

KAY WILLIAMS,

Grievant,

v.

Docket No. 95-06-325

CABELL COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Grievant, Kay Williams, grieves her removal from her principal's position by Cabell County Board of Education ("CCBOE") for unsatisfactory performance and willful neglect of duty. Only Grievant's principal contract was terminated, and she was retained as a teacher. The parties, in a pre-hearing telephone conference, agreed, with the approval of the undersigned, to proceed directly to Level IV. [\(See footnote 1\)](#) The parties also agreed, with the input of the undersigned, that the action was either a demotion or termination of a principal's contract. Four days of Level IV hearings were conducted on October 30 and 31, 1995, December 1, 1995, and March 8, 1996. This case became mature for decision on May 15, 1996, the deadline for the parties' proposed findings of fact and conclusions of law.

Procedural History

On June 13, 1995, Grievant met with Superintendent Richard Jefferson, Ms. Linda Curtis, Director of Personnel, and Mr. Jack Perkins, Administrative Assistant for Elementary Education and Grievant's direct supervisor. At that time Mr. Perkins informed Grievant that her year-end evaluation would be unsatisfactory and he would not recommend Grievant's retention. Grievant requested a transfer to another school as principal, and Superintendent Jefferson rejected this proposal because Grievant did not have the skills to perform as a principal. On June 21, 1995, Mr. Perkins performed Grievant's evaluation, and indicated Grievant's performance was unsatisfactory in the areas of "Communication" and "Effectiveness in Dealing with Others". Mr. Perkins also explained why the Grievant's performance was unsatisfactory. Grievant refused to sign this evaluation.

On July 14, 1995, Grievant received a detailed statement of charges with documentation and notification of her pre-termination hearing on July 18, 1995. Grievant attended this hearing with her representative, and Mr. Perkins presented the charges and the supporting evidence to CCBOE. Grievant indicated she had not had time to review all the charges and documents and had not yet prepared her case. She was given an opportunity to respond to the charges at this hearing. Superintendent Jefferson notified Grievant on July 19, 1995, that her principal's contract had been terminated, but that her teaching contract remained in force and she could bid on any available teaching position for which she was qualified. He also stated she would be assigned to Johnston Elementary as a Title I teacher if she did not bid on any other position.

Issues

Grievant's main argument appears to be that she was transferred illegally pursuant to W. Va. Code §§18A-2-7 and 18-5-4, as she was not notified of her transfer on or before the first Monday in April. She concludes that since she was not notified of this transfer before this date, CCBOE is required to reinstate her into her former position. Grievant also argues: 1) she was removed from her principal's position without due process; 2) it was illegal for CCBOE to base her termination on a review and assessment of her past seven years of performance; 3) she cannot be charged with willful neglect of duty because that specific term was not used in any of her evaluations; and 4) CCBOE cannot terminate her for unsatisfactory performance because she was not on an Improvement Plan ("IP") at the time of her demotion. [\(See footnote 2\)](#) Grievant also argued her "transfer" was illegal because W. Va. Code §18A-2-8 only allowed CCBOE to terminate her total employment, but did not allow CCBOE to demote or "transfer" her. [\(See footnote 3\)](#)

Respondent argued Grievant's demotion was handled properly; and in fact, Grievant was given all the protections a total termination of employment would have warranted. Respondent further argued Grievant was not transferred, but rather disciplinarily demoted, and thus, the time provisions in W. Va. Code §18A-2-7 do not apply. Respondent also noted Grievant had been given repeated notice of her deficiencies and opportunities to improve, but had proved herself incapable or unwilling to change.

Background

In this case the issue of witness credibility is of paramount importance since much of Grievant's

testimony either directly contradicts Respondent's witnesses or her view of events diametrically opposes their's. In assessing the witnesses' credibility the undersigned utilized the guidelines and factors set out in the United States Merit System Protection Board Handbook ("MSPB Handbook"). Harold J. Asher and William C. Jackson, Representing the Agency before the United States Merit System Protection Board 152-53 (1984). Some identified factors to consider in assessing a witness's testimony are the witness's: 1) demeanor; 2) opportunity or capacity to perceive and communicate; 3) reputation for honesty; 4) attitude toward the action; and 5) admission of untruthfulness. Id. Additionally, an Administrative Law Judge should consider 1) the presence or absence of bias, interest, or motive; 2) the consistency of prior statements; 3) the existence or nonexistence of any fact testified to by the witness; and 4) the plausibility of the witness's information. Id.; Perdue v. Dept. of Health and Human Resources/Huntington State Hospital, Docket No. 93-HHR-050 (Feb. 4, 1994).

Additionally, as this is a disciplinary action, CCBOE has the burden of proving Grievant's unsatisfactory performance and willful neglect of duty by a preponderance of the evidence. W. Va. Code §18-29-6. A county board of education's charge of unsatisfactory performance must be "as the result of an employee performance evaluation pursuant to [W. Va. Code §18A-2-12]." W. Va. Code §18A-2-8. W. Va. Code §18A-2-12 requires a professional whose performance is "deemed unsatisfactory" to be given notice of these deficiencies. An IP is then written to correct these deficiencies, and the employee is given an opportunity to improve. "If the next performance evaluation . . . shows that the professional is still not performing satisfactorily, the evaluator shall either make additional recommendations for improvement or may recommend the dismissal of such professional in accordance with [18A-2-8]." Id.

Discussion of Factual Evidence

On July 14, 1995, Grievant was presented with the following charges and specifications, along with a two-inch notebook of written documentation supporting the charges.

