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BETTY NICODEMUS

v.

Docket No. 35-88-148

OHIO COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant Betty Nicodemus is employed by Respondent Ohio County Board of Education and assigned to teach media skills, 1-6, at five separate county schools. On June 1, 1988, she filed a grievance in which she protested portions of an evaluation of her professional performance at one school during the 1987-88 school year and "stress, W. Va. Code §18-29-2." Grievant did not prevail at the lower grievance levels and filed a level four grievance August 2, 1988. She noted that the matter could be decided on the record developed below, and school officials agreed to the arrangement.<sup>1</sup> Grievant subsequently tendered materials to the Grievance Board, without copy

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<sup>1</sup>A level two hearing was conducted June 17, 1988 and Decision, "Proposed Finding of Fact, Conclusions of Law and Recommendations," was signed by the hearing evaluator, Assistant Superintendent Frank Dumas on July 14; the school board upheld the level two decision July 27, 1988.

under a probationary contract to teach media skills and manage the media centers at West Liberty Elementary (WL), grades 1-6, and four primary schools, North Park, grades 1-3, and Bethlehem, Parkview and Steenrod schools, grades 1-4. According to her testimony, she did not have a permit for the out-of-field media teaching nor was she given any training or specific instructional materials to initiate her media endeavors (T2.8).

At the end of grievant's initial teaching year, Dr. Barbara Fassig and Ruth Ann Scherich evaluated her work in the primary schools. The Library/Media Summative Evaluation instrument lists 37 performance standards divided among seven overall assessment categories, A-D. The evaluator checks either "Yes" or "No" by each standard in the appropriate column on the instrument to rate "Strong Evidence" or "No Evidence" of evaluatee performance. Yeses are then tallied to determine overall whether the evaluatee "Exceeds, Meets or Does Not Meet" performance standards. On this initial evaluation, grievant attained "Yes" in 31 of 35 evaluated standards for an overall "Exceeds" on the June 2, 1986 assessment.<sup>4</sup>

Larry Boron, grievant's principal at WL, also evaluated grievant that year. He altered the printed evaluation form, adding "Some" midway between Yes and No on the instrument. Inasmuch as the instrument was designed to accommodate only Yes

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<sup>4</sup>An addendum noted that grievant's classes demonstrate structure. Further comments pertained to the need for volunteer help, a school newspaper and prioritizing next year's needs with the primary schools' principal.

to respondent; thus, a level four hearing was scheduled for October 19, 1988. At hearing, an excerpt of one of grievant's submitted documents, "Media Course of Study For Grades 1-6" (Guide), a voluminous curriculum guide and set of comprehensive lesson plans she compiled for media studies at her assigned schools, and her two-page explanatory letter, dated August 16, 1988, were made part of the record, with copy to respondent, and grievant testified briefly about her Guide. Respondent proffered its "Library Media Skills" curriculum guide in effect during the relevant period. The parties submitted proposed findings of facts and conclusions of law November 7, 1988.<sup>2</sup> At the hearing examiner's request, additional materials were provided by Assistant Superintendent Dumas on December 5, 1988.<sup>3</sup>

Grievant is certified to teach elementary and early childhood education. She was employed for the 1985-86 school year

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<sup>2</sup>Counsel for the board stated that respondent adopted the findings and conclusions prepared by Mr. Dumas at level two and added further argument on the issue of evaluations per State Board of Education Policy (SBE Policy) No. 5300.

<sup>3</sup>The need for the materials was detected after respondent's brief had been filed and the level two record more thoroughly examined. Finding of Fact 5 of the level two decision listed respondent's 13 elementary-primary schools. Included was a computation of "Hours per Week for Planning or Library Work" for each school or school group and the average planning hours for all. Inasmuch as none of the data had been introduced into the evidence at levels two or four, and in light of respondent's reliance on the decision below, Mr. Dumas was asked to also furnish data about the number of students and teachers served at each school and the names of the media teachers assigned to each. Also requested were two missing documents referred to in testimony, Mr. Dumas' decision or in the level two transcript list of exhibits.

building for missing items,<sup>7</sup> even though she knew of other county media teachers who did work voluntarily beyond the school year. T2.128,129,136.

Prior to her second year, 1986-87, grievant asked for her teaching schedule but was told it could not be located. The first day of school for teachers, she discovered schedule modifications which included an assignment to teach another out-of-field subject, art, 1-4, at Steenrod; classes increased from 30 minutes to 50 minutes at WL; and a "few" duties, not previously assigned, at each school. She stated that her work load may have increased by one-fifth or one-third, including time before and after school (T2.9). According to grievant, the concern she voiced to respondent's administrators about the "tremendous overload" was met with indifference (T2.10).<sup>8</sup>

Of record is just one summative evaluation for grievant's second teaching year, signed by the primary schools' new principal, Jonathan Duncan, on December 23, 1986. Grievant met 34

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<sup>7</sup>This incident appears to have set a new tone for relations and other disagreements between grievant and Principal Boron. See Decision, infra.

<sup>8</sup>Grievant's representative noted at level two that the assignment constituted a transfer as per "Bonfantino," Marion Co. Bd. of Educ. v. Bonfantino, 336 S.E.2d 650 (W.Va. 1988), for which she was not noticed, and the addition of the classes and duties seriously impeded grievant's ability to perform her media-related and instructional tasks.

Also, grievant's assertion that she was the only elementary media teacher who had any 50-minute classes was unrebutted. She thus had to adapt her comprehensive lesson plans to accommodate 30-minute classes at the primary schools and 50-minute classes at WL, a task not imposed on any other media teacher.

or No ratings upon which to tally an overall numerical score, "Some" ratings would have no more value than a No. Mr. Boron found on the May 15, 1986 evaluation that grievant met 26 of 37 listed standards for an overall, Meets performance standards.<sup>5</sup>

At instructional year's end, teachers attend school two record days to prepare grades, inventory room items and the like, for closure. Media teachers have similar tasks but must inventory the entire media acquisition; grievant's duty in this regard was multiplied by her five school assignments. In June, 1986, grievant and Mr. Boron had a strong disagreement when she submitted her inventory. Boron thought her list of unaccounted for items excessive and she refused to heed his advice that she enter teachers' classrooms to search for the missing items.<sup>6</sup>

At the level two hearing, grievant stated that two days was not enough time to account for all media items and she refused to volunteer several days of her own time to search the entire

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<sup>5</sup>He rated seven "Some" and four "No." He commended her cooperation with the faculty and administration, management of budgetary matters, and efficient cataloging. Also, "(She) has promoted and maintained positive school/community relations this year." He recommended she improve instructional management via efficient use of class time, present objectives to begin the class, conduct activities to challenge the learners and develop a plan of assertive discipline to keep students "on task" and controlled. Gr. Ex. No. 3.

