

JOYCE FLOYD,

Grievant,

v.

DOCKET NO. 93-10-247

FAYETTE COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Joyce Floyd, filed this grievance directly at level four on July 6, 1993, following a hearing before the Fayette County Board of Education ("Board"), wherein the Board voted to accept the recommendation of Superintendent Rick P. Powell that Grievant's administrative assignment be terminated, and she be demoted to a classroom teacher position. Evidentiary hearings were held before the Grievance Board on October 11, 1993, October 27, 1993, February 4, 1994, February 9, 1994, and March 4, 1994. The parties' post-hearing submissions were filed simultaneously on January 31, 1995, whereafter Grievant requested additional time to file a response. Respondent was also given time to file a reply brief, and following a lengthy passage of time resulting from the preparation of transcripts of the hearing, the parties completed their briefing on or about April 1, 1996, at which time this case became mature for decision. ([See footnote 1](#)).

Background

1. Grievant had been employed professionally by Respondent Fayette County Board of Education as a teacher or administrator for approximately 21 years. She had served in an administrative capacity for 9 of those 21 years, serving 5 years as Principal at Beards Fork Elementary, 1-1/2 years as Assistant Principal at Montgomery Middle School under Principal John F. McGinnis, Jr., and the last 2 years, 1991-92 and 1992-93, as Principal at Montgomery Middle School ("MMS").
2. During the 1991-92 school year, her first year as principal at MMS, Grievant was observed

by her immediate supervisor, Jack Crist, Director of Secondary Education, on a continuing basis from September through December 1991. Mr. Crist evaluated Grievant's performance on December 4, 1991, and gave her a "Meets Standards" over-all score. G. Ex. 4.

3. Mr. Crist observed Grievant's performance one more time during the 1991- 92 school year (G. Ex. 5), before he was replaced as Director of Secondary Education by C. H. Mustoe. Mr. Mustoe thereafter observed Grievant two times during the 1991-92 school year (G. Exs. 6, 7). His last observation, dated May 21, 1992, indicated that Grievant needed to make sure the teachers were following their duty assignments, needed to set short and long range goals, and that she needed "to control [her] staff & students in a more forceful manner." He also indicated he would help her with the student and faculty handbooks. G. Ex. 7. Mr. Mustoe evaluated Grievant's performance for the 1991- 92 school year on May 21, 1992, giving her an over-all "Meets Standards" score. There were several areas noted on Grievant's evaluation which needed attention, specifically:

School policies are written for teachers and students;

Communicates pertinent information to teachers and students;

Effectively delegates authority; and

Assumes leadership for the development of high staff morale within his/her building.

Mr. Mustoe indicated on the evaluation that the written school and county policies for students and teachers needed to be updated each year; Grievant needed to make sure teachers were following the duty roster; Grievant needed to be the teachers' leader, not their buddy; she must use test scores in planning and teaching; and she needed to set goals and use the faculty senate improvement team if needed. G. Ex. 8.

4. During the summer of 1992, Grievant implemented several changes at MMS. She converted a teachers' lounge on the first floor to a boys' bathroom; she moved the science classes out of the science laboratory room; and she moved the computer room to another room. The computers were not hooked up for use at that time. Grievant did not consult with the faculty or affected teachers regarding these changes. In addition, the school was being painted that summer, and the library had to be dismantled so that it could be painted.

5. One of Grievant's responsibilities as principal at MMS was to develop the class schedule for the 1992-93 year, which was to be turned into the central office for approval in the preceding Spring.

Mr. Mustoe had indicated to Grievant the preceding Spring that he would help her with the schedule if she needed it. Grievant did not complete the schedule in the Spring of 1992, and did not contact Mr. Mustoe regarding preparing the schedule during the Summer of 1992.

6. Beginning the 1992-93 school year, the classroom schedule Grievant had prepared was not workable. Despite continued suggestions, comments and advice from the faculty, Mr. Mustoe and Mr. Crist, now the Associate Superintendent of Fayette County Schools, Grievant failed to implement a workable classroom schedule.

