

**GAYLE BROWN, .**

**Grievant, .**

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**V. . DOCKET NUMBER: 95-23-443**

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**LOGAN COUNTY BOARD OF EDUCATION, .**

**EMPLOYER. .**

### **DECISION**

Gayle Brown, Grievant, filed this complaint on September 28, 1995, pursuant to the provisions of the Grievance Procedure for Education Employees, West Virginia Code §§18-29-1, et seq., stating as follows: "Gayle Brown is protesting his large physical education class size and also asked that a female [teacher or aide] be assigned to the female locker room. He claims that the situation poses a safety hazard for the students." The grievance was denied at the lower levels and appeal was made to level four on October 2, 1995. An evidentiary hearing was held on December 7, 1995, at the Grievance Board's office in Charleston, West Virginia. The case became mature for decision on that date.

Grievant is a Physical Education/Health teacher at Man Junior High School. Grievant and the Board agree that there is no statutory limitation on the number of students that may be assigned to his class; however, he bases this claim on his opinion that the number of students assigned to his class creates a safety hazard for both himself and the students. Grievant opines that he should have approximately thirty students in his classes do other teachers.

Regarding his request for an aide to be assigned to the girls' locker room, he is concerned that he is not able to supervise the girls while in the locker room but is still responsible for their safety. At the level four hearing, the Undersigned was made aware that since the grievance had been filed, the Employer had assigned two female aides to work with Grievant so they could supervise the girls while in the locker room. Grievant was also assured that he is not responsible for going into the girls' locker room. Therefore, the issue regarding Grievant's requirement to supervise the girls in his class while they are in the locker room is moot.

There are no material facts in dispute as the parties stipulated to the number of students Grievant currently has in each of his classes. [\(See footnote 1\)](#) The following findings of fact and conclusion of law are set forth herein:

### Findings of Fact

1. Grievant is a physical education teacher for the Logan County Board of Education.
2. At the beginning of the 1995-1996 school year, Grievant was assigned to teach physical education, health, study skills and quads during the seven periods of the school day. [\(See footnote 2\)](#)
3. Currently, for two periods, Grievant has been assigned as many as 40 students in one class per period. At the time the grievance was filed, Grievant had as many as 60 students assigned to his class. Generally, because of absences, approximately 54 students were normally present in his largest class.
4. During one class period, Grievant has a student in a wheelchair assigned to his class.

### Conclusions of Law

1. The Logan County Board of Education is not prohibited by law from assigning forty or more students to Grievant's physical education classes at the junior high level by the.
2. Grievant has failed to establish by a preponderance of the evidence that the number of students assigned to his physical education classes has created "a substantial detriment to or interference with effective classroom instruction, job performance or the health and safety of students or employees." See, W. Va. Code §18-29-2(a). While Grievant's concern is understandable, he cannot meet his burden by solely relying upon the number of students assigned to his class, per se, as creating a hazardous or ineffective atmosphere for instruction.

3. Grievant's complaint about being required to supervise the girls in his class while they are in the locker room has been rendered moot.

Therefore, this grievance is hereby **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Logan 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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**ALBERT C. DUNN, JR.**

**Administrative Law Judge**

**April 16, 1996**

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[Footnote: 1](#)

*As of the level two hearing, Grievant's class size was larger than it is currently. Changes in his student assignment have been made because of the filing of the grievance.*

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[Footnote: 2](#)

*The record does not indicate what "Quads" stands for.*