CAROLYN McCOLLAM

v. **Docket No. 93-20-074**

KANAWHA COUNTY BOARD OF EDUCATION

D E C I S I O N

The basic question presented in this grievance is whether the Kanawha County Board of Education (the respondent) violated West Virginia State Board of Education Policy 5300 (See footnote 1) in terminating the employment of the grievant, Carolyn McCollam, on the grounds of unsatisfactory job performance. (See footnote 2)

I.

The grievant had been employed by the respondent as a full-time teacher for about five years when she was terminated at the end of the first semester of the 1992-1993 school year. She possesses a Bachelor of Science degree in Agriculture and a Master's Degree in Biological Behavior. She has completedapproximately seventy hours toward her PhD in Biology Behavior and is certified in Science, 7-12. She had been employed as a science teacher at Roosevelt Junior High School (RJHS) since 1991.

The grievant received an evaluation dated December 17, 1991, (See footnote 3) from RJHS's principal, Patricia Petty, in which she found that the grievant needed to improve her teaching performance. The evaluation provided that the grievant was to be placed upon a written plan of improvement, emphasizing among other things, classroom management. The principal recommended that the grievant's position be reviewed by the county superintendent for possible dismissal. No written improvement plan, however, was devised for that school year and the grievant was not formally evaluated a second time during the spring of that school year.

Prior to the beginning of the 1992-1993 school year, the grievant was placed on a written improvement plan (See footnote 4) predicated upon the December, 1991 evaluation. On September 8, 1992, the grievant's classroom teaching was formally observed and she was given a written evaluation of her performance based upon the results of that observation. (See footnote 5) The following day she received and signed an amended improvement plan. (See footnote 6)

On January 29, 1993, Ms. Petty completed a final evaluation and report on the grievant's job performance and rated herunsatisfactory in four areas: Programs of Study; Classroom Climate; Instructional Management System; and Student Progress and Communication. The grievant was rated as satisfactory in only one area, namely Professional Work Habits. In this final report, Ms. Petty identified eleven specific deficiencies she found continued to exist following the first semester improvement plan. In a letter dated February 1, she recommended to the county superintendent that the grievant's employment be terminated immediately for unsatisfactory job performance.

By letter of February 3, the superintendent advised the grievant of the dismissal recommendation and scheduled a February 16 hearing. On that date an assistant superintendent conducted a hearing at which Ms. Petty and the grievant testified, and documentary evidence was introduced. The grievant was represented at that hearing by a West Virginia Education Association representative. On February 18, the assistant superintendent issued a memorandum recommending that the grievant be terminated immediately due to unsatisfactory performance. On the following day, the respondent approved the county superintendent's recommendation that the grievant be terminated effective that date. The grievant then appealed to the Grievance Board contending that her dismissal was without cause and requesting reinstatement with back pay. (See footnote 7)

At the Level IV hearing, the respondent introduced the testimony of a number of witnesses including Julia Neenan, a science teacher and head of the science department at RJHS, who testified that she believed the grievant lectured to her science students in a manner that was above their level. She had also examined two of the grievant's tests and found the material to be completely above the level of the students. She made a number of other critical comments concerning the grievant's teaching performance. She said the grievant and the students in her classroom frequently talked in an argumentative tone, and described an incident, which she found to be particularly distressing, involving the manner in which the grievant had disciplined a student who had improperly left his seat. As a form of discipline, the grievant had required the student to stand at the front of the room near the doorway. In her opinion, the student, who was crying, had been unnecessarily humiliated.

Marguerite Wilburn, a science teacher at RJHS since 1987, who taught science at the Alternative Learning Center, an area where students with behavioral problems are placed, testified that the grievant's lesson assignment instructions were less than clear and were frequently expressed in sentence fragments. She said that she had observed terrible disciplinary problems in the grievant's

classroom on a regular basis. She briefly described two incidents when, in her opinion, the safety of the students was jeopardized by the grievant's failure to properly supervise the classroom, and she noted that the grievant improperly detained students after class asa form of discipline.