7. On November 4, 1992, Superintendent Rick Powell wrote Grievant a letter which began, "[a]fter two months of the instructional term, approximately forty-five days, it is apparent that the instructional day at Montgomery Middle School is in some disarray for students and teachers. The class schedule and the subsequent changes developed by you, the principal, have caused confusion and disorganization in the school environment." The letter went on to indicate that suggestions for improvement by Mr. Mustoe and Mr. Crist had apparently been ignored, and Mr. Powell concluded:

As a result of your apparent failure and incapability to properly schedule your school in order to permit a smooth instructional day, you are hereby notified that I consider this to be a serious matter in the area of your job responsibilities and that this must not occur in the future. By WV Code 18A-2-9 and Fayette County Board Policy B-1, particularly items 5 and 7, you are totally responsible for the organization and management of the instructional program at your respective assignment. In the future, I am going to direct your immediate supervisor to prepare a plan of improvement to assist you with goals and objectives in an effort to alleviate any possibility of this occurring again. Furthermore, included in that plan of improvement will be a directive that you are to have a complete schedule by the middle of May of each term in order to avoid and eliminate such confusion. I do hope that as we work throughout this school term it will not become necessary for me to become involved with regard to any further personnel action.

Admin. Ex. 3.

Attached to this letter are notes of observations made by Mr. Mustoe of Grievant from September 18, 1992 through October 23, 1992, encompassing a variety of problems, including the above-mentioned scheduling, communication with the faculty, disciplinary problems under the Fayette County Code of Conduct, and complaints from parents.

8. Mr. Powell continued to get complaints from parents and from teachers at MMS regarding Grievant's performance as principal, and her continuing communication, scheduling, and disciplinary problems. Admin. Exs. 8, 12, 12A, 13A, 13B.

9. Further, Mr. Powell continued to communicate with Grievant regarding items of her

responsibility that were not being carried out in conformance with Board policy and the State Code. Admin. Ex. 28.

10. On November 24, 1992, following Superintendent Powell's directive of November 4, 1992, Grievant was placed on an Improvement Plan, which was developed by Mr. Mustoe, and agreed to by Grievant. The November 24, 1992 Improvement Plan (IP) contained the following areas to be improved:

1. Operation of school plant
 - A. Cleanliness, neatness and appearance of buildings and grounds
 - B. Maintenance of building and grounds
2. Maintain good relations with members of your faculty.
3. Be responsible for keeping and making, promptly, all requests required by the Superintendent
4. Supervision of classroom instruction in order to bring about improvement in the teaching-learning situation.

Under each category, specific actions to be taken by Grievant to achieve those goals were listed, as well as sources of assistance, including individuals and written policies and procedures. Adm. Ex.

15. 11. On April 20, 1993, Mr. Mustoe reported to Grievant the results of his observations and evaluation of the November 24, 1992 IP. Adm. Ex. 16. Mr. Mustoe observed Grievant, as well as other members of her staff, 12 times from December 3, 1992 through April 6, 1993. Mr. Mustoe concluded that Grievant had shown some improvement in the areas of building cleanliness and discipline, but that improvement was still needed in those areas, as well as the areas of relations with the faculty; keeping and making promptly all requests required by the Superintendent; and supervision of classroom instruction, which Mr. Mustoe indicated was "the most important thing to work on." Mr. Mustoe indicated Grievant had failed to successfully implement the November 24, 1992 IP and informed her that he would work with her to develop a new IP, adding that the State Accreditation visit had found deficiencies in the school which needed to be addressed. Adm. Ex. 16.

12. During the many observations noted above, Mr. Mustoe talked to Grievant about the areas that needed improving and made suggestions to assist her in facilitating those improvements.

13. On April 20, 1993, Superintendent Powell wrote to Grievant indicating that the results of the on-site evaluation team from the State Board of Education indicated that serious deficiencies

existed at MMS which needed her immediate attention. Mr. Powell stated, "[a]s the instructional leader and administrator of Montgomery Middle School, you are directly responsible and accountable to implement necessary action to correct these deficiencies. As I indicated in our conference, these deficiencies are further evidencethat substantiated our need to place you on a plan of improvement and monitor your job performance very carefully." Adm. Ex. 23.

14. A second IP was developed by Mr. Mustoe and Grievant on May 11, 1993, which identified the following areas to be improved:

1.