CHARGE I

UNSATISFACTORY PERFORMANCE

The Board of Education charges that Kay Williams, an elementary principal for the Cabell County

Board of Education, has been guilty of unsatisfactory performance as herein set forth in the following specifications:

Specification No. 1:

During the school year of 1988-89, your financial records for Culloden Elementary School were substandard and not in compliance with the regulations of the Cabell County Board of Education and the statutes of the State of West Virginia. An improvement plan dated September 22, 1989, was written and implemented. Documentation attached.

Specification No. 2:

For school year of 1988-89 during your principalship at Culloden Elementary School, no professional evaluations were submitted to the Personnel Department as required by Cabell County Policy-Staff Evaluation, WV Board Policy 5300 and the new Senate Bill I. Only after being requested were they submitted and they were over one and one-half (1-1/2) years late. Documentation attached.

Specification No. 3:

In school year 1989-90 during your principalship at Hite Saunders Elementary School, no professional evaluations were submitted to the Personnel Department as required by Cabell County Policy- Staff Evaluation, WV Board Policy 5300 and the new Senate Bill I. Only after being requested were they submitted and they were six months late. Documentation attached.

Specification No. 4:

In school years 1989-90 and 1990-91 during your principalship at Hite Saunders Elementary School, the following service personnel evaluations were not submitted to the Personnel Department as required by Cabell County Policy-Staff Evaluation, WV Board Policy 5300 and the new Senate Bill I.

Due March 1, 1990, Requested April 16, 1991, Received after April 16, 1991:

Bonnie McKenzie - Cook (1989-90 evaluation)

Melanie Ellis - Aide (1989-90 evaluation)

Virgil Handy - Custodian (1989-90 evaluation)

Due March 1, 1991; Requested April 16, 1991; Received after April 16, 1991:

Alma Adkins - Cook (1990-91 evaluation)

Documentation attached.

Specification No. 5:

For school year 1990-1991, work was not done in a timely manner and deadlines were not met on the following administrative assignments: discipline forms, purchase orders, classroom enrollment by grades staffing report, performance objectives, student handbook, school improvement council report. Noted on evaluation and discussed with you during evaluation process. Documentation attached.

Specification No. 6:

In school year 1991-92, during your principalship at Hite Saunders Elementary School, you were given job postings on February 4, 1992, and a memo related to the timelines for selection of the positions posted. These were to be completed by February 14, 1992, so they could be placed on the agenda for the February 18, 1992, board meeting. The Personnel Department is bound by specific laws and regulations which require the adherence to timelines; you did not meet these timelines. Documentation attached.

Specification No. 7:

In school year 1991-92, during your principalship at Hite Saunders Elementary School, a parent, Mr. John Sears, complained that students were not using the computer lab, computers, and the Writing to Read Program in kindergarten. You were allowing kindergarten and first grade teachers to use this as an optional program. Mr. Sears also complained that report cards for kindergarten students were not being sent out at the appropriate time. The report cards were a week late. Documentation attached.

Specification No. 8:

In school year 1991-92, during your principalship at Hite Saunders Elementary School, work was not done in a timely manner and deadlines were not met on the

following administrative assignments: student handbook, performance objectives, bell schedules, job postings, and report cards going out on schedule. Documentation attached.

Specification No. 9:

During school year 1992-93, during your principalship at Hite Saunders Elementary School, you violated the IEP [Individual Education Plan] [\(See footnote 4\)](#) for a student by failing to take responsibility and administrative leadership and there were confidentiality violations of this student at Hite Saunders. You failed to work cooperatively with parents of this child, thus causing the parents and others to feel a lack of confidence in the school program. You did not insure that the classroom teacher implemented the requirements of the IEP. Documentation attached. An improvement plan dated August 31, 1993, was written and implemented.

Specification No. 10:

During school year 1992-93, during your principalship at Hite Saunders Elementary School, you were ineffective in dealing with and solving problems with the staff and parents. You were unable to intervene, negotiate, and resolve conflict with PTA complaints, parent concerns, volunteer complaints, teacher conflict, and student transfer requests. Documentation attached. An improvement plan dated August 31, 1993, was written and implemented.

Specification No. 11:

In school year 1992-93, during your principalship at Hite Saunders Elementary School, work was not done in a timely manner and deadlines were not met on the following administrative assignments: enrollment forms, local school improvement council, travel forms, requests for furniture and shades, goal statements for 1992-93, and evaluations. Documentation attached. An improvement plan dated August 31, 1993, was written and implemented.

Specification No. 12:

During school year 1993-94, during your principalship at Hite Saunders Elementary School, you failed to implement an IEP for a student. The IEP was violated because you failed to take responsibility and administrative leadership for its implementation. You did not insure that the classroom teachers implement the requirements of the IEP and meet the timelines. You failed to work cooperatively with parents of this student, thus causing the parents and others to feel lack of confidence in the school program. Documentation attached. An improvement plan dated August 23, 1994, was written and implemented.

Specification No. 13:

During school year 1993-94, during your principalship at Hite Saunders Elementary School, you did not follow county guidelines and directives to implement progress reporting for intermediate report cards. You did not insure that the classroom teachers fully implement progress reporting for immediate report cards as teachers gave percentages and grades. Documentation attached. An improvement plan dated August 23, 1994, was written and implemented.

