

**KAREN MOUNTS,**  
**Grievant,**

**v. Docket No. 95-29-006**

**MINGO COUNTY BOARD OF EDUCATION,**  
**Respondent.**

### **DECISION**

Grievant, Karen Mounts, is an art, music, physical education, and Charlie/POPS [\(See footnote 1\)](#) teacher at Dingess Grade School ("DGS"). She contends, "[t]here is a need for another multi[-]subjects teacher at Dingess Grade School." She states she "teaches every child in their school every day" with multiple overages in almost every class. She seeks as relief that the Mingo County Board of Education ("MCBOE") hire another teacher and pay Grievant her overages for every child over the limit as mandated by W. Va. Code §18-5-18a.

This grievance was waived at Level I. A Level II hearing was held, but no decision was forthcoming. Grievant appealed to Level IV. After this appeal, Grievant received a letter dated January 4, 1996, from Assistant Superintendent Johnny Fullen giving her a new teaching schedule which resolved the overage problem in all her classes and approved payment for all overages in her art classes. Grievant continued her grievance at Level IV on the issues of 1) seeking another multi-subject teacher at DGS, 2) seeking payment for overages in her other classes, and 3) continuing to teach a morning reading course. A Level IV hearing was held on February 26, 1996, and the case became mature for decision on that day as the parties did not wish to submit proposed findings of fact and conclusions of law.

The facts in this grievance are not in dispute and will be set out below.

#### **Findings of Fact**

1. MCBOE hired Grievant to teach art, music, physical education and self- awareness courses

at DGS on October 23, 1995.

2. Grievant was also initially assigned to teach reading to ten students for one hour every morning.

3. Grievant taught the following subjects on the following days:

Art - Tuesday

Music - Thursday

Physical Education - Monday and Wednesday

Self-Awareness - Friday

4. Grievant originally had the following schedule and numbers of students in her classes:

First period 8:45 - 9:45 Reading - 10 students

Second period 9:50 - 10:20 All third graders - 37 students

Third period 10:25 - 10:55 First graders - 25 students (first class)

Fourth period 11:00 - 11:30 All second graders - 38 students

11:30 - 12:30 Lunch/Planning

Fifth period 12:30 - 1:00 All Fifth graders - 41 students

Sixth period 1:00 - 1:30 All fourth graders - 38 students

Seventh period 1:35 - 2:05 All kindergarteners - 34 students

Eighth period 2:10 - 2:40 First graders - 25 students (second class)

5. After January 4, 1996, Grievant's schedule was changed so that each classroom was instructed separately, except for kindergarten, in which she had a teacher's aide. All class sizes then met the standards required by W. Va. Code §18-5-18a.

6. Grievant received payment for the overages in art and has dropped that portion of her grievance.

7. When the principal of DGS filled out his Staffing Needs Assessment at the end of the 1994-95 school year for the 1995-96 school year, he overestimated his projected enrollment by approximately fifty students and requested two multi-subject teachers in addition to classroom, Special Education, and Chapter I teachers. MCBOE assigned one multi-subject teacher, Grievant.

8. The student-teacher ratio at DGS is within the guidelines mandated by the State Department of Education ("S DOE").

9. Grievant's original overages were caused by a scheduling problem, not by a shortage of

teachers.

### Issues

There are three remaining issues in this grievance. One, Grievant argues she should continue to teach reading, as it is an important part of the educational program; two, DGS still needs another multi-subject teacher, at least for half a day; and three, she wishes to be paid for the remaining, prior overages. MCBOE argues that when Grievant's schedule was changed to eliminate the overages, there was no time left for the reading program. Also, MCBOE argues DGS teacher-pupil ratio is within the guidelines mandated by SDOE, and with its current budgetary problems, there is no money for an additional teacher. MCBOE also states W. Va. Code §18-5-18a does not require payment for overages in the areas of physical education and music.

### Discussion

#### A. Reading Class

MCBOE changed approximately one hour per day of Grievant's teaching schedule when it removed the reading class from her daily schedule. "[A] principal [and an Assistant Superintendent] have the authority to adjust a teacher's schedule as long as the teacher remains in the same area of certification and discipline and in the same department or grade level." Thomas v. Kanawha County Bd. of Educ., Docket No. 94-20-1123 (May 17, 1995). Principal Hugh Talbert, at the direction of Assistant Superintendent Fullen, had the right to remove Grievant from the one hour reading assignment and reschedule her teaching assignment, as he is responsible for the administrative and instructional programs within DGS as well as the "planning, management, operation and evaluation of the school . . . ." W. Va. Code §18A-2-9. See, Barker v. Kanawha County Bd. of Educ., Docket No. 90-20- 505 (Feb. 22, 1991). While it may be true that the reading class was beneficial to the students, barring some violation of a Code Section, MCBOE may make changes in Grievant's teaching schedule to remove the overages in her classroom.