Supervision of classroom instruction in order to bring about improvement in the teaching-learning situation. (Under this section, Grievant is expressly directed to observe and evaluate personnel).

2. Follow Fayette County Code of Conduct

3. Maintain good relations with members of your faculty

4.

Be responsible for keeping and making, promptly, all requests required by the Superintendent.

5. Operation of school plant

A. Cleanliness, neatness and appearance of building and grounds

B. Maintenance of building and grounds

The deadline for achievement of this IP was May 28, 1993, with the exception of the directive under operation of school plant to develop and use a daily check list for custodians, which was required to be turned in to Mr. Mustoe by May 14, 1993. Again, sources of assistance were provided to Grievant in all of the areas to be improved. Adm. Ex. 17.

15. During this time, Grievant was working on developing the classroom schedule for the upcoming 1993-94 school year, which she had turned in to Mr. Mustoe for approval. Mr. Mustoe returned the schedule to Grievant on May 20, 1993, noting that the schedule she prepared "will not work in its present form." Mr. Mustoe had many questions regarding the schedule, which Grievant responded to on May 27, 1993. Adm. Ex. 20. 16. On May 21, 1993, Mr. Mustoe wrote to Grievant informing her that she had failed to implement or follow the Fayette County Discipline Code as required by her IP, as shown in recent disciplinary hearings before the Superintendent. Adm. Ex.

19.

17. On May 28, 1993, Grievant wrote to Mr. Crist regarding her IP, attaching several documents which she maintained complied with the directives of the May 11, 1993 IP. Adm. Ex. 9.

18. On May 28, 1993, Mr. Mustoe reported his observations and evaluation of her IP to Grievant, noting that both he and Mr. Crist had observed Grievant, her staff and faculty. Mr. Mustoe concluded that Grievant had not successfully completed the IP of May 11, 1993. Specifically, as of May 28, 1993, Grievant had not observed or evaluated many of her teachers. Adm. Ex. 18.

19. Mr. Mustoe completed his formal, yearly evaluation of Grievant on May 28, 1993. Mr. Mustoe stated that "Ms. Floyd's performance of duties as principal at Montgomery Middle School has been shown to be unacceptable. She has been placed on two Improvement Plans consisting of five areas each. She has not met the requirements of the improvement plans." Adm. Ex. 22.

20. On June 1, 1993, Mr. Mustoe informed Superintendent Powell that Grievant failed to successfully implement her two plans of improvement, and recommended her reassignment from principal at MMS. Adm. Ex. 1.

21. On June 7, 1993, Superintendent Powell recommended to the Board that Grievant's assignment as principal at MMS be terminated, and that she be demoted and reassigned to a classroom teacher position. Superintendent Powell informed Grievant by letter dated June 8, 1993, of his recommendation to the Board, notifying her of the date of the scheduled hearing to discuss his recommendation, and offering the opportunity to appear and respond to the charges against her of unsatisfactory performance and incompetence as per W. Va. Code § 18A-2-8. Superintendent Powell stated, "This is evidenced by your failure to satisfactorily improve performance as required by the above referenced improvement plans and by paragraphs I, II, III and IV of the evaluation of the improvement plan dated May 28, 1993. . . ". Jt. Ex. 1.

22. Following a hearing before the Board on June 29, 1996, the Board voted to accept the Superintendent's recommendation and terminated Grievant's administrative assignment and demoted her to a classroom teaching assignment.

Motion to Dismiss

Grievant made a Motion to Dismiss the charges brought by the Board at the beginning of the level four hearing on the basis of alleged violation of her due process rights. Specifically, Grievant alleges

that her due process rights were violated at the Board disciplinary hearing when Superintendent Powell went into Executive Session with the Board following the hearing. Grievant relies on this Grievance Board's decision in Drake v. Tucker County Bd. of Educ., Docket No. 47-86-326-2 (Mar. 12, 1987), which held that:

The presence of the superintendent in an executive session during the deliberation of a grievance by the board of education, when the superintendent represented the administration at the level three hearing, prohibits the grievant from receiving a fair and impartial hearing as required by W. Va. Code, 18-29-6 and therefore is improper.

Drake, at 8.