Specification No. 14:

During school year 1994-95, during your principalship at Hite Saunders Elementary School, your conduct was deficient in dealing with parents and solving problems, concerns and issues. You were unable to intervene, negotiate and resolve conflict with PTA complaints, such as the election of officers, executive committee, citizenship awards and recognition of children, and the WV Executive Director of PTA. Your conduct was deficient in dealing with parent concerns with the family involvement program and citizen complaints concerning the CAP [Child Assault Prevention] program, limiting the use of the Little League field, and the change in the bus schedule and not permitting students in the building in the mornings until 7:55 a.m. Documentation attached. No improvement plan was prepared, rather a recommendation for removal as principal because of prior failures to continue corrected behaviors, was made.

Specification No. 15:

During school year 1994-95, during your principalship at Hite Saunders Elementary School, your conduct was deficient in communicating effectively with the PTA regarding the election of officers, the executive committee, citizenship awards and recognition of children, the WV Executive Director of PTA, family involvement program, citizen complaints, CAP program, limiting the use of the Little League field, the change in the bus schedule which permitted students in the building at 7:55 a.m. Documentation attached. No improvement plan was prepared, rather a recommendation for removal as principal because of prior failures to continue corrected behaviors, was made.

CHARGE II

WILLFUL NEGLIGENCE OF DUTY

The board of education charges that Kay Williams, an elementary principal for the Cabell County Board of Education, has been guilty of willful neglect of duty, in the following specifications:

Specification No. 1:

In school year 1991-92, during your principalship at Hite Saunders Elementary School, you were given job postings on February 4, 1992, and a memo related to the timelines for selection of the positions posted. These were to be completed by February 14, 1992, so they could be placed on the agenda for the February 18, 1992, board meeting. The Personnel Department is bound by specific laws and regulations which require the adherence to timelines; you did not meet these timelines. Documentation attached.

Specification No. 2:

During school year 1992-93, during your principalship at Hite Saunders Elementary School, you violated the IEP for a student by failing to take responsibility and administrative leadership and there were confidentiality violations of this student at Hite Saunders. You failed to work cooperatively with parents of this child, thus causing the parents and others to feel a lack of confidence in the school program. You did not insure that the classroom teacher implemented the requirements of the IEP. Documentation attached. An improvement plan dated August 31, 1993, was written and implemented.

Specification No. 3:

During school year 1993-94, during your principalship at Hite Saunders Elementary School, you failed to implement an IEP for a student. The IEP was violated because you failed to take responsibility and administrative leadership for its implementation. You did not insure the classroom teachers implement the requirements of the IEP and meet all timelines. You failed to work cooperatively with parents of this student, thus causing the parents and others to feel a lack of confidence in the school program. Documentation attached. An improvement plan dated August 23, 1994, was written and implemented.

Specification No. 4:

During school year 1993-94, during your principalship at Hite Saunders Elementary School, you did not follow county guidelines and directives to implement progress reporting for intermediate report cards. You did not insure that the classroom teachers fully implement progress reporting for intermediate report cards as teachers gave percentages and grades. Documentation attached. An improvement plan dated August 23, 1994, was written and implemented.

Specification No. 5:

During school year 1994-95, during your principalship at Hite Saunders Elementary School, your conduct was deficient in dealing with parents and solving problems, concerns and issues. You were unable to intervene, negotiate and resolve conflict with PTA complaints, such as the election of officers, executive committee, citizenship awards and recognition of children, and the WV Executive Director of PTA. Your conduct was deficient in dealing with parent concerns with the family involvement program and citizen complaints concerning the CAP program, limiting the use of the

Little League field, and the change in the bus schedule and not permitting students in the building in the mornings until 7:55 a.m. Documentation attached. No improvement plan was prepared, rather a recommendation for removal as principal because of prior failures to continue corrected behavior, was made.

The following list briefly identifies Grievant's evaluation history while serving as a principal.

1988-89

Unsatisfactory Evaluation - Improvement Plan

Statement of Deficiency - Financial records were substandard and not in compliance with regulations of the Board of Education and the statutes of the State of West Virginia.

1989-90

Satisfactory Evaluation

1990-91

Marginal Evaluation [\(See footnote 5\)](#) - 1 marginal area - no Improvement Plan

Statement of Deficiency IX - Work is not always done in a timely manner and deadlines are frequently not met.

1991-92

Marginal Evaluation - 2 marginal areas; 1 area marked between marginal and expected competency - no Improvement Plan

Statement of Deficiency VIII -
Planning and organizing work.

Statement of Deficiency IX -
Timeliness

Statement of Deficiency XIII -
Effectiveness in dealing with others.

1992-93

Unsatisfactory Evaluation [\(See footnote 6\)](#) -
Improvement Plans

Statement of Deficiency 17.3 -
Managing Consensus and Group Behaviors - Effectiveness in Dealing
with Others

Statement of Deficiency 17.5 -
Organizing and Delegating to Accomplish Goals -
Timeliness.

Letter of Reprimand - Failure to implement IEP.

1993-94

Unsatisfactory Evaluation - Improvement Plan

Statement of Deficiency 17.3 -
Managing Consensus and Group Behaviors - Effectiveness in Dealing
with Others

1994-95

Unsatisfactory Evaluation - Recommend Termination of Principal Contract

Statement of Deficiency 17.3 -
Managing Consensus and Group Behaviors -
Effectiveness in Dealing with Others

Statement of Deficiency 17.6 -
Communicating Effectively - Communications

Grievant did not grieve any of these evaluations or placements on IP's until the 1994 evaluation. This grievance was dropped by Grievant at Level II. Grievant also did not grieve her 1992-93 Letter of Reprimand.