#### B. Request for an Additional Half-Time Teacher

Given that DGS is within the guidelines established by the SDOE, Grievant has failed to demonstrate MCBOE violated any statute, rule, or regulation when it did not place an additional multi-subject teacher at DGS.

### C. Overages

W. Va. Code §18-5-18(a) states in pertinent part:

County boards of education shall provide, by the school year one thousand nine hundred eighty-three\_eighty-four, and thereafter, sufficient personnel, equipment and facilities as will ensure that each first and second grade classroom, or classrooms having two or more grades that include either the first or second grades shall not have more than twenty-five pupils for each teacher of the grade or grades and shall not have more than twenty pupils for each kindergarten teacher per session, unless the state superintendent has excepted a specific classroom upon application therefor by a county board.

County boards shall provide by the school year one thousand nine hundred eighty-four\_eighty-five, and continue thereafter, sufficient personnel, equipment and facilities as will ensure that each third, fourth, fifth and sixth grade classroom, or classrooms having two or more grades that include one or more of the third, fourth, fifth and sixth grades, shall not have more than twenty-five pupils for each teacher of the grade or grades.

...

During the school year one thousand nine hundred eighty-four\_eighty- five, and thereafter, the state superintendent is authorized, consistent with sound educational policy, (a) to permit on a statewide basis, in grades four through six, more than twenty-five pupils per teacher in a classroom for the purposes of instruction in physical education, and (b) to permit more than twenty pupils per teacher in a specific kindergarten classroom and twenty-five pupils per teacher in a specific kindergarten classroom and twenty-five pupils per teacher in a specific classroom in grades one through six during a school year in the event of extraordinary circumstances as determined by the state superintendent after application by a county board of education.

The state board shall establish guidelines for the exceptions authorized in this section, but in no event shall the superintendent except classrooms having more than three pupils above the pupil-teacher ratio as set forth in this section.

The requirement for approval or an exception to exceed the twenty pupils per kindergarten teacher per session limit or the twenty-five pupils per teacher limit in grades one through six is

waived in schools where the schoolwide pupil-teacher ratio is twenty-five or less in grades one through six: Provided, That a teacher shall not have more than three pupils above the teacher/pupil ratio as set forth in this section. Any kindergarten teacher who has more than twenty pupils per session and any classroom teacher of grades one through six who has more than twenty-five pupils shall be paid additional compensation based on the affected classroom teacher's average daily salary divided by twenty for kindergarten teachers or twenty-five for teachers of grades one through six for every day times the number of additional pupils enrolled up to a maximum pupils permitted in the teacher's classroom. All such additional compensation shall be paid from county funds exclusively.

. . .

No provision of this section is intended to limit the number of pupils per teacher in a classroom for the purpose of instruction in choral, band or orchestra music.

Each school principal shall assign students equitably among the classroom teachers, taking into consideration reasonable differences due to subject areas and/or grade levels.

. . .

#### 1. Self-Awareness Classes

Given the above-stated Code Section, it is clear Grievant had overages in all of her Friday Self-Awareness classes, with the exception of the two first grade classes. She had twelve students over twenty-five in her second period class; thirteen students over twenty-five in her fourth period class; sixteen students over twenty-five in her fifth period class; thirteen students over twenty-five in her sixth period class; and fourteen students over twenty in her seventh period class. Grievant is entitled to payment for these overages. See, Starr, et al. v. Lincoln County Bd. of Educ., Docket No. 94-22-125 (Oct. 20, 1994).

#### 2. Music Classes

Grievant is not entitled to any overage payment for the additional students she had in the Thursday music classes, as this class is specifically exempted by paragraph 8 of W. Va. Code §18-5-

18a. The class size in “choral, band, and orchestra music” is not limited. Id.

3. Physical Education Classes The issue of class size for physical education elementary students, kindergarten through third grade, is clear from the Code Section. No more than twenty pupils for kindergarten and twenty-five pupils in grades one through three are permitted without overage payment, and no more than three pupils over this limit are allowed. Thus, Grievant is entitled to payment for twelve students over the mandated twenty-five in her second period class; thirteen students over twenty-five in her fourth period class; and fourteen students over twenty in her seventh period class.