<sup>6</sup>She did not conduct a building search that first year as she felt she had no right to look into other teachers' personal belongings, desks and cabinets for missing items. She wrote, "Mr. Boron was furious." See grievant's May 26, 1988 addendum (Protest) contesting the May 19, 1989 evaluation, at issue; see also Note 7.

performance standards (0-17)." On an attached addendum, Boron listed seven distinct recommendations; only one referenced two of the three formative evaluations<sup>11</sup> conducted during the semester. Grievant stated that she did not agree with several items she believed were not evaluated correctly and attempted to point it out to Mr. Boron. She felt the bad evaluation threatened her tenure chances.

By addendum dated December 18, 1987, grievant formally challenged 15 of Mr. Boron's "Some" ratings on the evaluation.<sup>12</sup> Grievant concluded, "When I questioned some of the items, he simply defended them. It was obvious to me that he would not change any of them even if I could prove them to be wrong." Grievant's notion that Mr. Boron would not change a rating was

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<sup>11</sup>Formative evaluations are evaluative instruments utilized by an evaluator to formally observe the evaluatee's teaching performance. This instrument lists seven distinct performance categories, 1-7, not identical to those of the summative evaluation, and assesses forty individual standards falling within the seven. The evaluator must check Y, Yes, strong evidence, N, No evidence, or S, Some evidence that the standards is performed, or "O, Not Observed, performance indicators not germane to lesson." The instrument also provides an area designated "Indicators" for written comment beside each standard. Formatives, as well as other data, may form the basis for the final or "summative" evaluation. The formative evaluations used to support the December 11 summative evaluation were not made part of the record herein. See Note 12.

<sup>12</sup>She pointed out some discrepancies between Mr. Boron's written addendum, a December 4, 1987 formative evaluation and the checklisted items on the summative evaluation. She faulted Mr. Boron for not following written evaluations procedures that "[t]he evaluator and evaluatee shall work cooperatively to compile evidence that each standard is being met," noting that Mr. Boron presented the already prepared form to her, with no input from her, and asked for her reaction.

of the 37 performance standards. He noted that "the evaluative tool does not allow for indicators between 'exceeding' and 'not performing' a standard"<sup>9</sup> and also wrote that grievant "has indeed performed the standards and thus exceeds performance standards according to this evaluation."<sup>10</sup> Gr. Ex. No. 2.

Grievant's third year (1987-88) teaching schedule indicated that she had 15 different sets of pupils and media classes in her four assigned primary schools, plus the Steenrod art pupils (4 classes) and a "TMI" (special education) class at Park View. She had 219 students in 11 media classes at WL, where she reported Wednesday mornings and all day Thursday and Friday. All totaled, grievant served approximately 32 teachers and 627 students, 27 different groups of children for 31 different classes during the year.

On December 11, 1987, Principal Boron issued grievant an evaluation which contrasted sharply with all prior evaluations of record, including his own. Boron again inserted a "Some" rating on the instrument and marked 17 standards Yes, 19 standards Some, and one standard No, for an overall "Does not meet

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<sup>9</sup>Mr. Duncan was apparently unaware that at least one county principal, Mr. Boron, had modified the evaluative rating criteria. However, SBE Policy 5310(6)(1) requires that evaluation components be standardized throughout a county and rating is a critical component of an evaluation instrument.

<sup>10</sup>The three performance standards unmet were, in category A-Utilization/Services: 1. Provides in-service for staff; 3. Arranges for inter-media loan of materials; and 4. Contributes to curriculum planning and provides knowledge of available materials.

school days grievant reported to WL.<sup>15</sup> The culmination of this action was Mr. Boron's May 19, 1988 evaluation of grievant, at issue in this grievance dispute. Grievant fared better on the May 19 evaluation as Mr. Boron rated her 20 "Yes" and 17 "Some" for an overall "Meets" performance standards (19-32). However, this time Principal Boron listed ten "Recommendations for Improvement," five related to instructional skills, and the other five to the non-instructional aspects of her position.<sup>16</sup>

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<sup>15</sup>There were 12 formal classroom observations conducted by Mr. Boron and three assistance team members; 14 messages, observation notes and memos; 9 conferences; and 4 formative evaluation addenda. Scrutiny of the extensive data shows that many of grievant's efforts to meet one criticism resulted in a response that she embark on still more specified activity not even mentioned in the original criticism. For example, a Plan conference memo of March 31 noted grievant's statement that she had remedied criticisms that the media center needed "brightened up" by use of plants and displays (one Plan team member had commended the effort in a previous memo). Mr. Boron then advised that she contrive display themes to support reading and to consider "motivational activities and contests." Mr. Boron's May 19, 1988 Plan assessment further criticized grievant in that her displays seldom supported "special activities" such as "Written Communication Week, Handicapped Awareness Week, Black Awareness Studies and special dates for individuals and events." Resp. Ex. Nos. 4, 5 and 8.

<sup>16</sup>Compared with the December 11, 1987 evaluation, grievant net gained three more "Yes" ratings and there was no "No" rating; however, four areas previously marked "Yes" were downrated to "Some." Mr. Boron concluded the May 19 evaluation,

Commendations: Betty has made an effort to better meet job performance standards. Media equipment and resource material checkout systems are now in effect. A faculty awareness newsletter is currently being published relevant to media happenings. Betty has been cooperative in working with assistance personnel.

I recommend the employment of Mrs. Betty Nicodemus for the 1988-89 school year.



erroneous: Subsequent to her written protest, on December 23, 1987, he added another addendum to the evaluation and changed one "Some" to another "No."

Mr. Boron then prepared a formal Plan of Assistance (Plan), to be implemented during grievant's two-and-one-half weekdays at WL. The Plan, presented to grievant January 13, 1988,<sup>13</sup> listed four items under a heading "Statement of Deficiency" and, in part, under "General Statement" for the Plan, "you are directed to follow this Plan of Assistance which has been developed to assist you in correcting your deficiencies."<sup>14</sup>

According to the extensive evidence of record, between January 27 and May 16, 1988, 39 interactions between grievant, Boron and the assistance team took place in the estimated 26.5

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<sup>13</sup>SBE Policy 5310(D)(7)(c)(6) requires that an evaluator use input from the employee to write an improvement plan. Mr. Boron prepared the single-spaced, four-page document without grievant's input.

<sup>14</sup>The Plan's "Program To Be Followed" then listed eight deficiencies with one or more command, e.g., "You will ensure...; You will utilize...; direct...; establish..." etc., in all, 20 separately listed directives, some of which contained more than one distinct instruction. Some of the listed deficiencies, as well as the remediative directives, were repetitive, merely restating the perceived problems differently but adding to the enormity of remedial actions.