Rebecca Goodwin, the respondent's director of secondary schools, described in detail the process by which the original plan of assistance had been developed and the improvement team appointed. This improvement plan was put into final form and signed by the Grievant on August 29, 1992. Ms. Goodwin detailed the results of her announced and scheduled observation of the grievant's classroom teaching in December, 1992. (See footnote 8) In summary, she stated that the class was poorly taught, that a substantial amount of instructional time was wasted and that the grievant's conduct did not meet the respondent's minimum requirements. She testified that she found no evidence that the grievant's teaching had improved. She expressed the opinion that the improvement plan itself was reasonable and fairly calculated to assist the grievant in improving her teaching ability. She stated that the grievant at no time had questioned the fairness of the improvement plan or contended that she was not afforded sufficient time to improve. She concluded her direct testimony by stating that the grievant lacked sufficient instructional skills to be a teacher.

On cross-examination, Ms. Goodwin testified that the initial improvement plan was amended in September 1992, that tenured teachers in Kanawha County are ordinarily only evaluated one time during the school year and that it was not unusual for an improvement plan not to be implemented until the beginning of the next school year. She also noted that the improvement plan hadbeen amended, in part, to comply with new evaluation forms and guidelines promulgated by the West Virginia Board of Education. See W. Va. Code, 18A-2-12 (1990) (See footnote 9)

Teresa Hardman, an assistant principal at RJHS, who attempted to assist the grievant informally during the 1991-92 school year and who served as a member of the improvement team, testified that she observed the grievant in the classroom five times between September, 1992 and early January, 1993. On each occasion she recorded her observations on an evaluation form that served as the basis for weekly conferences with the grievant. Ms. Hardman testified that the grievant habitually failed to properly complete and timely submit certain basic forms that were a part of the school's disciplinary procedure. This was one of the deficiencies addressed in the improvement plan. Ms. Hardman described in detail the problems she observed in the grievant's teaching performance and expressed the opinion that the grievant's performance had not improved despite all the efforts made

to assist her, including the existence of a very specific improvement plan.

The grievant testified about the improvement plan and her performance during the first semester of the 1992-93 school year. She acknowledged that she was not a perfect teacher, that she needed training in classroom management, but she nonetheless maintained that she was improving and should not have been terminated for unsatisfactory job performance. She explained thatshe had taken a number of steps to improve her classroom management skills and either denied or attempted to explain or minimize critical observations made about her teaching performance, particularly the observations of Ms. Hardman and Ms. Goodwin. The undersigned did not find the grievant to be a persuasive witness, however, and her testimony did little to undermine the testimony of the respondent's witnesses concerning her inability to control the classroom.

Ms. Petty testified on rebuttal. She stated that two surveys were given to the grievant's students during the improvement period. She explained that most of the students were critical of the instruction received in the grievant's classes, perceived the grievant as treating students unfairly, believed the grievant did not create a good learning environment and reported that the grievant did not grade and return all papers promptly. Ms. Petty testified that the grievant essentially made no effort to improve her teaching performance. Ms. Petty's testimony, which the undersigned finds to be credible, largely refuted the grievant's unpersuasive testimony, including the grievant's assertion that most of her problems stemmed from her being required to teach students who were severe disciplinary problems and from the failure of school administrators to take appropriate disciplinary measures against these students.

II.

