



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

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

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

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

NANCY THOMAS

v.

Docket No. 13-87-313-4

GREENBRIER COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Nancy Thomas, is a business education teacher employed by the Greenbrier County Board of Education and assigned to Greenbrier East High School. On September 17, 1987 and October 20, 1987 Ms. Thomas was given written evaluations and corresponding improvement plans by her principal, Mr. Charles Carney. She filed the present grievance alleging these evaluations did not conform to the requirements of State Board of Education Policy Numbers 5300 and 5310. A Level II hearing was held on November 10, 1987 and the hearing examiner at that level rendered a decision which reversed in part and affirmed in part the Level I response completed by Mr. Carney. The Board waived the Level III hearing and a Level IV evidentiary hearing was held on January 8, 1988.

Grievant and her principal had been experiencing some difficulties over the question of the need for the shorthand class she was teaching at Greenbrier East and shortly before the September 17th evaluation, Mr. Carney came to grievant's room and indicated he was displeased with her performance. Subsequently she was given the first evaluation with unsatisfactory marks in three categories including one under the heading "Instructional Qualities". The particular subsection marked was No. 2 "Plans for Class and Individual Student Differences on a Consistent Basis". An attached improvement plan gave Ms. Thomas one month to remove the unsatisfactory ratings by accomplishing goals in several listed areas of performance. Later Mr. Carney was apparently made aware of school board policy requirements that he make actual classroom observations before the evaluation and he and an improvement team then made observations of grievant's classroom performance before the October 20, 1987 evaluation and improvement plans were developed.¹ On this second evaluation two additional

¹Mr. Carney testified at the Level II and Level IV hearings he made only one observation. Mr. Gray and Mr. Livesay, from the Board Central Office, comprised the improvement team and they made several visits to grievant's classroom prior to the second evaluation.

deficiencies were under the headings "Reacts Favorably to Constructive Criticism" and "Projects Concern and Interest for Students". Grievant contends both evaluations and improvement plans should be removed from her personnel file for two main reasons:

1. The evaluation of September 17th was done before classroom observation by her principal and therefore in violation of State Board of Education Policy 5310, and this evaluation and the one completed on October 20, 1987 were both contrary to her actual performance as a teacher.
2. State Board of Education Policy 5310 also requires a principal to incorporate input from the employee into any improvement plan and this procedure was not followed when developed by Mr. Carney.

At Level II the hearing examiner agreed with grievant on her first argument insofar as the September 17th evaluation was done before classroom observation was made and issued a decision requiring Mr. Carney to remove from her file the part of that evaluation which indicated a deficiency in "Instructional Qualities".² He also found the grievant had been given opportunity to provide input when the

²Grievant raised the issue of Mr. Carney's non-compliance with this Level II decision but he testified at the Level IV hearing that he had delayed in deleting this item because he was aware grievant had appealed that decision.

improvement plans were developed and she chose not to do so.³

It is clear that the evaluation of September 17, 1987 was not in compliance with those parts of State Board of Education Policy 5310 which read:

EVALUATION PROCESS

...
b. Observation

1. Each formal written evaluation should be based upon a minimum of two observations.

...
c. Evaluation
...

5. Evaluations should be based on the sum total of all observations of performance standards. Evaluation reports shall include strengths, deficiencies and suggestions for improvement.

(Grievant's Exhibit No.2)

³Mr. Carney testified at the Level IV hearing he did not think it was necessary to get input from the grievant when he wrote the plans and he also did not agree with this requirement if indeed it was part of the State Board of Education Policy 5310. He also stated he had attempted to discuss the second plan with the grievant but she told him she had been instructed by her representative not to discuss the matter since her grievance was pending.

The first evaluation was simply not based on a sum total of all observation of performance standards. Mr. Carney testified at Level II and Level IV he did not make any prior classroom observations and contrary to the Level II findings, this particular part of the evaluation process is not merely one separable component but is integrally connected with all other aspects of a teacher's overall performance assessment. If the requirement of observation was not met then the whole evaluation is flawed as it could not represent a complete picture of grievant's performance. Insofar as the corresponding improvement plan was based on this evaluation it is also defective regardless of whether or not the grievant was given the opportunity for input when it was written.