Some directives, while quite detailed and lengthy in scope, provided no meaningful specifics with which to accomplish the stated goal, e.g., "To correct the deficiency of inappropriate school/community relations as a teacher in the media center: 1. You will consistently promote positive student and teacher relationships in the work environment" (Emphasis added). The evaluation data of December 11, 1987 does not indicate in what manner grievant no longer met this particular standard, the performance of which Mr. Boron had previously commended after her first year of media teaching. Resp. Ex. Nos. 2, 3; Gr. Ex. No. 3; and see, Note 5, supra.

19 items, not in the media center, but scattered throughout the classrooms and school. He spoke of the importance of inventory, yearly tendered to the school board for insurance purposes, and his concern due to the cost value of some of the missing items. He said that on June 4, 1987, grievant submitted another list of 15 unaccounted for items. He continued:

So that list [June 4, 1987] was submitted. I think it was based upon that that I had a real concern, and when I wrote the plan of assistance on January the 13th, [1988] I sat down with Betty on that day, and the one thing I included in there, I said that a comprehensive and efficient system for cataloging that ensures organization and that prohibits inventory losses will be maintained. It was a real concern we might lose<sup>18</sup> a lot of items or not be able to account for items<sup>18</sup> (T2.63).

Boron then stated that when grievant submitted the 1987-88 inventory list in June 1988, there were nine missing items (T2.64). He went on to explain that prior to the May 19 evaluation he "made a check" of some film loops and cassettes and identified certain items with no pocket or card in the pocket<sup>19</sup> "[S]o there was no means to establish an accountability" (T2.64). According to his testimony he had photographed those particular items in December 1987 and "knew there was a concern in terms of accountability and reliability of getting inventory

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<sup>18</sup>Mr. Boron did not explain why, if he felt real concern about inventory loss after the June 1987 list turned in by grievant, he did not convey the concern to grievant when the school year began instead of waiting until the December 11, 1987 evaluation to rate this standard unmet.

<sup>19</sup>The card/pocket system provided teachers a means to check out audio-visual (A-V) cassettes, but was not maintained in the past. See Notes 22, 23, 24.

On May 26, 1988, grievant attached a four-page "Protest" to the evaluation and appended 15 pages of data as well as her completed Guide in support thereof.<sup>17</sup> At level two the parties further developed their respective positions about 13 of the 17 standards rated "Some" on the May 19, 1988 evaluation which grievant felt should be changed to a rating of "Yes." The pertinent evaluation categories, standards and positions are as follows.

A. Library-Media Organization and Administration: 4. Maintains a comprehensive and efficient system for cataloging all media center materials.

Mr. Boron's explanation of why grievant was rated Some for this category was protracted and difficult to follow and understand. See T2.60-67. Boron spoke of August 27, 1986 when grievant completed her first year and furnished him an inventory list with 19 missing items. He apparently contacted the former media teacher to help him reinventory and they located 17 of the

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<sup>17</sup>As noted supra, the intact Guide was eventually forwarded to the Grievance Board and the undersigned had an opportunity to thoroughly examine its contents. Subsequently, an excerpt of the Guide, representative of the various grade levels, 1-6, was copied and made part of the record, and the original was returned to grievant as per her written request. Mention must be made of this most impressive and professional-looking work. As a starting point, grievant listed and adhered to the numbered "Learner Outcomes" (Objectives) for each distinctive grade level found in respondent's printed media curriculum guide, of record. She developed a one-year, 40-week curriculum for each grade level, and each week's lesson thoroughly identified concepts, learner outcomes, learning objectives, teaching strategies, media-resources and student evaluation techniques, in all, approximately 240 separate comprehensive lesson plans.

turned in." When he checked again May 16, the items found in Decmeber were still not completed and he sent grievant a memo about those 11 items May 19 (after evaluation). T2.66. Boron stated that he collected and removed other items from the media center as "I wanted those items in my office at this point in time because I wanted to prove the point that they did not have a card or pocket in them" (T2.62). On June 3 he sent grievant a memo<sup>20</sup> listing the items and informing her that they could be marked as accounted for on her inventory. He concluded, "I think it would be difficult to say that when you have items of this value that a rating of Yes should be given"(T2.67).<sup>21</sup>

Mr. Boron's testimony and analysis of grievant's performance of this standard is not consistent with other more

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<sup>20</sup>It was very difficult to ascertain the nature of the gathered materials - listed were, Skill Development Study Guides, workbooks, Box Controlled Rdng. Skill Dev., Box PAVE A-F, and various A-V items and charts. He did not state whether the items were materials normally used only in the media center and not removed for classroom use, "but if one would desire to take the items to a classroom it would be difficult to maintain an accurate account or inventory of them." T2.67.

<sup>21</sup>The stated rationale falls short. The assistance evaluative period was January 13 to May 19. On May 19 Mr. Boron penned the contested ratings, prior to his receipt of the inventory list from grievant in June, yet he used the nine missing inventory items, in part, as justification for the rating. He knew in December 1987 of items not pocketed or with missing cards, yet he did not compile and present that list to grievant until May 19 after the May 16 "recheck" when he found them still not completed. Likewise prior to evaluation, he gathered items with missing pocket or card to his office, for no other reason than to "prove" grievant derelict. Boron's role during the evaluative period was to assist grievant's endeavors, yet it appears he devoted energy and time to prove she could not comply with his ever increasing directives, and even impeded her efforts in that regard. See, e.g., Note 22.

compelling evidence. According to grievant's un rebutted testimony, there are nearly 800 items in WL's media collection, all of which are presently properly cataloged, i.e., a title and subject card for the items are placed in the card catalog. Grievant contended that when she began her duties at WL most of the A-V software had not been cataloged in any manner and the only record of those materials was a school inventory, listing the items on date of receipt, some back to the 1970s. Grievant entered all of the materials into a computer data base and produced an A-V catalog for WL teachers' use. From the data base, subject and title cards were printed for the card catalog and all incoming materials are now cataloged upon receipt, according to her. See Gr. Protest.

However, Mr. Boron believed that materials are not cataloged properly when pockets or cards may be missing from the items as he noted on the list of 11 items he issued to grievant May 19.<sup>22</sup> Conversely, grievant testified that when she assumed her duties at WL, 500 items had no book pocket or circulation card and there was no checkout system in place (T2.98).

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<sup>22</sup>In her evaluation Protest, grievant wrote she had repeatedly asked Mr. Boron what items were not cataloged. Sh said that he finally "came up" with his list on the day of evaluation with items that were missing pockets or cards, but, as she maintained, the works had been cataloged by title in the card catalog. She also wrote that nine of the 11 items on the list had been in the WL collection well before her tenure and "it is apparent that his standards for cataloging of materials are applied to me differently than they have been applied to previous librarians."

