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LOIS E. KIMBLE

v.

DOCKET NO. 02-86-369-2

BERKELEY COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Lois E. Kimble, is employed by the Berkeley County Board of Education and is presently assigned as a teacher at the Back Creek Valley Elementary School. On October 3, 1986 Ms. Kimble filed a grievance in which she alleged a violation of W. Va. Code, 18-5-18a and W. Va. Board of Education Policy 2442.3 as she was assigned a split class of 23 third grade and 5 fourth grade students for the 1986-87 school term. The grievance was denied at levels one and two and the Berkeley County Board of Education waived consideration to level four. Both parties have agreed that the matter is to be submitted for decision based upon the record supplemented by briefs.

Grievant argues that the respondent has misapplied State Board of Education Policy 2442.3 as transportation of the 5 fourth grade students to another school was a viable alternative,

that the situation could have been remedied without transporting students through the use of a portable classroom and the hiring of an additional teacher and/or the assignment of a teacher's aide to assist the grievant. The grievant further alleges that the split grade situation altered her teaching assignment in violation of W. Va. Code, 18A-2-7.

The respondent argues that it was faced with an unexpected increase in enrollment at the beginning of the school year and that a waiver of the teacher/pupil ratio was requested.<sup>1</sup> Since the time of the initial filing of the grievance the student population has declined and the grievant now has only a third grade class within the maximum teacher/pupil ratio thereby rendering the situation moot.

The grievant acknowledges that her class is now in compliance with the statutory teacher/pupil ratio but requests that she be compensated for the 5 fourth graders improperly assigned to her during the 1986-87 term and wants assurance that she will not be assigned a split grade in future years of employment.

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<sup>1</sup>Respondent's brief indicates that waiver was approved by the State Department of Education on November 3, 1986.

In addition to the foregoing it is appropriate to make the following specific findings of fact and conclusions of law.

#### Findings of Fact

1. The Grievant is employed as a teacher by the Berkeley County Board of Education.

2. Due to an unexpected increase in the student population the grievant was assigned a split third and fourth grade class of twenty-eight students at the beginning of the 1986-87 school term.

3. The Berkeley County Board of Education applied for and received a waiver to the teacher/pupil ratios from the State Department of Education for grades one, three and four split, four and five for the 1986-87 term.

4. A loss of student population leaves the grievant presently with a third grade class within the statutory teacher/pupil ratios.

#### Conclusions of Law

1. W. Va. Code, 18-5-18a limits the number of split grade classrooms maintained by a county board of education and establishes maximum teacher/pupil ratios for kindergarten through grade

six. The state superintendent is authorized to permit an excess of the ratio in specific classrooms upon the application and showing of extraordinary circumstances by a county board of education .

2. State Board of Education Policy 2442.3 defines "extraordinary circumstances" as a situation which places an unreasonable burden or hardship on a county board of education, including but not limited to:

- a. when the number of available classrooms are inadequate and a realignment of school attendance zones will not solve the problem;
- b. when students have been assigned to classrooms and there is an unexpected surge in student population causing class enrollment to exceed the legal ratio;
- c. when an improved educational program can be offered by placing 26 to 28 students in specific classrooms to avoid additional split classes.

3. The grievant has failed to show any violation or misapplication of W. Va. Code, 18-5-18a or State Board of Education Policy 2442.3 and has provided no basis for the relief as requested.

Accordingly, the grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Berkeley 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: May 15, 1987

Sue Keller  
SUE KELLER  
Hearing Examiner