



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

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

REPLY TO:
401 Davis Avenue
Suite 315
Elkins, WV 26241
Telephone: 636-1123

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

MARYLENE RADD

v.

DOCKET NO. 51-88-39-2

WEBSTER COUNTY BOARD OF EDUCATION

DECISION

Grievant, Marylene Radd, is employed as a speech pathologist by the Webster County Board of Education and is presently assigned to the Diana and Hacker Valley Elementary Schools. Ms. Radd filed a grievance at level four on February 24, 1988 as a result of being suspended without pay for two days. A level four hearing was conducted on April 11 and proposed findings of fact and conclusions of law were submitted by the grievant on May 3. The board did not submit a final written statement.

Superintendent Martha Dean notified the grievant by letter dated February 4, 1988 of her immediate suspension due to her failure to submit lesson plans as required by county policy.

On February 8 Superintendent Dean recommended that the two day suspension without pay be upheld based upon charges of insubordination and failure to adhere to county and state policy. Superintendent Dean further recommended that the suspension be extended up to fifteen days but to be discontinued upon the submission of the plans. The board upheld the two day suspension but directed the grievant to return to work the following day and to submit lesson plans to her principals within seven days and weekly thereafter.

Evidence offered at the level four hearing indicates that early in the 1987-88 school term a committee of teachers and administrators were working to revise the lesson plan policy and format then in use. Input from all teachers was solicited as indicated by a faculty meeting agenda dated September 28 and a memo from Michelle Livingston to the faculty dated October 5. The recommended format consists of grided pages, one grid per class, in which the learning objective, activities and resources are to be noted. The scope of the plans is to be limited to serve as a cue for the teacher to conduct the class and is to consist of a few words or a short phrase of how the student is to demonstrate mastery of a learning outcome

and a brief description of the planned instructional event. Formal terms and detailed outlines are not required. In October, 1987 the board of education adopted this format as part of Policy ICB which requires instructors to complete weekly lesson plans within the prescribed manner. The rationale for this requirement is to aide in "...the implementation of a well conceived, purposeful plan with essential features or components that promote the realization of established curricular goals and aims." The lesson plans are to be reviewed by the principal, providing him an evaluative tool and alerting him to individuals who may require assistance in lesson planning.

Principals were notified of the revision in the lesson plan policy by memorandum dated November 15. The faculty at Hacker Valley Elementary was informed by memorandum of November 18 and it was discussed at a faculty meeting held at Diana Elementary on November 4. A memorandum dated December 2 and issued to the faculty at Hacker Valley indicates that the lesson plan fillers implementing the new format had arrived and were to be used beginning the following week. A discussion regarding lesson plans was also included on the agenda for the December 17 faculty meeting at Hacker Valley.

Principal William Kavanagh issued a memorandum to his faculty dated January 5, 1988 in which he requested that the lesson plans be submitted each Monday or before. Mr. Kavanagh testified that although the memorandum was addressed to all faculty members only the grievant was not submitting the plans by that time. He further indicated that he had informally discussed this matter with the grievant on several occasions and that she had stated her philosophical opposition and intention not to complete the plans. A letter of January 18 from Mr. Kavanagh to the grievant confirmed discussions held with her on January 15 regarding lesson plans and yet another request that she adhere to county policy and submit the plans on a weekly basis.

Jerry Young, principal at Diana Elementary School, also issued a letter in early January in which he indicated that after three verbal requests he still had not received the grievant's lesson plans. The grievant was advised that the letter was to be considered a reprimand which would be placed in her personnel file.

On January 14 the Directors of Special Education and Curriculum and Instruction met with the grievant and Principal Young to discuss her noncompliance in the submission of lesson plans. According to the directors the grievant expressed her concern

as to the applicability of the format to the lesson plans of teachers of special subjects and asked to be exempt from the policy. While the directors made suggestions to assist the grievant she found them unacceptable and no resolution was reached.

By letter of January 26 Superintendent Dean confirmed a meeting with the grievant on January 25 concerning her compliance with the lesson plan policy. The grievant was reminded that adherence to board policy was required by her employment contract and that she had already been reminded, orally and in writing, of her obligation to submit the weekly plans. Superintendent Dean advised the grievant that the failure to follow the directive of her supervisors constituted insubordination and if the lessons were not submitted by February 1 at 8:00 a.m. further disciplinary action, possibly including suspension or dismissal, would be taken. When the grievant had not submitted the lesson plans to Principal Young by February 4 the letter of suspension was issued.¹

¹The grievant was scheduled at Hacker Valley on Tuesday and Friday and did submit lesson plans to Principal Kavanagh on February 2, however, she did not submit the plans to Principal Young at Diana Elementary School on February 3.