Hence, it appears grievant had been judged by standards not required of the former media teacher.<sup>23</sup> Given Mr. Boron's newly imposed standard for proper cataloging and inventory loss control, grievant would be required to devote part of her two-and-one-half days at WL checking 800 items to ensure a card or pocket had not fallen off an item or been mislaid by others during the equivalent days she was not on-site at WL.<sup>24</sup>

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<sup>23</sup>Mr. Boron admitted there had been no checkout system in the past because he was not aware of inventory loss of value items prior to grievant's tenure. However, according to grievant's unrebutted commentary, Ms. Seiferth, one of the Plan assistance team members and former media person at WL, had advised grievant her first year that if certain items were not actually located during inventory to check them off anyway. Grievant declined to follow the advice for she felt the inventory list should have meaning. Moreover, grievant claimed that teachers still removed A-V materials without implementing the checkout procedures she initiated as some felt the procedure demeaning to them as professionals. T2.95-106; Gr. Protest.

Grievant's ethical stance in this matter is credible and commendable for all she would have to do to avoid Boron's concern, wrath and low rating, would be to simply check off every item whether it was located or not and send him a inventory list with no missing value items. See Notes 6 and 7.

<sup>24</sup>When questioned why she did not complete "pocketing" work at WL in three years, grievant stated that there was just not enough time. But the directive to "properly" catalog with pockets for inventory loss control appears to have been first issued with the January 13, 1988 Plan. Grievant disclosed that when she began her position, due to the overall condition of the media centers, she felt she had to create or redo the entire card catalog and shelf lists for three of her other schools. On one occasion, Mr. Boron had observed her typing at WL and accused her of doing personal typing. When she explained she was typing materials for another of her schools, he advised her to do only WL work while there. However, she had only 20 minutes planning at Park View, one-hour at North Park, 40 minutes at Bethlehem and 25 minutes at Steenrod, where she also taught art.

During the evaluation period, grievant initiated a new system for monitoring usage of A-V materials by some type of bulletin board method and sign-up sheets in the A-V storage area (T2.102); sent notices home to some parents whose children had lost books, a loss prevention activity which earned Mr. Boron's approval (T2.117); and "now had a more workable loss prevention system" according to Mr. Boron's own analysis (T2.103).

C. Utilization/Services: 4. Contributes to curriculum planning and provides knowledge of available materials (Yes, 12/11/87); 5. Assists faculty in providing basic research and study skills instruction in the use of the center's material and equipment for all students; 6. Cooperates with teachers in planning and providing library instruction which is relevant to the instructional process.

Principal Boron began with standard C.4 by stating his belief that grievant had not "thoroughly worked with the teachers" to advise them of the usefulness of available media materials. He said she had conducted a formal in-service "this year" but it was the first one in three years "so that was a real area of concern at this point." T2.69. However, "Provides in-service for staff" appeared as C.2 in this category and is rated Yes on the contested May 19, 1988 evaluation.<sup>25</sup>

Mr. Boron stated that he related standard 5 in this category to instructional techniques and strategies he observed,

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<sup>25</sup>Mr. Boron's focus on in-service for this standard, C.4, seemed unclear and unfounded since grievant conducted an in-service and he rated her Yes for C.2, the specific in-service standard, but he rated her Yes for standard C.4 on December 11, 1987, even though she had not performed an in-service up to that time. Further, the scope of the remediation-evaluative period, January 13 - May 19, precluded consideration of past deficiency.

Oftentimes student behavior is not as desirable as it should be. Furthermore, I think the class presentations do not always maintain the most positive environment from an instructional standpoint. I think classes need to incorporate review, introduction, explanation of skill, practice, and then review again and summary.<sup>26</sup> And oftentimes this does not occur. And I realize that that is an area that is very difficult to substantiate on paper, however, that's my opinion at this point in time. I think Betty needs to do a more effective job in that area (T2.73,74).

With respect to standard 6 in this category, he related:

I have suggested that formal procedures be established, because I feel that there is time within Betty's schedule when it would be possible to meet with teachers on a consistent, regular basis to be able to provide support in the classroom to assist them in terms of planning and providing resources. Because Betty does some inter-media center loan work which is definitely an improvement, and I know that she informs the staff of new materials, because we are getting them in all the time. So I think that some formality needs to be established there. In other words, you know, if we are going to get together once every two weeks, or what have you, so that we can provide assistance to the [classroom] teachers ....

Grievant responded to the Some ratings of C.4, 5 and 6, that it was unjust to rate her less than Yes. She expressed difficulty integrating her lessons with other teachers,<sup>27</sup>

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<sup>26</sup>Mr. Boron rated grievant "Some" for "Promotes appropriate conduct of students using media center facilities" found in A.9, so it is not clear why student behavior is again cited in this standard. Also, the evaluation instrument clearly provides other criteria and standards to assess teaching skills such as described; why the evaluatee/grievant should be subject to downrating for one alleged deficiency in more than one category and/or stated standard is not fair or reasonable. As for "Review," grievant complied, according to Boron's formative observation-evaluative data. See Resp. Ex. No. 4; see also Note 35.

<sup>27</sup>The actual value and feasibility of this activity on grievant's part is questionable given the fact that she served  
(Footnote Continued)



because she had no time allocated to plan with them; when she instructed one group of students, their homeroom teacher was then released for a planning period. She said in order for her to accomplish the objective, she would also need to know the teachers' planning two weeks in advance as she submitted her own lesson plans to the principal one week in advance.

Principal Boron did not respond to grievant's direct challenge in this vein. Boron instead stated that she had "345, possibly 367 minutes per week"<sup>28</sup> of unassigned time at WL while his staff teachers had only 220 minutes of planning per week. He stated that grievant had 180 minutes without scheduled classes each Wednesday morning and eight WL teachers had planning periods during that time.<sup>29</sup> However, the schedules submitted by respondent show grievant to have approximately 175 minutes "planning" on Wednesday morning from 8:15 until her lunch period at 11:10 a.m. Seven of the 11 teachers whose students are scheduled media classes have 30-minute planning

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(Footnote Continued)

over 600 students per week and only met with each of the 11 separate WL classes (200 students) once weekly. Moreover, her media skills research curriculum is inherently supportive of the classroom instructional process.

<sup>28</sup>Grievant's weekly schedule reveals that she had 334 minutes scheduled for planning at WL. She also had eight minutes Wednesday and Thursday from the time she arrived at school at 7:55 until she reported outside the building at 8:03 for Sidewalk Duty (until 8:15) and 20 minutes on Friday until she had Breakfast Duty from 8:15 until 8:35.

<sup>29</sup>Music and physical education visiting specialists met with WL students Wednesday morning with back-to-back 30-minute classes which served to free-up WL teachers for planning.



periods in increments from 8:35 until 11:05. While it may be a minor point from Mr. Boron's perspective, the time on Wednesday when grievant could have possibly traveled around to all of the seven teachers' rooms during their planning periods, amounted to 150 minutes, not 180 minutes as Mr. Boron suggested.<sup>30</sup>

Mr. Boron admitted that he never observed grievant idle during non-instructional time but he stated that she spent a lot of time typing. Grievant noted that additional new books required production of a whole card set, subject, author and title card. She must then type a pocket and checkout card and affix the pocket and spine label to the book before shelving.