After carefully reviewing the testimony and all matters of record, the undersigned concludes that the respondent establishedproper grounds for the grievant's dismissal. There can be no doubt that the preponderance of the evidence establishes "unsatisfactory [job] performance," one of the listed just causes for which a teacher can be dismissed from employment under W. Va. Code, 18A-2-8. In her proposed conclusions of law, the grievant contends that her placement on an improvement plan based upon the December 1991 performance evaluation does not satisfy the "regular" evaluation requirement of Policy 5300 and, hence, she is entitled to reinstatement with back pay and all attendant benefits. See Mason County Bd. of Educ. v. State Superintendent of Schools, 274 S.E.2d 435 (W. Va. 1981). The undersigned cannot agree that the respondent's actions constituted a

violation of Policy 5300. According to the testimony, respondent conducts written evaluations of tenured teachers only once a year. No showing has been made that Regulation 5300 requires more frequent evaluations of such teachers and, thus, no legal error has been demonstrated. Official notice is also taken that Section 10 of State Board of Education Policy 5310 mandates only one written evaluation per year for teachers such as the grievant who have three to six years of experience. (See footnote 10)

In addition, the grievant's classroom teaching was observed on September 8, 1992, and a conference was held with her concerning the teaching deficiencies that had then been observed. The observation and conference were part of the basis for the amendedimprovement plan dated September 9. Accordingly, contrary to the grievant's allegation, the improvement plan was not based solely upon the December 1991 evaluation. The testimony further establishes that the grievant was observed in the classroom on several occasions during the improvement period, and conferences were held with her in an effort to bring her performance up to an acceptable level. This case on its facts in thus clearly distinguishable from Lipan v. The Bd. of Educ., County of Hancock, 295 S.E.2d 44 (1982).

The grievant advances a second argument in her reply brief. The grievant was previously released from employment as a probationary teacher at the end of the 1989-1990 school year. She had been placed on an improvement plan earlier in that school year, and when her employment was not renewed she filed a grievance that resulted in her reinstatement with back pay. McCollam v. Kanawha County Bd. of Educ., Docket No. 90-20-278 (Oct. 30, 1990). The grievant prevailed in that case because the respondent had failed to live up to certain requirements contained in the improvement plan, i.e., the respondent had not conducted several classroom observations and conferences required by the plan. On appeal the respondent sought a stay of the administrative decision but the Circuit Court of Kanawha County refused to grant the stay, and the grievant was placed in a teaching position. The Circuit Court, on August 3, 1993, affirmed the Grievance Board's prior decision. The grievant's contention is, in effect, that she should be reinstated pursuant to the Circuit Court decision. This argument ismanifestly without merit.

Conclusions of Law

1. The respondent proved by a preponderance of the evidence that the grievant was properly dismissed for unsatisfactory job performance within the meaning of W. Va. Code, 18A-2-8 (1990).

2. The respondent did not violate West Virginia State Board of Education Policy 5300 in terminating the grievant's employment for unsatisfactory job performance. The grievant was honestly, openly and regularly evaluated and was given a sufficient opportunity to improve her job performance in accordance with that policy.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to 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. Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal, and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

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RONALD WRIGHT, DIRECTOR

Administrative Law Judge

Dated: January 14, 1994

Footnote: 1 Policy 5300 provides, in part, that teachers cannot be terminated from employment unless they have been given open, honest and regular performance evaluations and have been afforded an opportunity to improve their teaching performance to an acceptable level. See Powell v. Brown, 238 S.E.2d 220 (W.Va. 1977).

Footnote: 2 W. Va. Code, 18A-2-8 was amended in 1990 and now expressly provides that a county board of education may suspend or dismiss any employee for "unsatisfactory job performance."

Footnote: 3 Resp. Exh. No. 1.

Footnote: 4 Resp. Exh. No. 3.

Footnote: 5 Resp. Exh. No. 2.

Footnote: 6 Resp. Exh. No. 6.

Footnote: 7 A copy of the transcript of the February 16 hearing and the 26 exhibits presented at that hearing were admitted into evidence at Level IV by agreement of the parties. The grievant introduced seven documents and a group of student disciplinary records that have been marked as the grievant's exhibit number eight.

Footnote: 8 Resp. Exh. No. 21.

Footnote: 9 There is no contention that this statutory provision was violated.

Footnote: 10 Policy 5310, which was amended effective December 1991, of course, does not prohibit more frequent written evaluations for teachers with three to six years of experience.