The grievant argues that she had done individual lesson plans for her students that were available for review by the principals but that transferring them to the county format was time consuming and would have required that she curtail services to the students.² This argument is not persuasive in light of the grievant's schedules which indicate that she had one hour planning time on Monday and Wednesday, one-half hour on Thursday and from one and one-half to two and one-half hours on Thursday and Friday, depending upon her caseload.

She found suggestions that she do lesson plans for the Diana students while at Hacker Valley unacceptable because of her concern in transporting confidential records. Neither would she consider shortening the sessions by five minutes or reducing student services from three to two days per week in order to make more planning time available to her.

The grievant argues that her prior evaluations had not indicated a problem in this area; that she was not provided

²Copies of the grievant's lesson plans were not submitted into the record and it is not clear whether she did week to week plans or was simply using a long term system based upon the student's Individual Educational Profile. It appears that whatever she was using was not submitted to the principals.

with a copy of the charges before the board action on February 8, that other speech pathologists in the county do not use the format; that it is difficult for teachers in special subject areas to utilize the format and as speech pathologists do not have substitutes when absent, lesson plans on a standardized format are not necessary for their use.

The testimony of the county directors indicate that all other teachers were submitting lesson plans on the proper format and if the greivant was not satisfied with the method as adopted the appropriate procedure for her to follow was to participate in a review of the policy scheduled in May. The claim that she had not been given a copy of the charges prior to the board meeting is also inaccurate as Superintendent Dean's letter to her of February 4 indicated that charges of insubordination would be presented.

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

Findings of Fact

1. Grievant is employed as a speech pathologist by the Webster County Board of Education and is assigned to Hacker Valley and Diana Elementary Schools.

2. In October, 1987 the board of education adopted a revised lesson plan policy with a specified format to be used by all teachers in the county.

3. During December and January both of the grievant's principals spoke with her regarding her failure to submit lesson plans. The directors of curriculum and special education met with her to no avail and she was issued a written reprimand from Principal Jerry Young.

4. In late January Superintendent Martha Dean met with the grievant and advised her that the lesson plans were a part of her contractual obligation and that the failure to comply by February 1 would result in further disciplinary action, possibly including suspension and/or dismissal for insubordination.

5. The grievant submitted lesson plans at Hacker Valley Elementary School on February 2 but did not submit plans at Diana Elementary School on February 3.

6. The grievant admits that the lesson plans were not submitted on the new format as transferring them from her format was time consuming and would require a reduction of her services to the students.

7. A review of the grievant's schedules indicates that she should have adequate planning time at least at Hacker Valley, however, she refused to complete planning for the Diana students there due to a concern about transporting confidential records. She additionally refused to implement a suggestion that her schedule be revised to permit more planning time.

8. All other teachers in the county were submitting lesson plans in the adopted format.

9. Superintendent Dean advised the grievant by letter of February 4 that she would present charges of insubordination to the board of education on February 8.

Conclusions of Law

1. The superintendent, subject only to approval of the board, shall have the authority to suspend school personnel pursuant to the provisions of Chapter 18A of the W.Va. Code. The superintendent's authority to suspend shall be temporary and not to exceed thirty days unless extended by order of the board pending a hearing upon charges. W.Va. Code, 18A-2-7; Gobeli v. Tucker County Board of Education, Docket No. 47-87-257-2.

2. The causes for suspension are the same as those for dismissal, i.e., immorality, incompetency, cruelty, insubordination, intemperance and willful neglect of duty. W.Va. Code, 18A-2-8; Totten v. Board of Education, 301 S.E. 2d 846 (W.Va. 1983).

3. Pursuant to W.Va. Code, 18A-2-8, a board of education may suspend any person in its employment at any time for insubordination upon the showing of just cause which authority must be exercised reasonably, not arbitrarily or capriciously. DeVito v. Board of Education, 317 S.E. 2d 159 [W.Va. 1984], Carden v. Boone County Board of Education, Docket No. 03-87-056-4.

4. A public school employee may be immediately disciplined for misconduct in appropriate circumstances as Board of Education Policy 5300 which requires evaluation and a period of improvement applies only to conduct which is correctable. Mullins v. Kiser, 331 S.E. 2d 494 (W.Va. 1985); Sell v. Barbour County Board of Education, Docket No. 01-88-019-2.

5. The grievant was given notice of the charges supporting the recommendation for suspension within the time limits set forth in W.Va. Code, 18A-2-8.

6. The board of education has established that the suspension was for just cause and processed in compliance with statutory guidelines.

Accordingly, the grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Webster 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 23, 1988

Sue Keller

SUE KELLER
HEARING EXAMINER