Grievant's position that she should be rated Yes for these standards is convincing. Inasmuch as she had 50-minute classes at WL, she should have had a 50-minute period of instructional

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<sup>30</sup>This instance is representative of Mr. Boron's one-sided or mistaken viewpoint on many of the criticisms he expressed about grievant. For example, Boron spoke also of time on Thursday, when grievant had a 55-minute uninterrupted period, and Thursday and Friday, when she had no scheduled classes from 11:15 to 12:17. He stated that discounting her 30-minute lunch period (11:15-11:45) on those days, she could use that "free" time to make an effort to go out and talk with the teachers to see what was happening in the classroom (T2.69-71).

Since grievant and an art teacher were the only specialists on Thursday, there would be only one teacher available with a planning period between 9:30 and 10:25, grievant's earlier planning period that day. Further, Mr. Boron neglected to point out that his own staff is also on lunch break during three time periods between 11:18 and 12:26, when grievant had time between the end of her lunch period and her first scheduled afternoon class on Thursday and Friday. Moreover, the record reveals that grievant had no on-the-job "free" time and the 150-minute period on Wednesday was essential, solely for library-media management.

planning time, at least on Thursday and Friday. W.Va. Code §18A-4-14(2) provides in part:

Every teacher who is regularly employed ... shall be provided at least one planning period within each regular school day to be used to complete necessary preparations for the instruction of pupils. Such planning period shall be the length of the usual class period in the school to which such teacher is assigned, and shall be not less than thirty minutes. No teacher shall be assigned any responsibilities during this period, and no county shall increase the number of hours to be worked by a teacher as a result ....

Principals ... shall cooperate in carrying out the provisions .... including but not limited to, assuming control of the class period or supervision of students during [the] ... period (emphasis added).

Obviously grievant must have non-instructional time to attend to the managerial and clerical duties of the position and Wednesday morning appeared to be an ideal time to attend those duties, but grievant's schedule did not reveal any specified instructional planning time. Further, if Mr. Boron desired that she integrate her lessons with his teachers' curriculum, and indeed he insisted that a "formal procedure" should be implemented, he was in the best position to schedule and provide for that activity inasmuch as grievant had no authority to make her own schedule -- or even intrude on other teachers' instructional planning.<sup>31</sup> Finally, according to grievant's un rebutted testimony, when she did provide in-service for WL teachers, Mr. Boron did not even require his staff to attend.

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<sup>31</sup>Mr. Boron placed the entire responsibility for this endeavor on grievant and none upon himself or his staff. WL teachers could have more easily come to grievant, located in one site, as she to approach them, at many sites in the school.

D. Implements Program Of: 2. Accepted practices/goals; 3. Knowledge of child development; 5. Scope and sequence in delivery.

Mr. Boron stated that he rated standard 2 of this category based on four summative evaluations and because grievant "signed off" on each. He continued:

From the standpoint of the target goals in Ohio County, I think a lot of information has been made available on effective school research. Betty has participated in the TESA Program which has 15 strands. She has participated in the teacher induction program, so I feel that she would have a good understanding of what the expectations are in this school system. Also, she has participated in TESA revisited. In terms of standing in front of a group or class and administering a lesson, I think observations will support ... that improvement is needed (T2.75,76).

With respect to standard D.3, Mr. Boron again explained that he rated grievant "Some" on each formative evaluation for this standard as well as "Some" three times for "student challenge." However, "Challenge of students" is category E standard 4 (E.4) on the summative evaluation and grievant did not dispute the "Some" rating therein on the May 19 evaluation. Boron noted that student conduct was in the "Some" range on the observations also,<sup>32</sup> and she "had an opportunity to read in conference to question and sign off. And she did do that." He also noted that grievant had issued only six interim progress reports, sent home to promote positive and negative behaviors,

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<sup>32</sup>This is the third instance in which "student conduct" was used as a criteria to support Boron's rating in yet another category's standards.

the entire school year.<sup>33</sup> He brought up an instance when grievant posted students' and teachers' names for overdue books on the media bulletin board and he felt the practice upset students (and perhaps teachers) and did not foster positive classroom interactions. Grievant stopped the practice at his behest even though she disagreed with him on the matter.<sup>34</sup>

Mr. Boron justified his Some rating for standard D.5 in the following manner:

That item pretty much follows along with the observations, it's very similar to the other two items that

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<sup>33</sup>Mr. Boron's expectation that grievant monitor over 200 WL students in this regard is onerous. Mr. Boron guessed that each classroom teacher issued six to 12 interim reports each quarter. He would not concede that grievant's rate, 6, for half-time duty at WL would then approximate the full-time teachers' rate. At level two, the Hearing Examiner and respondent's representative seemed to conclude that since grievant saw more pupils per day than a homeroom teacher, her ratio should be much higher (T2.119-121). It is not clear whether Mr. Boron expected grievant to meet or exceed his teachers' rate; if so, and each classroom teacher sends a report for half her class (10) each quarter, it would amount to 40 per year for one teacher. If grievant sent reports for half her class(es), it would amount to a minimum of 100 per quarter and 400 per year.

<sup>34</sup>Interestingly, grievant had been cited by Mr. Boron and some members of the assistance team for lack of "assertive" discipline measures when students "talked out" or among themselves in media class. Apparently, the approved method is to write the misbehaving child's name on the blackboard. It is not clear how grievant's posting measure for what amounted to inventory loss control is much different than posting a child's name on a chalk board for misbehavior. Resp. Ex. No. 5.

It must also be noted that media students are released from their homerooms to proceed to the media center. The disruption must contribute to some animation on the students' part when they attend the media class. It must also be recognized that grievant does not have the advantage of a classroom teacher with only one set of students in a constant environment and with daily continuity to fully deal with any ongoing behavioral problems, and no doubt there are some such students at WL with ongoing behavioral problems.

we have just discussed, and I think that the ... observations ... will support a mark of "some" on that particular item (T2.78).

Grievant answered those particular criticisms, in part, by her written Protest, May 26, 1988:

Since the goals for my lessons are the West Virginia State Department of Education's educational media learner outcomes, the "some" rating for accepted practices/goals is really a "some" rating for the State Department learner outcomes. With no assistance from anyone in Ohio County Schools, I have developed a curriculum guide for a program of study for media skills for grades one through six.

The lesson units contained in the curriculum are designed to present concepts in spiral fashion. Students have contact with each of the important media concepts a number of times during the six grades. Each time, previous learning is reinforced and the breadth of the understanding of the concept is widened. A good example is the concept of fiction-non-fiction. The children first come in contact with this concept in the first grade when they learn the differences between fiction and nonfiction. This understanding is broadened gradually to enable them to describe different types of fiction and nonfiction. As their understanding grows in succeeding grades, they learn about cataloging of these materials. They learn to use the nonfiction materials to find information. The study broadens in scope until students in the sixth grade have learned to find and use a variety of nonfiction materials. The study of fictional and nonfictional materials is gradually broadened to include a study of mythology. One can trace a similar spiral for reference skills, etc.