Grievant has been an educator for approximately thirty-six years, the last seven as an elementary principal. [\(See footnote 7\)](#) Grievant has multiple certifications, but was unable to identify all of them at hearing. She is certified in Elementary Education, as a Reading Specialist, K-12, and in Education Administration. She has a Masters +100, course work toward a Ph.D., and her last class work in

administration was in 1963. During most of her tenure as principal, the first year at Culloden Elementary ("CE"), the last six at Hite-Saunders Elementary ("H-S"), Grievant was supervised by Mr. Perkins. [\(See footnote 8\)](#) Although Respondent produced multiple witnesses to support its charges against Grievant, the primary witness was Mr. Perkins. He testified at length about Grievant's many problems at H-S, and his attempts to assist Grievant in overcoming her areas of deficiency so she could fulfill her role as principal. His testimony was thoroughly documented with multiple sheets of contemporaneous notes, which reflected the numerous conversations he had with Grievant about areas of concern and difficulty. These notes also document numerous conversations Mr. Perkins had with concerned and irate parents concerning Grievant's failure to respond appropriately to their inquiries and concerns.

Mr. Perkins testified he would discuss problem areas and the IP's with the Grievant and then, shortly thereafter, Grievant would call him to go over the same data and to clarify what he had already told her. He found Grievant's perception, no matter what evidence and documentation he presented her with to be there are "no problems". Mr. Perkins noted Grievant frequently failed to do what was requested and required, whether it was ensuring her faculty's implementation of a student's Individual Educational Plan ("IEP"); completing forms and evaluations in a timely manner, following county policies on grading procedures, computer education, and curriculum integration; or resolving conflict and issues between teachers and parents or groups of parents.

Other Central Office staff testified about their difficulties dealing with Grievant. Ms. Curtis discussed Grievant's failure to follow deadlines, evaluation, and posting procedures. Mr. Billy Adams, Director of Service Personnel, discussed Grievant's failure to turn in service personnel evaluations in a timely manner. Dr. Bill Capehart, Assistant Superintendent, detailed Grievant's failure to implement two student IEP's; one during the 1992-93 school year and one during the 1993-94 school year. He also discussed Grievant's failure to implement an integrated curriculum. Grievant's fourth and fifth grade faculty had continued to maintain a departmentalized teaching system even though elementary schools were told in 1988 to adopt an integrated system in order to promote whole language learning. Mr. John Schurman, Auditor, spoke to Grievant's first IP, and stated that by the end of the improvement period Grievant had become satisfactory in maintaining the school's financial records.

[\(See footnote 9\)](#)

Donna Adams, Supervisor for Elementary Schools, was asked to investigate both IEP problems.

She found, both times, that the faculty failed to implement the IEP and appeared to be unclear as to what they were legally mandated to do. She also stated that she recommended one teacher involved, Ms. Cheryl Lynn Scarberry, observe another teacher in a similar setting for learning purposes. She had difficulty getting release time for this teacher from Grievant, and Grievant cancelled this arrangement twice.

Ms. Kathy McCoy, Special Education Supervisor, helped to investigate the second IEP problem during the 1993-94 school year. Grievant indicated the parents had never called her about the teacher's failure to send home the mandated mid-term paper reports in a timely manner, until the last month of school when the student received an unsatisfactory, 58%. The parents testified they had called Grievant several times about these late reports, before the May incident without response. Ms. McCoy indicated she had called Grievant herself before Christmas after discussion with the parents. Grievant told Ms. Adams and Ms. McCoy she could not remember talking to the parents before May and if she did, she did not remember what she told them. Ms. McCoy also recommended Grievant attend IEP training. There were fifteen sessions offered during the following 1994-95 school year. Grievant did not attend.

Respondent also called Mr. Eddie Bowen, the current principal at H-S. He testified that the end of school materials a principal is to have organized in preparation for the next year were not to be found at H-S, and the secretary [\(See footnote 10\)](#) indicated they did not exist. Some of the materials Mr. Bowen could not find were class rolls, curriculum materials, and schedules.

Mary Campbell, principal at Ceredo-Kenova, filled in for Mr. Perkins during the Fall of 1994. She stated Grievant successfully completed portion 17.3 of her IP, but if it had been her decision, she would have written another IP on 17.6, Communication, because Grievant was unsatisfactory in this area. She noted Grievant did not attend recommended IEP training, had improperly implemented the Child Assault Prevention ("CAP") program, and had been ineffective in dealing with the school opening issue [\(See footnote 11\)](#). Ms. Campbell noted Grievant was still unsure of how to correct her grading problem, even though she had been given a detailed packet of directions. Ms. Campbell said Grievant appeared to have the knowledge and expertise of a first or second year administrator, not a principal of six years.

The Executive Director of the West Virginia Parent-Teacher Association, Nancy Cartmill, also testified. She stated she had received parental calls about Grievant since she was a principal at CE

in 1988-89. The number of these calls were out-of-proportion to other schools and related to multiple issues. She discussed at some length the problems with the 1995 PTA elections, Grievant's involvement in them, and her attempts to help Grievant, parents, and Mr. Perkins resolve them. She also reported that Grievant had called her to ask how to dissolve the PTA.

