



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

**WEST VIRGINIA EDUCATION AND  
STATE EMPLOYEES GRIEVANCE BOARD**

**ARCH A. MOORE, JR.**  
Governor

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

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

**WANDA DAVIS**

**v.**

**Docket No. 45-88-133**

**SUMMERS COUNTY BOARD OF EDUCATION**

**D E C I S I O N**

Grievant, Wanda Davis, is employed by the Summers County Board of Education as a science teacher assigned to Hinton High School. She filed a grievance on May 9, 1988, alleging she had improperly been placed on a transfer list. A Level II hearing was held on May 27, 1988, and the decision at that level was adverse to the grievant. The Board voted to uphold that decision in June 1988. Upon appeal to Level IV, the parties indicated a decision could be made on the record developed at lower levels.

The parties do not dispute the facts giving rise to the grievance. Ms. Davis was notified by letter dated February 16, 1988 that Mr. Demetrius Tassos, Superintendent of Schools, would recommend she be placed on a transfer list for subsequent assignment

for the ensuing school year (Grievant's Exhibit No.1). Grievant was afforded a hearing on the proposed transfer before the Board at its regularly scheduled meeting on March 24, 1988 but no formal action was taken by the Board on that date. On April 1, 1988 three members of the Board resigned and their replacements were appointed on April 14, 1988. On April 19, 1988 a fourth member of the Board resigned and at a Board meeting on that date Mr. Tassos presented a list of employees to be considered for transfer which included grievant's name. No vote on the list or other formal action regarding the employees named therein was taken by the Board at that time. By letter dated April 22, 1988 Ms. Davis was notified that her name was included in the list given the Board. At the time of the Level II hearing on May 27, 1988, the Board had still taken no formal action on the list and grievant had not been informed of her assignment for the 1988-89 school term.

Ms. Davis contends that W.Va. Code, 18A-2-7 requires official action by a county board of education before an employee's name can be placed on a proposed transfer list and if such action is not taken on or before the first Monday of May of the current school year, the employees cannot be subsequently transferred. The Board places an interpretation upon W.Va. Code, 18A-2-7 by which only the presentation of the list must be made on or before the first Monday in May and a superintendent may obtain the Board's approval to actually transfer employees at a later

time. Accordingly, the Board contends the grievance is "premature" as Ms. Davis has not yet been reassigned.

The pertinent parts of W.Va. Code, 18A-2-7 provide:

The superintendent, subject only to approval of the board, shall have authority to assign, transfer, promote, demote or suspend school personnel and to recommend their dismissal pursuant to provisions of this chapter. However, an employee shall be notified in writing by the superintendent on or before the first Monday in April if he is being considered for transfer or to be transferred. Any teacher or employee who desires to protest such proposed transfer may request in writing a statement of the reasons for the proposed transfer. Such statement of reasons shall be delivered to the teacher or employee within ten days of the receipt of the request. Within ten days of the receipt of the statement of reasons, the teacher or employee may make written demand upon the superintendent for a hearing on the proposed transfer before the county board of education. The hearing on the proposed transfer shall be held on or before the first Monday in May. At the hearing, the reasons for the proposed transfer must be shown.

The superintendent at a meeting of the board on or before the first Monday in May, shall furnish in writing to the board a list of teachers and other employees to be considered for transfer and subsequent assignment for the next ensuing school year. All other teachers and employees not so listed shall be considered as reassigned to the positions or jobs held at the time of this meeting. The list of those recommended for transfer shall be included in the minute record of such meeting and all those so listed shall be notified in writing, which notice shall be delivered in writing, by certified mail, return receipt requested, to such persons' last known addresses within ten days following said board meeting, of their having been so recommended for transfer and subsequent assignment and the reasons therefor.

Although the provisions do not contain an express requirement that a county board of education vote on a recommended transfer list, this is the obvious intent of the legislation. Otherwise the requirements of notice and the deadlines imposed therein would be frivolous. It is quite clear that this section of the W.Va. Code emphatically places the responsibility for important personnel changes jointly upon the superintendent and the board of education and this emphasis could not be given effect if the superintendent had the authority to initiate the first step of a transfer process by merely furnishing a list of persons that may or may not be transferred. Mr. Tassos testified he would go before the Board and request approval to transfer particular employees (T.\_\_), but there is no requirement in W.Va. Code, 18A-2-7 that he do so. A mere presentation of the list and no official board action would thus have the effect of granting to the superintendent complete authority to reassign personnel at his own discretion and this is not the import of the above-cited provisions of the W.Va. Code. In Morgan v. Pizzino, 256 S.E.2d 592 (W.Va. 1979) the West Virginia Supreme Court of Appeals, although not specifically addressing the issue of board action on transfer lists, stated:

W.Va. Code, 18A-2-7 requires that an employee be notified and given a hearing before a decision about their placement on a transfer and reassignment list is made.

(Emphasis added)

The Board's subsequent notice and hearing did not cure their early approval which did not comply with Code 18A-2-7. The purpose of Code 18A-2-7 notice and hearing is to give employees an opportunity to present their position to the Board before their names are listed.

(Emphasis original)

There being no provisions contained in W.Va. Code, 18A-2-7 by which an employee can protest subsequent reassignment it is obvious a Board's formal action on the superintendent's recommendation is necessary before the first Monday in May of the then-current school term and failure to take such action prohibits the Board from initiating reassignments at a later time.

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

#### FINDINGS OF FACT

1. Grievant, Wanda Davis, is employed by the Summers County Board of Education as a science teacher and for the 1987-88 school term was assigned to Hinton High School.

2. By letter dated February 16, 1988 grievant was informed by Demetrius Tassos, Superintendent of Schools, that he would recommend to the Board that she be placed on a transfer list for subsequent assignment for the 1988-89 school term.

3. Mr. Tassos submitted a list of persons to be considered for transfer to the Board on April 19, 1988 and by letter dated April 22, 1988 he informed grievant that her name had been on that list.

4. The Summers County Board of Education has not voted on the proposed list or taken any other official action regarding the employees on the list.

#### CONCLUSIONS OF LAW

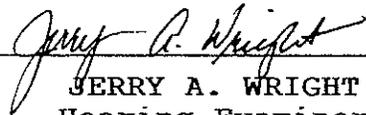
1. W.Va. Code, 18A-2-7 requires the superintendent of schools to present to the county board of education on or before the first Monday in May of the present school term a list of employees to be considered for transfer during the ensuing school term.

2. A county board of education must vote to approve the list submitted by the superintendent on or before the first Monday in May of the then-current school term and a failure to do so invalidates the list and prohibits said board from subsequently transferring any of the employees contained thereon.

3. The failure of the Summers County Board of Education to approve the transfer list submitted by Superintendent Tassos on April 19, 1988 before the first Monday in May 1988 prohibits it from reassigning the grievant during the 1988-89 school term.

Accordingly, the grievance is **GRANTED** and the Summers County Board of Education is hereby **ORDERED** to assign the grievant, Wanda Davis, to her former position at Hinton High School.

Either party may appeal this decision to the Circuit Court of Summers County or the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of said decision. (W.Va. Code, 18-29-7) Please inform this office of your intent to do so in order that the record can be prepared and transmitted to the Court.



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JERRY A. WRIGHT  
Hearing Examiner

Dated: August 26, 1988