I challenge the criteria upon which Mr. Boron based the "some" rating for "Knowledge of child development." A review of my transcript will reveal that I have had several courses in child development. The most recent were taken at WLSC and include Special Education Courses and Psych. 325 (Cognitive Development). I have a 4.0 GPA in these courses from West Liberty.

The mass of data which relate to the 11 observations of grievant's actual teaching performance and upon which Mr. Boron

relied for rating these standards appears to be more germane to the next category, "Manages Instruction", than "Implements Program Of," this category. Hence, grievant's position on these disputed standards appears more reasonable than respondent's.

E. Manages Instruction: 2. Objectives.

Mr. Boron stated that grievant,

does not consistently, in my opinion, communicate objectives to the students. And I think that I talked to her about this, what I have asked her to do is to give the students at the beginning of each class -- I have asked her to make a simple review in relationship of this lesson to the past lesson and then to provide the students with an idea of what we're going to be doing today, how and why we're going to be doing that lesson, and consistently she has not done that during the [four] formal observations that I made ... through this evaluation period ... (T2.79).

The entirety of class observation data does not support Mr. Boron on this standard. See Resp. Ex. Nos. 4 and 5. Mr. Boron made the last of his four observations March 31, 1988, two months after his first formative observation under the Plan, but nearly two more months prior to the issuance of the disputed May 19, 1988 summative evaluation. He had marked "Some" in all instances for "Objectives." <sup>35</sup> However, the April and May

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<sup>35</sup> On the January 19 formative, Boron rated "Objectives" Some, and noted, "Clearly provide to students to begin the lesson," but "Review, Repeat, Reinforce" was rated Yes; a February 18 formative was similarly marked. March 11, both were rated Some with comment to "Give to begin session" for Objectives. March 31 rated Objectives, No, and Review, etc. was rated, Yes. The evaluation addendum noted that objectives were not followed because, "the plans for this week required the use of such reference tools as the atlas, almanac, and globe: the presentation conducted on this date centered on skills related to cross referencing using encyclopedias." Mr. Boron did not  
(Footnote Continued)



observations of one Plan team member check-marked that grievant did state her objectives to the class although a April 14, 1988 recommendation made by another team member expressed that person's own idea of how she would focus them for the lesson.<sup>36</sup>

F. Professional Growth: 2. Professional work habits, (3) Responsibility; (4) Self Improvement (Yes, 12/17/87); (6) Preparation.

Grievant's Protest challenged Mr. Boron to demonstrate one instance in which she had exhibited irresponsible behavior.

Mr. Boron went to great lengths and, in some cases, beyond the evaluative period to provide justification for his ratings of Some in this category challenged by grievant. To begin, he displayed grievant's grade books for three years (T2.80) and said he initially told grievant to label the grade, e.g., daily work, quiz, project or book report and to base final grades upon more than one grade. He said that during an observation he checked her grade book and there were some grades for one section that were not labeled, and three sections had 9-week final grades based upon only one grade. He said there was no policy of required grades, but he had advised grievant of his preference for three grades each 9-week period and "that's

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(Footnote Continued)

require such adherence to the letter of the lesson plan from his own staff because he felt it was understandable that they could deviate from day to day presentations.

<sup>36</sup>The question arises whether Mr. Boron could have assisted grievant more effectively under the Plan had he observed her teaching performance in April or May, when improvement was noted by other Team members, instead of devoting time, energy and resources to searching for, listing and transporting unpocketed media items to his office in May 1988. See Note 21.

certainly a factor and a real area of concern."<sup>37</sup> T2.81,82. He mentioned that on one occasion, May 5, 1988, grievant placed a telephone order for materials without following procedures. He also stated that she did not unpack from the previous year 15 or 20 film loops until March 31,<sup>38</sup> and she did not tell him until January 28 of her plan to have a book fair on February 17-19, although she had told him earlier in the year she anticipated conducting the book fair. He then discussed his dissatisfaction with some aspects of her lesson plans which he admitted were very well done by computer.<sup>39</sup> Mr. Boron additionally faulted

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<sup>37</sup>In order to comply with Mr. Boron's grading preference, not respondent's requirement, grievant would have to carve time to log 657 entries every nine weeks for the 219 WL students she only meets once weekly. If this endeavor was also preferred by her other schools' principal, grievant would be making at least 1,881 entries for media students alone. If it were also required for the 127 Steenrod art students, grievant would have another 381 entries to manage. Serious question exists whether Mr. Boron can impose this preference not required by respondent, which would serve no useful purpose but to add to the burgeoning tasks demanded of grievant.

<sup>38</sup>Grievant related that the items, once part of a new technology, were used with a small view screen, accommodating one or two children, and were limited to workshop activities (not classroom activities), e.g., not like screened movie film (T2.112).

<sup>39</sup>He stated that on March 31, 1988 she modified the lesson she scheduled to teach; that on one occasion, in late March and early April, she did not adjust lesson plans to accommodate one 6th grade section of students who did not receive certain lessons due to school holiday; that grievant did not change her 3-year-old lesson plans from year to year to accommodate the varying abilities of WL students; and on September 18, 1986 she gave him lesson plans for September 8-12, 15-19 and 22-26. "I don't know how they ended up that way, but that's what I got." T2.79-88. He also criticized her for another unnamed time when the lesson plans for each grade level were similar and were

(Footnote Continued)

the quality of some of grievant's handout materials to students, and submitted two examples dated 1987, and one, March 31, 1988,<sup>40</sup> and other information items given to teachers.

In regard to F.2(4), Boron stated that grievant had made some improvement during the evaluation period, but it was not significant improvement. He did not specify why she had declined from his Yes rating for this standard on December 11, 1987.

Grievant wrote in her May 28 Protest:

During the last year, I have completed fifteen hours of graduate courses with a GPA of 3.66. I have done this while operating five media centers, teaching Media in five schools, and teaching Art in one school. I have also completed a curriculum guide for media for grades 1-6 in the same year. I do not know what Mr. Boron's criteria for earning a "yes" rating in the category of "self improvement" could possibly be.

G. School/Community Relations: 1. Promotes and maintains positive pupil-teacher-parent; 2. Contributes to total school program.

Mr. Boron addressed Standard 1 in this category by stating without further explanation, "I feel that at times comments to Betty during interactions with the students have not been the most positive in nature." T2.90. He also stated his opinion that grievant could do better than to issue only six interim reports and reiterated his position that grievant should not

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(Footnote Continued)

submitted "weeks in advance to the actual week of instruction." Again, Mr. Boron focused on events outside of the evaluative period.