Multiple parents testified about problems they had with Grievant and their attempts to resolve them. Many also testified that they had signed a 1994-95 citizen appeal petition to correct the problems they felt existed. Major problems identified by these parents were:

- interference in the election of PTA officers causing dissension
- difficulty interacting with volunteers
- refusal to admit children into the school until 8:00 a.m. despite a change in schedule
- conducting the Child Assault Prevention ("CAPS") Program in the school without proper notice to the parents or providing privacy for troubled children
- removing a survey from the school newspaper she had earlier approved without discussing this issue with involved parents
- inability to resolve conflicts among parental groups
- failure to follow through on questions and concerns
- failure to implement mandatory computer program
- failure to maintain confidentiality of students

In presenting her evidence Grievant called several teachers and parents, as well as testifying herself. Ms. Scarberry is a K-8 teacher with eighteen years of experience and was involved in the first IEP problem in 1992. She stated Grievant never gave her the student's IEP, but only read portions of it to her and then locked it in her desk. Ms. Scarberry finally got a copy of the document on December 21, 1992. She stated she shared no confidential data with anyone, but then stated she had told parents that the student was covered by an IEP. She was reprimanded by Dr. Capehart for her conduct in failing to implement this IEP, as was Grievant, but Grievant did not note this on her evaluation, as both Grievant and Ms. Scarberry did not think it was warranted or that she had done anything wrong.

Ms. Trudy Elam was the teacher primarily involved in the second IEP incident. She is currently a fourth grade teacher and has twenty-two years of experience as well as a Masters degree in learning disabilities. [\(See footnote 12\)](#) The incident involved a failure to complete mid-term reports in a timely manner as requested by the IEP. Also involved was the failure of the teachers to meet and discuss the student every six weeks. Additionally, no intervention was taken when the student received a failing grade. She stated this student "did not look like he had a problem," that she had done nothing wrong and the report may have been late but her reports were not late. She indicated it was "not a big deal" that this problem occurred without intervention, because the student received an opportunity to raise his grade. The evidence was clear and Grievant later admitted these reports were late.

Ms. Elam also spoke to the H-S faculty's failure to follow county guidelines on reporting grades. She stated she did not know they were out of compliance, even though she had received data and training on how the new grading system was to work and be applied. She stated she and other teachers did not agree with the change, and Grievant had approved the placement of inserts in the report cards giving letter grades and percentages. At the time H-S's faculty were utilizing this insert, all elementary schools were to use "developmentally appropriate education" reports devised by the teachers to give parents specific information as to what learning objectives their children had met.

Mr. Perkins testified about this method of assessment and submitted documentation of the steps Central Office took to inform and train teachers and administrators about this process which began in September 1993. On June 19, 1994, Grievant wrote Mr. Perkins requesting information on this program and told him she did not understand developmentally appropriate education.

Two parents testified on Grievant's behalf and stated they had no difficulty relating to Grievant and that many people in the community still supported Grievant. Both indicated that during Grievant's tenure there were problems among PTA members, and angry feelings about school activities and awards.

Grievant testified in her own behalf. Much of her testimony was in direct conflict with that of others. Additionally, she stated she did not know when various forms or reports were due, or that it was vital to complete them on time. Grievant also stated she thought she was in compliance with the Writing to Read computer program [\(See footnote 13\)](#), both IEP's, and report cards. She stated she did not know her fourth and fifth grade teachers should not be departmentalized in order to follow an integrated curriculum. Further, she stated PTA problems were caused by others, the doors to the school were unlocked in the morning before 7:55 a.m. and students could come inside, she never banned any volunteers, and the financial problems at CE were caused by a secretary who was "well connected" who did not receive an IP.

In response to questions about Mr. Perkins' testimony, Grievant stated "alot" of it was not true, she did not know why he would say such things, except maybe to make her record look worse, and that she did not think she had any personal problems with Mr. Perkins. She repeatedly stated she was shocked that Mr. Perkins took notes about their communications, even though she admitted she also made notes about certain conversations and interactions.

Grievant also stated, "I feel I've done a wonderful job", and "I don't know why this [removal] would come about because a few parents went out and got signatures." She also stated she thought it was unfair to "bring up" prior unsatisfactory and marginal evaluations because she had successfully completed each IP.

During her testimony Grievant had difficulty focusing on the questions asked and formulating clear responses. This difficulty was more pronounced on cross-examination when the questions required short answers or factual data. Respondent's counsel frequently attempted to redirect questions with no avail, and it was clear Grievant did not remember what the asked question had been. The undersigned also experienced the same difficulties when attempting to clarify Grievant's prior answers and grievance information.

Although not spoken to directly in the above discussion, much of Grievant's testimony focused on the citizen appeals filed and signed by numerous parents and grandparents during the last two years

of her tenure. Grievant and her counsel argued Grievant was fired because of these appeals, and that she was not allowed to participate in these appeals in a meaningful way. A review of the record, in its entirety, does not support these contentions. Many of the complaints contained in the citizens' appeals were brought to her and Mr. Perkins' attention prior to filing, and had never been resolved. Some of the issues, like opening the doors to allow students in the building prior to 8:00 a.m., ([See footnote 14](#)) had been discussed for years. What is clear is that parental dissension and discord increased during Grievant's tenure at H-S, numerous parents complained, and CCBOE reasonably believed it was compelled to act. Thus, Grievant was not demoted because of the citizen appeals, but these appeals did indicate the depth of the problems and discord in the H-S school district. Grievant had been counseled about many of these problems, but did not intervene to resolve them, and the situation escalated. Grievant's difficulty in communicating with others was noted in her 1991-92, 1992-93, 1993-94, and 1994-95 evaluations.