On the issue of the permitted number of students in grades four through six in physical education, W. Va. Code §18-5-18a states: “the state superintendent is authorized, consistent with sound educational policy, (a) to permit on a statewide basis, in grades four through six, more than twenty-five pupils per teacher for the purposes of instruction in physical education . . . .” The statute continues and discusses the possibility of and the method for receiving approval from the state superintendent for receiving permission to have greater than the number of students allowed by paragraphs one, two, and three. [\(See footnote 2\)](#)

Additionally, on October 20, 1988, then State Superintendent Tom McNeel stated that fifth and sixth grade physical education classes could not have more than twenty-eight students. His only rationale was that greater numbers were not permitted by the fourth paragraph of W. Va. Code §18-5-18a.

The undersigned finds this ruling of the State Superintendent to be clearly wrong. To interpret the statute in this way negates the need to have Section (a) in the statute at all, as the language mandating the numbers of students is clearly stated elsewhere. Each section of a statute must be considered in the context of the entire statutory scheme of which it is a part, and statutes relating to the same subject matter should be read and applied together so that the legislature's intention can be gathered from the whole of the enactments. W. Va. Dept. of Health and Human Resources v. Hess, 189 W. Va. 357, 432 S.E.2d 27 (1993); Boley v. Miller, 187 W. Va. 242, 418 S.E.2d 352 (1992); Wills v. Summers County Bd. of Educ., Docket No. 94-45-567 (Apr. 3, 1995).

In essence, W. Va. Code §18-5-18a limits class size in all grades, kindergarten through six, and then states some exceptions to this limitation. The limitation in physical education in grades four through six is that the number of students be “consistent with sound educational policy.” Grievant

presented no evidence or information about what numbers of physical education students would be within sound educational policy. Clearly, at some point, the number of fourth through sixth grade elementary students would be too great in terms of the safety factor. Without data by educational experts the undersigned is reluctant to identify what number is "too many". Accordingly, the undersigned finds, without further information, that Grievant did not have overages in the fourth and fifth grade combined classes of thirty-eight and forty-one students respectively. [\(See footnote 3\)](#)

The above discussion will be supplemented by the following conclusions of law.

### Conclusions of Law

1. Grievant is required to prove all the charges of her grievance by a preponderance of the evidence. Napier v. Logan County Bd. of Educ., Docket No. 94-23- 541 (Apr. 25, 1995).

2. "A principal has the authority to adjust a teacher's schedule as long as the teacher remains in the same area of certification and discipline and in the same department or grade." Thomas v. Kanawha County Bd. of Educ., Docket No. 94-20-1123 (May 17, 1995); See W. Va. Code §18A-2-9; Barker v. Kanawha County Bd. of Educ., Docket No. 90- 20-505 (Feb. 22, 1991).

3. When an individual school is within the pupil-teacher ratio established by the State Department of Education, the failure to fulfill a principal's request for additional teachers does not violate any statute, rule, or regulation.

4. Grievant demonstrated she had the following overages in her Friday self- awareness classes from October 23, 1995, to January 3, 1996:

Second period    12

Fourth period    13

Fifth period    16

Sixth period    13

Seventh period    14

5. Because W. Va. Code §18-5-18a permits overages in choral, band, and orchestral music classes, Grievant failed to demonstrate she had any overages in her music classes. 6. Grievant demonstrated she had the following overages in her kindergarten through third grade, Monday and Wednesday physical education classes from October 23, 1995, to January 3, 1996:

Second period 12

Fourth period 13

Seventh period 14

7. W. Va. Code §18-5-18a permits a teacher in grades four through six to have greater than twenty-five students in a physical education class.

8. Grievant did not prove the overages in her fourth and fifth grade physical education classes were inconsistent with sound educational policy.

Accordingly, this grievance is **GRANTED**, in part, and **DENIED**, in part. MCBOE is directed to pay Grievant for the overages in all self-awareness classes. MCBOE is directed to pay Grievant for the overages in her kindergarten through third grade physical education classes. The formula for these overages is to be 1/25th of her daily salary in the first through fifth grade classes or 1/20th of her daily salary in the kindergarten classes, times the number of overages, times the amount of class time for each of these overages (1/2 hour per day).

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Mingo 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: May 31, 1996**

---

[Footnote: 1](#)

*These last two programs teach self-awareness to elementary students.*

---

[Footnote: 2](#)

*Paragraph six of this Code Section waives the requirement for approval for schools with a certain pupil/teacher ratio.*



*DGS meets the requirements for this waiver.*

---

[Footnote: 3](#)

*This is not to say those same numbers would be found to be acceptable, given supporting data to the contrary.*