<sup>40</sup>It is again noted that two-thirds of Mr. Boron's examples on this matter relate to periods of time before the contested evaluative period, January 13 - May 19, 1988.

have posted overdue notices with students' names<sup>41</sup>, as the practice was "not that readily" accepted by students.<sup>42</sup>

Next, Principal Boron first conceded that grievant had done a better job with inter-media center loan, providing teachers with books and producing a good newsletter. However, he justified his rating for standard G.2 by reiterating examples he cited for previous downrated standards: That grievant's in-service presentation this year was the only one in over a three-year period; that there was "a lot of media inventory loss which is tied in with the current catalog systems"; that she had appropriate planning time for which to cooperate, plan with, and meet his teachers' needs; and that her classroom strategies to interest or challenge students were weak. Boron also stated that, by her own admission, the books in the media center were not as orderly as they should be. He offered to supply "pictures" to support this.<sup>43</sup> Boron again brought up the matter

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<sup>41</sup>As so often found in the record, these criticisms had been used to downrate a previous standard.

<sup>42</sup>Principal Boron had repeatedly urged grievant to institute procedures to prevent inventory loss, although he never articulated just how she was to accomplish that goal when she was not on-site at WL, and grievant ceased the posting practice although she disagreed with Boron on the matter.

<sup>43</sup>The appropriateness of Boron's picture-taking conduct is questionable. He obviously expended some time and energy going through the media center shelves, cabinets and drawers taking photographs "to prove a point." While the pictures Mr. Boron alluded to in testimony were not made part of the record, little weight could be given to such, including his testimony thereon, without comparative photographs of the same objects and items before grievant's tenure at WL. Also, he did not speak of WL  
(Footnote Continued)

that instructional materials and faculty notices had not always been of good quality and grievant had not created an inviting media center environment with timely or relevant decorations or displays. Mr. Boron did not quantify the incidences when her materials were of acceptable quality and he proffered only one example of bad quality relative to the evaluation period.

Grievant's position about School/Community Relations and her contributions to the school are found in her Protest:

My media curriculum guide was presented to a group of media professionals from all over West Virginia at the recent "Learning 88" conference for media and technology. (It was presented by my husband because Mr. Boron refused to grant my request for professional leave and I could not attend the conference.) The response to the curriculum guide was overwhelmingly very positive. The group included county coordinators and media teachers. Many of those in attendance asked about obtaining copies of the guide. Because of the size of the document, I could not honor all of these requests. However, in response to her request, I did photocopy the book for the state coordinator of library/media.

Several of those who reviewed the guide at the "Learning 88" conference suggested that it be published.

In summation at level two, grievant's representative questioned the subjectivity of the data comprising grievant's evaluation and wondered aloud how many Somes were needed for Yes and what was the criteria to be met; he stated that enough Somes should equal Yes. Among other things, he also commented on the inability of grievant to control loss prevention when she was

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(Footnote Continued)  
staff responsibility for orderliness in grievant's half-week absence.

not at WL without administrative intervention on the matter, the favorable evaluations she received from other schools, and the enormity of the directives given grievant at WL during the assistance evaluative period which could not help but intrude upon the instructional aspects of her position. T2.140-142.

In her letter of August 16, 1988 grievant pleaded,

I ... have 8.5 hours in which to manage five media centers.

...

This is simply not enough time. My job is a constant dilemma. Every day I must decide which of the many things that need done to do and which to postpone. Some things cannot be postponed. Returned books must be checked in, new materials must be cataloged and shelved, equipment must be maintained, etc. After ... that ... very little time remains for decorating the walls, conferring with teachers, going through the software cabinets searching for a few missing cards, etc. I know that these things should be done, but, doing them would mean not shelving returned materials or not maintaining equipment or not doing something else since there is not time to do everything. I have repeatedly tried to communicate this dilemma to officials ... without success.

Respondent maintains that it complied with law and policy and acted properly when it evaluated grievant's performance. It contends that grievant challenged her May 19, 1988 evaluation results on the basis of mistake or error in judgement on the part of its administrator, and it argues that mistake in judgement is not sufficient justification for judicial intrusion into decisions concerning an evaluation by a principal of a teacher.

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

## FINDINGS OF FACT

1. Grievant, certified in elementary and early childhood education, was employed in 1985-86 by the respondent board as an itinerant media specialist assigned to several widely scattered elementary or primary schools, grades 1-6. Grievant's professional goal is to be awarded a position vacancy in media at one specific school site. T.32.

2. According to respondent's "Curriculum Guide for Library Media Skills," in effect prior to the current 1988-89 school year, the media specialist in each school instructs students in appropriate skills (to integrate information skills into the curriculum) and maintains the audio-visual equipment; the guide includes concepts, learning outcomes and objectives for grades K-12 but no programs or lesson plans. Moreover, respondent's guide makes no mention of a media specialist assuming full librarian responsibilities for a school. No job description for grievant's position was tendered, but the record reveals that she must determine library and media needs, and order, catalog, prepare, shelve or store, and disseminate information of new media and library materials; inspect, dust, clean, store or reshelve and maintain existing items; oversee and manage use procedures for all media acquisitions; train volunteers to help with library work and recheck their work efforts to ensure accuracy; search for requested WL media items such as books or equipment, made all the more difficult when

removed without proper checkout, or secure materials from other sources when not in WL's collection; and perform her instructional responsibilities with attendant preparations, lesson plans, instructional materials or handout supplements, and grading matters, for over 600 students in five schools.

3. At the end of her initial teaching year, grievant displeased her principal at West Liberty (WL), Larry Boron, when she refused to invade staff classrooms and personal areas to search for missing items or to volunteer unpaid time at year's end to conduct such searches for inventory purposes. Further disagreement ensued between grievant and Boron about proper cataloging procedures and inventory control methods.

4. Without prior notice before the beginning of her second year, 1986-87, grievant's assignment was expanded to include art instruction, 1-4, at one school, one class of special education students (media) at another and on-site student-related duties at all five. Grievant's expressed concerns to respondent of an overload situation were unheeded. Respondent did not show that the former media teacher at WL, or similar staff in other schools, had equivalent responsibilities.

5. Grievant's 1987-88 teaching schedule and other data reveal she had the most students, 627, teachers, classes, and schools to serve than all other county elementary-primary media teachers. Only one other teacher had multiple schools, two,



which were in close proximity. One teacher had 549 students, approximately 23 teacher-student groups (classes) and 8.5 unassigned hours to run one media center. All other teachers had under 500 students, 22 or less classes and an average of 8.5 hours to manage one media center while grievant had 8.5 hours to manage five school media centers and prepare for over 30 instructional classes. Working under those circumstances made it difficult for grievant to plan school-centered activities.

6. This disparity was exacerbated at WL, where grievant was assigned 2.5 days each week. While Principal Boron's high standards for WL were commendable, his demands of grievant were disproportionate to reason and, in one proven instance, to the standards he required of prior media personnel.