Two other issues must be noted. One, many of the stated charges for Grievant's demotion were not related to issues in the citizens appeal, and two, although it appears CCBOE administrators encouraged parents to file their appeal initially with Grievant and to discuss the issues face-to-face with her, the parents refused to do so. Reasons for this refusal were: 1) fear of harassment for their children; and 2) failure of prior discussion of the same issues to provoke a meaningful response.

Discussion

Because of the conflicting testimony the first issue to resolve is one of credibility. The undersigned finds Respondent's witnesses from Central Office to be credible. Grievant identified no bias or motive for these individuals to lie. Further, the testimony of most of these individuals was supported by contemporaneous notes, reports, evaluations, memos, and informational packets.

Grievant's witnesses Ms. Elam and Ms. Scarberry actually confirmed some of the Respondent's charges. While these witnesses did not support Respondent's charges as they related to their own possible wrongdoing, they did reflect Grievant's failure to provide strong leadership at H-S, and her failure to understand and communicate board policy to her staff.

As for the parent witnesses, it is clear they believed what they were saying. Respondent's parent witnesses made numerous allegations and felt so strongly about these issues they called Dr. Capehart, Mr. Perkins, Ms. McCoy, and Ms. Cartmill as well as filing complaints. Many of these

complaints were well-founded and supported by documentation. Grievant's parent witnesses basically stated any problems were not Grievant's fault and were caused by a few dissident parents. Whatever else may be said of the parental testimony, it is clear communication and interpersonal relationship problems abounded at H-S and had escalated to a point requiring direct, immediate intervention.

Grievant's credibility is somewhat difficult to assess. It is clear she believed what she said, but her testimony was unfocused, confusing, conflicting, and, at times, non-responsive. It appears Grievant never understood how serious the problems were, whether they were with IEP's, deadlines, or parental interaction. Grievant did not appear to understand that she, as the principal, was to facilitate resolution to these problems. See W. Va. Code §18A-2-9. Further, Grievant did not appear to understand multiple county policies and programs as they related to her school and what her role was in the implementation of these programs.

Grievant's main argument can be summarily addressed. First, contrary to Grievant's counsel's statement on page 17 of his brief, the undersigned did not state "this case was not a 'termination' but was a 'transfer and demotion'." Throughout the pre-hearing conference and the subsequent four days of hearing, the undersigned repeatedly clarified that the parties should view the action against Grievant as disciplinary in nature, and it could either be viewed and argued as a demotion or termination of a principal's contract, for cause. See W. Va. Code §18A-2-7. The undersigned repeatedly informed Grievant's counsel that the action was not a transfer pursuant to W. Va. Code §18A-2-7, requiring notice before the first Monday in April, but the action was taken under W. Va. Code §18A-2-8 which gives a county board of education the right to discipline employees for the reasons identified in this Code Section. It is noted that Grievant's interpretation of W. Va. Code §18A-2-7 would prevent county boards from disciplinarily demoting school personnel as the need arose and would be against the best interests of the schools, their students, faculty, and community. ([See footnote 15](#))

In disciplinary matters, the employer bears the burden of establishing the charges by a preponderance of the evidence. W. Va. Code §18-29-6; Hoover v. Lewis County Bd. of Educ., Docket No. 93-21-427 (Feb. 24, 1994); Landy v. Raleigh County Bd. of Educ., Docket No. 89-41-232 (Dec. 14, 1989). "Superintendents, subject only to approval of the board, shall have authority to assign, transfer, promote, demote or suspend school personnel and to recommend their dismissal

pursuant to the provisions in this chapter.” [\(See footnote 16\)](#) W. Va. Code §18A-2-7. The authority of a county board of education to discipline an employee must be based upon one or more of the causes listed in W. Va. Code §18A-2- 8 and must be exercised reasonably, not arbitrarily or capriciously. Bell v. Kanawha County Bd. of Educ., Docket No. 91-20-005 (Apr. 16, 1991). See Beverlin v. Bd. of Educ., 158 W. Va. 1067, 216 S.E.2d 554 (1975). W. Va. Code §18A-2-8 provides, in pertinent part:

Notwithstanding any other provisions of law, a board may suspend or dismiss any person in its employment at any time for: Immorality, incompetency, cruelty, insubordination, intemperance, willful neglect of duty, unsatisfactory performance, the conviction of a felony or a guilty plea of nolo contendere to a felony charge. A charge of unsatisfactory performance shall not be made except as the result of an employee performance evaluation pursuant to section twelve of this article.

The letter from Superintendent Jefferson indicated Grievant's principal's contract was terminated for unsatisfactory performance and willful neglect of duty. In terms of unsatisfactory performance, a county board of education is prohibited from “discharging, demoting or transferring an employee for reasons having to do with prior misconduct or incompetency that has not been called to the attention of the employee through evaluation, and which is correctable.” Syl. Pt. 3, Trimboli v. Bd. of Educ., 163 W. Va. 1, 254 S.E.2d 561 (1979); See also Holland v. Bd. of Educ. of Raleigh County, 327 S.E.2d 155 (W. Va. 1985). W. Va. Code §18A-2-12 clarifies and codifies this statement and requires that an unsatisfactory professional must be given notice and an opportunity to improve. If the individual is still not performing satisfactorily by the next performance evaluation, their supervisor may place them on another IP or recommend them for dismissal. Id. It is not necessary for a professional to be on an IP to be dismissed.

In Grievant's case, she received repeated notices of her areas of difficulty, and although would appear to improve while she was on an IP, she would then “fall back” into her prior methods of coping, which would result in another IP on the same issues after the next evaluation. In Grievant's case, her overall problems got worse, not better, and while she did improve some while on the IP in the Fall of 1994, the previously identified problem not only returned, but escalated in the Spring of 1995. Respondent has clearly proven the charge of unsatisfactory performance and her supervisor, Mr. Perkins, followed the directions stated in W. Va. Code §18A-2-12 and “recommended the dismissal” of Grievant from her administrative position.