The second evaluation and improvement plan pose a more complex question. Mr. Carney complied with the requirements of State Board of Education Policy 5300 that prior observations of classroom performance be made but grievant contends he failed to meet that part of the policy which reads:

c. Evaluation

...

6. An improvement plan shall be written by the evaluator, using input from the employee for areas in which the employee needs improvement.
(Grievant's Exhibit No.2)

The language of this policy requiring the employee's input is clear and despite Mr. Carney's claim that he attempted to get such input from the grievant when he developed the second improvement plan, his testimony at Levels II and IV indicate he just did not agree with this policy and as principal felt it was solely his responsibility to write such plans. It has been held that the provisions of Policy 5300 must be strictly construed in favor of 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. 29-86-240-1. The improvement plan of October 20, 1987 is therefore also defective.

The evidence is not supportive of the grievant's additional claim that the second evaluation should also be removed from her file because it did not accurately reflect her performance as a teacher. On the contrary, there was ample testimony at both levels which indicate she did not think shorthand should be taught at the school and openly expressed this opinion to other teachers and students despite the fact that Mr. Carney had told her the class would be continued and her actions were discouraging enrollment and encouraging students to drop the class. There is also sufficient evidence to support Mr.

Carney's claim that the grievant's very strict standards for the students in this particular class were in part the result of her desire to have it dropped from the school's curriculum. Moreover, 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 to show the primary purpose of the policy has been confounded. Brown v. Wood County Board of Education, supra; Higgins v. Randolph County Board of Education, 286 S.E.2d 682 (W.Va. 1981).

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

FINDINGS OF FACT

1. Grievant has been employed as a teacher by the Greenbrier County Board of Education since 1971 and is currently assigned to Greenbrier East High School.

2. On or about September 18, 1987 grievant was given a written evaluation and attached improvement plan by her principal, Mr. Charles Carney.

3. The evaluation cited deficiencies in three main areas and the improvement plan gave her one month to make substantial changes in her performance as a teacher.

4. Mr. Carney had made no classroom observations prior to this evaluation nor incorporated input from the employee into her improvement plan.

5. Subsequent to this evaluation Mr. Carney and/or members of an improvement team made at least three (3) classroom observations of the grievant's shorthand class.

6. Grievant was given a second written evaluation and improvement plan by Mr. Carney on or about October 20, 1987 and the evaluation included two additional deficiencies.

7. Mr. Carney did not incorporate input from the grievant into the second improvement plan.

CONCLUSIONS OF LAW

1. State Board of Education Policy 5300 requires prior classroom observation as part of a teacher's overall performance evaluation and a failure of school officials to make such observations

invalidates the entire evaluation and any improvement plan based upon it.

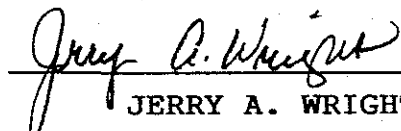
2. The failure of Mr. Carney to make classroom observations before the September 18, 1987 evaluation therefore invalidates it and the accompanying improvement plan.

3. State Board of Education Policy 5300 also requires a principal to use input from the employee when developing an improvement plan and Mr. Carney's failure to do so also invalidates the improvement plan of October 20, 1987.

4. Grievant failed to prove by a preponderance of the evidence that the October 20, 1987 evaluation amounted to such an arbitrary abuse of discretion on the part of her principal that the primary purpose of Policy 5300 was confounded.

Accordingly, the grievance is **GRANTED** in part and **DENIED** in part and the Greenbrier County Board of Education is hereby **ORDERED** to remove from the grievant's personnel file the September 18, 1987 evaluation and attached improvement plan. The Board is further **ORDERED** to remove from said file the improvement plan of October 20, 1987 and to develop another such plan using input from the grievant.

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. (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.


JERRY A. WRIGHT
Hearing Examiner

DATED: February 22, 1988