7. Respondent's Principal Boron issued a December 12, 1987 "Does Not Meet Standards" evaluation of grievant's professional performance which was inconsistent with prior evaluations of record. The evaluation form was altered by Boron so as to distort the instrument's scoring scheme by adding an ambiguous unquantified rating of Some, for no point value, to a system which only scored Yes, 1 point, or No, zero, to indicate whether 37 performance standards were met. Based on the evaluation with numerous Some ratings, grievant did not meet Principal Boron's standards at WL and he composed a plan of assistance, without grievant's input, effective January 13 to May 19, 1988, when another evaluation would be conducted. The "directives" and

never-ending tasks required of grievant at WL were onerous. Moreover, data compiled during the assistance period reveal petty and inconsistent criticisms by and between assistance team members and Mr. Boron.

8. On May 19, 1988 grievant was overall rated Meets Performance Standards, but she challenged 13 of Boron's 17 "Some" ratings. Grievant has shown she quantitatively met all of the contested 13 standards:

(8.1) Standard A.4: Grievant cataloged WL media items in accordance with sound library practice, i.e., author and subject cards for the card catalog and proper label for shelf placement. A directive to also place book pockets and circulation cards necessitated a scan of 800 items, 500 of which needed this work. Grievant attempted within the limits of time to comply but could not monitor all 800 items to verify if pockets and cards remained intact during her 2.5. days absence. She also instituted other inventory control devices but WL teachers were not administratively directed to follow procedures.

(8.2) Standards C.4, 5, 6: Grievant's ability to conduct cooperative curricular planning with WL teachers was hampered as respondent did not schedule a specific time for this activity, assist the endeavor by placing at least some responsibility on the part of WL teachers, or provide grievant with WL lesson plans a week in advance of her own required submission. However, grievant responded to specific requests for assistance as indicted by many cited examples, instituted a newsletter to communicate with staff teachers about skills to be taught in upcoming media lessons, produced an Audio-Visual catalog for staff use, and engineered her entire curriculum to provide students research and study skills which would inherently assist classroom teachers' curricular endeavors.

(8.3) Standards D.2, 3, 5: Grievant contrived her own comprehensive Guide and developed a rational, structured curriculum to convey and implement a yearly program for media skills instruction, grades 1-6, using respondent's goals and practices as authority and guidance. All lessons reflected implementation and knowledge of child development, e.g., lessons were age and grade oriented, and she followed respondent's recommended scope and sequence in media instruction delivery.

(8.4) Standard E.2: During instruction of students, grievant presented class objectives, but at the beginning of the

evaluative period she did not always present to the class when the lesson began, as respondent's administrator desired. In the latter portion of the evaluative period, grievant complied with the directive, but Mr. Boron, who had final evaluative authority, did not visit any latter-day classes. Grievant experienced some instructional difficulty at WL because respondent provided no designated instructional planning period and scheduled 50-minute media classes at WL, and no other elementary media teacher had 50-minute classes. Grievant conducted 30-minute classes in her four primary schools and, accordingly, had to adapt her lesson plans for WL.

(8.5) Standards F.2 (2,3,6): At her own expense, grievant had begun a graduate program in order to certify in media instruction and had attained 15 graduate hours, 1987-88. She responded to teachers' non-curricular interests by obtaining relevant books and materials for staff who were traveling to China and Italy. She strived to meet the "constant dilemma" of not enough time to do all the work to be done. Grievant stated that her Guide would be available to any new county media teacher to save that person the preparation she had to undertake to develop a media curriculum (T4.\_\_\_\_).

(8.6) Standard G.1,2: Grievant promoted and maintained positive pupil-teacher-parent relationships and contributed to the total school program at WL by training and working with "media moms," parent volunteers who assist with clerical, shelving and cleaning chores in the media center; attending PTA and teacher's meetings; sending a few interim reports to parents as the constraints of her time permitted; notifying parents whose children had lost books; conducting a book fair; helping with the school carnival; updating and streamlining media procedures; and sharing with the State Coordinator of Media/Library her Guide, which reflects well on WL and respondent in general.

9. Grievant did not, per se, develop or argue the issue of "Stress" within the parameters of W.Va. Code §18-29-2, presumably "action, policy or practice constituting a substantial detriment to or interference with effective classroom instruction, job performance or the health ... of ... employees," nor did she specify relief sought, but the record clearly establishes respondent created stressful employment conditions and resultant interference with grievant's performance in the instructional aspects of her position.

## CONCLUSIONS OF LAW

1. SBE Policy 5300(6) mandates that every employee be offered the opportunity of open and honest evaluation of his performance. Smoot v. Kanawha County Board of Education, Docket No. 20-86-177/209-1 (March 2, 1987).

2. SBE Policy 5310 defines the purpose of employee evaluation, i.e., to improve the quality of education, provide information for employee improvement, identify employees for future incentive systems and provide bases for sound personnel decisions. The policy requires that a school board use standardized evaluation components, and rating is an integral component of an evaluation instrument.

3. The Education and State 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. 54-86-262-1 (May 5, 1987).

4. School officials are permitted some latitude in the evaluation of a teacher subject to the requirement that the evaluation be open and honest and not arbitrary, State ex rel.

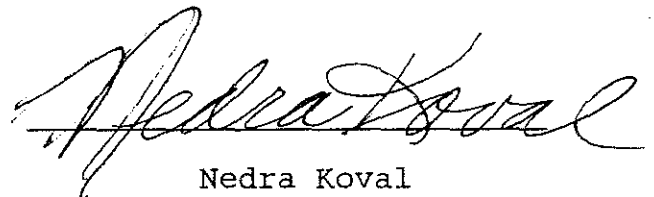
McLendon v. Morton, 249 S.E.2d 919 (W.Va. 1978), and alteration of the rating component on an evaluation instrument by an evaluator and repeated mistakes in his subjective judgement contrary to the objective evidence, is an abuse of discretion which renders the resultant evaluation arbitrary.

5. Based upon all the facts, including grievant's onerous work schedule, Principal Boron's unreasonable expectations and demands of grievant, made subject to the evaluative process, subjected her to stress, threatened her career aspirations and undermined her teaching performance, and was contrary to the purposes of SBE Policy 5300.

Accordingly, this grievance is **GRANTED** in its entirety and respondent is Ordered to modify grievant's May 19, 1988 evaluation in a manner consistent with the Decision herein.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Ohio County and such appeal must be filed within thirty (30) days of receipt of this decision. W.Va. Code §18-29-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Hearing Examiners is a party to such appeal, and should not be so named. Please advise this office of any intent to appeal so that the record can be prepared and transmitted to the appropriate Court.

DATED: March 31, 1989

A handwritten signature in cursive script, reading "Nedra Koval", written over a horizontal line.

Nedra Koval  
Hearing Examiner