Respondent must also prove a charge of willful neglect of duty by a preponderance of the evidence. Arbaugh v. Putnam County Bd. of Educ., Docket No. 90- 40-437 (May 22, 1991). To prove willful neglect of duty, the employer must establish that the employee's conduct constituted a knowing and intentional act, rather than a negligent act. Hoover v. Lewis County Bd. of Educ., Docket No. 93-21-427 (Feb. 24, 1994). See Bd. of Educ. v. Chaddock, 183 W. Va. 638, 398 S.E.2d 120 (1990). Although the West Virginia Supreme Court of Appeals has not formulated a precise definition of "willful neglect of duty", it does encompass something more serious than incompetence and imports "a knowing and intentional act, as distinguished from a negligent act." Chaddock, *supra*.

Grievant was repeatedly given deadlines she failed to follow and guidelines and directions for her faculty that she failed to interpret and enforce. In 1992-93 and 1993-94, Grievant failed to supervise her faculty to insure they correctly implemented IEP's. IEP training was strongly recommended to assist with these problems; she did not attend. Grievant repeatedly explained she did not know about these deadlines, guidelines, and failures. When an intelligent, professional employee is given this data and either fails to read, fails to implement it, or fails to take the time to process and understand it so she can utilize it, these acts must be seen as willful and intentional and more serious than incompetence. County boards have the right to expect an administrator to follow its directives without constantly checking and reminding, and to seek assistance if something is unclear. See W. Va. Code §18A-2-9. The fact that the exact words of wrongful neglect of duty were never used with Grievant is of no significance. Grievant was told of her duties and did not perform them. Respondent has proven its charge of willful neglect of duty.

Grievant's argument about Respondent's failure to provide required due process is also without merit. The West Virginia Supreme Court in Bd. of Educ. of the County of Mercer v. Wirt, 453 S.E.2d 402 (W. Va. 1994), determined what due process is required to terminate a continuing contract of employment. A tenured employee is entitled to a pre-termination hearing, not a full adversarial hearing. An employee is also entitled to written notice of the charges and an explanation of the evidence. Id. at Syl. Pt. 3; W. Va. Code §18A-2-8. Additionally, Wirt found an employee is entitled to an opportunity to respond to the charges. Grievant was given all these due process protections by CCBOE. She had a pre-termination hearing, written notice of the charges, explanation of the evidence, and an opportunity to respond.

One point of clarification may be helpful. W. Va. Code §18A-2-8 speaks to disciplinary

suspension and termination, not demotion. As demotion frequently involves the same loss of money or status involved in suspension and termination, the safeguards provided in the Code Section and in Wirt were appropriately applied to this disciplinary demotion. The above discussion will be supplemented by the following findings of fact and conclusions of law.

Findings of Fact

1. Grievant has been employed by CCBOE as a professional educator for approximately thirty-six years, the last seven as a principal.
2. During Grievant's seven years as a principal she had one satisfactory evaluation, two marginal evaluations, and four unsatisfactory evaluations.
3. Grievant was repeatedly notified of her deficiencies but was unable or unwilling to correct them.
4. During Grievant's tenure as principal, she failed to meet multiple deadlines; failed to enforce several county policies and implement several programs; failed to ensure her faculty implemented two IEP's; and failed to resolve multiple parental, student, and faculty conflicts.
5. Grievant received written notice and documentation of the charges which resulted in her demotion. She also had a pre-termination hearing with an opportunity to respond to these charges.

Conclusions of Law

1. The employer must establish the charges in a disciplinary matter by a preponderance of the evidence. W. Va. Code §18-29-6; Froats v. Hancock County Bd. of Educ., Docket No. 91-15-159 (Aug. 15, 1991); Landy v. Raleigh County Bd. of Educ., Docket No. 89-41-232 (Dec. 14, 1989).
2. Unsatisfactory performance and willful neglect of duty are among the causes listed in W. Va. Code §18A-2-8 for which an education employee may be disciplined. See, Jones v. Mingo County Bd. of Educ., Docket No. 95-29-151 (Aug. 24, 1995); Beverlin v. Bd. of Educ., 158 W. Va. 1067, 216 S.E.2d 554 (1975).
3. Dismissal of a professional employee for unsatisfactory performance requires notice of the deficiency and an opportunity to improve. If, at the next performance evaluation, this professional is still not performing satisfactorily, another improvement plan may be issued, or the supervisor may recommend dismissal. W. Va. Code §18A-2-12; Syl. Pt. 3, Trimboli v. Bd. of Educ., 254 S.E.2d 561

(W. Va. 1979).

4. When an employee is dismissed for willful neglect of duty, the employer must prove its case by a preponderance of the evidence. Arbaugh v. Putnam County Bd. of Educ., Docket No. 90-40-437 (May 22, 1991). To prove willful neglect of duty, the employer must establish that the employee's conduct constituted a knowing and intentional act, rather than a negligent act. Hoover v. Lewis County Bd. of Educ., Docket No. 93-21-427 (Feb. 24, 1994). See Bd. of Educ. v. Chaddock, 183 W. Va. 638, 398 S.E.2d 120 (1990).

5. Although the West Virginia Supreme Court has not formulated a precise definition of "willful neglect of duty", it does encompass something more serious than incompetence and imports "a knowing and intentional act, as distinguished from a negligent act." Chaddock, supra.

