follow the requirements thereof invalidates the improvement plan. Brown v. Wood County Board of Education, Docket No. 54-86-262-1; Dunleavy v. Kanawha County Board of Education, Docket No. 20-86-240-1.

2. The Education Employees Grievance Board will not intrude itself into evaluations under State Board Policy 5300 unless there is evidence of such an arbitrary abuse of discretion on the part of the school officials as to show that the primary purpose of Policy 5300 has been confounded. Higgins v. Randolph County Board of Education, 286 S.E.2d 682 (W.Va. 1981); Brown v. Wood County Board of Education, Docket No. 54-86-26201.

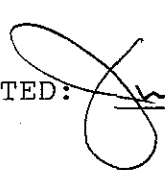
3. The grievant has failed to prove, as a matter of law, that the evaluation of December 17, 1986 was procedurally flawed and the respondent has shown that the questionable and unfavorable recommendation was corrected on March 30, 1987.

Accordingly, the relief requested in this grievance, is  
DENIED.

Either party may appeal this decision to the Circuit Court of Greenbrier 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 22, 1987