6. "Employees are expected to respect authority and do not have the unfettered discretion to disobey or ignore clear instructions." Reynolds v. Kanawha-Charleston Health Dept., Docket No. 90-H-128 (Aug. 8, 1990), citing Meads v. Veterans Admin., 36 M.S.P.R. 574 (1988); Daniel v. U.S. Postal Serv., 16 M.S.P.R. 486 (1983); Davis v. Smithsonian Inst., 13 M.S.P.R. 77 (1983)).

7. Respondent met its burden of proof and proved its charges of unsatisfactory performance and willful neglect of duty against the Grievant. Given that Respondent proved these charges by a preponderance of the evidence its termination of Grievant's principal contract was not arbitrary and capricious.

8. Respondent's action of terminating Grievant's administrative contract and placing her in a teaching position was a disciplinary demotion, pursuant to W. Va. Code §18A-2-8, not a transfer, pursuant to W. Va. Code §18A-2-7.

9. Grievant was afforded the due process protection she was entitled to at the time of her demotion. W. Va. Code §18A-2-8; Bd. of Educ. of the County of Mercer v. Wirt, 453 S.E.2d 402 (W. Va. 1994).

10. It is not necessary to use the exact term "willful neglect of duty" to place a grievant on notice that she has failed to perform her required duties.

11. It is appropriate to review an employee's past performance evaluations and IP's, and the subsequent reoccurrence or continuation of identified problems when deciding whether to remove that professional from her current position. This practice can establish a continuing pattern of behavior which has proven not correctable.

12. An employee does not have to be currently on an IP to be terminated. Grievant demonstrated by her ongoing performance problems that her behavior was not correctable. See W. Va. Code §18A-2-12. 13. Respondent violated no statutes, rules, regulations, policies, or written agreements when it terminated Grievant's written contract.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Cabell 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.

JANIS I. REYNOLDS
Administrative Law Judge

Dated: October 31, 1996

[Footnote: 1](#)

W. Va. Code §18A-2-8 allows an employee who is suspended or dismissed for disciplinary reasons to file an expedited grievance to Level IV. The issue of disciplinary demotion, or termination of an administrative contract, while still retaining the employee, is not addressed.

[Footnote: 2](#)

As the hearings in this grievance lasted four days, every single incident testified to and cross-examined on at length will not be detailed. Although the Decision is based on all evidence at hearing, the Decision itself is a brief summary of the major events and controlling factors, not a month-by-month accounting of grievant's seven years prior to her demotion.

[Footnote: 3](#)

At hearing, Respondent's counsel offered to rectify this perceived problem by terminating Grievant's employment. Although this offer was ignored by Grievant's counsel, this argument was resurrected in Grievant's brief. This argument is deemed to be without merit, as Respondent offered to resolve this issue.

[Footnote: 4](#)

All special education students have an IEP, which is a legal document mandating compliance with each student's educational program.

[Footnote: 5](#)

No IP's were written when an employee received a marginal evaluation. An evaluation is considered Marginal when even one category is so marked. Recommendations are made by the evaluator on what is necessary to improve performance.

[Footnote: 6](#)

The method of evaluation changed after the 1991- 92 school year.

[Footnote: 7](#)

Grievant is currently employed by CCBOE as a Chapter I Reading and Math teacher at Johnston Elementary.

[Footnote: 8](#)

Mr. Perkins is now retired.

[Footnote: 9](#)

Grievant's counsel made much of the fact that Grievant was placed on an IP at H-S for the deficiency noted at CE. It is recognized that an IP is to correct a professional's deficiency, not a school's deficiency.

[Footnote: 10](#)

This secretary had retired at the end of the 1994-95 school year, but returned over the summer of 1995 to assist Mr. Bowen in locating materials.

[Footnote: 11](#)

An area of ongoing conflict with parents was Grievant's refusal to open the school before 7:55 a.m., no matter what the weather.

[Footnote: 12](#)

Ms. Elam has never been employed as a special education teacher.

[Footnote: 13](#)

This program took longer to implement in Grievant's school than any other school in the county. Grievant was repeatedly informed it was not optional. (Testimony of Ms. Adams.)

[Footnote: 14](#)

Throughout the testimony both times of 7:55 a.m. and 8:00 a.m. were used.

[Footnote: 15](#)

To the extent that this Grievance Board in Hoffman v. Mingo County Bd. of Educ., Docket No. 95-29-527 (May 31, 1996) stated the removal of a principal and his subsequent placement into a teaching position is always a transfer, it is overruled. Hoffman cited Bd. of Educ. of the County of Grant v. Townshend, 187 W. Va. 249 (1992) to support this holding. Townshend dealt with a reduction-in-force of a principal to a teaching position. Thus, the issue was not disciplinary and was a transfer based on seniority pursuant to W. Va. Code §18A-2-7. Further, Hoffman relied on Holland v. Bd. of Educ. of Raleigh County, 327 S.E.2d 155 (W. Va. 1985) to state the transfer of a principal to a teacher's position could be administrative or disciplinary in nature. Holland dealt with teachers who were disciplinarily transferred. Thus, although the transfer of a teacher to another teacher position could be a disciplinary transfer, the placement of a principal in a teaching position for unsatisfactory performance and willful neglect of duty is a disciplinary demotion, not a transfer.

[Footnote: 16](#)

The rest of this Code section discusses the methods and requirements for transferring an employee, and the superintendent's authority to suspend.