Grievant's reliance on Drake is misplaced. That case dealt with a level three hearing before the Board under the grievance procedure for education employees, W. Va. Code §§ 18-29-1, et seq. In the instant case, the alleged violation of due process occurred at a disciplinary, pretermination hearing before the Board under W. Va. Code §§ 18A-2-6 and 18A-2-8, which are not governed by the procedures set forth in the grievance statute, and which afford employees some limited due process protection. "It is not necessary for a pre-termination hearing to be a full adversarial evidentiary hearing; however, an employee is entitled to a written notice of the charges, an explanation of the evidence, and an opportunity to respond prior to a Board of Education's decision to terminate the employee." Bd. of Educ. of County of Mercer v. Wirt, 192 W. Va. 568, 453 S.E.2d 402 (1994).

Grievant was presented with written notice of the charges, an explanation of the evidence, and was given ample opportunity to respond at the disciplinary hearing. Further, there is nothing in the pretermination statutes or Wirt to suggest that it is improper for the Superintendent to go into executive session with the Board following the presentation of the charges and Grievant's opportunity to respond to them. Thus, Grievant's due process rights under W. Va. Code §§ 18A-2-6 and 18A-2-8 were not violated and Grievant's Motion to Dismiss the charges against her is hereby **DENIED**.

Discussion

Grievant contends Respondent violated W. Va. Code § 18A-2-8 and State Board of Education Policies 5300 and 5310 in voting to terminate her administrative assignment and demote her to a classroom teaching position. W. Va. Code § 18A-2-8 states:

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 or a 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. . . .

W. Va. Code § 18A-2-12 provides, in pertinent part:

A professional whose performance is deemed to be unsatisfactory shall be given a notice of deficiencies. A remediation plan to correct deficiencies shall be developed by the employing county board of education and the professional. The professional shall be given a reasonable period of time for remediation of the deficiencies and shall receive a statement of the resources and assistance available for the purposes of correcting the deficiencies.

. . .

Any professional personnel whose performance evaluation includes a written improvement plan shall be given an opportunity to improve his or her performance through the implementation of the plan. If the next performance evaluation shows that the professional is now performing satisfactorily, no further action shall be taken concerning the original performance evaluation. If such 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 the provisions of section eight [§ 18A- 2-8] of this article.

Further, State Board of Education Policies 5300 and 5310, 9 W. Va. C.S.R. § 126 (1990), provide, in part:

Every employee is entitled to know how well he/she is performing his/her job, and should be offered the opportunity of open and honest evaluation of his/her performance on a regular basis. Any decision concerning promotion, demotion, transfer or termination of employment should be based upon such evaluation, and not upon factors extraneous thereto. Every employee is entitled to the opportunity of improving his/her job performance, prior to the terminating or transferring of his/her services, and can only do so with assistance of regular evaluation.

Policy 5310 provides that, "[f]or administrators with three or more years of experience, a minimum of one written evaluation per year is required." In addition, Section 16 of Policy 5310 provides:

16.1

An improvement plan shall be developed by the supervisor and administrator when an administrator's performance is unsatisfactory in any area of responsibility as contained in Section 17 of this policy.

16.2

The improvement plan shall designate how satisfactory performance will be demonstrated. The improvement plan shall:

a)
identify the deficiency(ies),

(b)

specify the corrective action to remediate the deficiency(ies),

(c)

contain the time frame for monitoring and deadlines for satisfactory improvement, and

(d)

describe the resources and assistance available to assist in correcting the deficiency(ies).

Section 17 of Policy 5310 identifies the administrator's responsibilities as:

17.1

providing purpose and direction of schools/county,

17.2

demonstrating cognitive skills to gather, analyze and synthesize information to reach goals,

17.3

managing consensus and group behaviors,

17.4

enhancing quality of total school/county organization,

17.5

organizing and delegating to accomplish goals, and

17.6

communicating effectively.

See 9 W. Va. C.S.R. § 126 (1990), Policy 5310.

Grievant apparently contends that the Plans of Improvement did not comply with the statutory

authority or the guidelines of the Fayette County Board of Education, or Policy 5310. Grievant also apparently contends that the Plans of Improvement did not clearly and specifically set forth recommendations for improvement, and could not be completed in a reasonable fashion during the time allowed. Grievant did not grieve her placement on the two Plans of Improvement when they were established, nor did she grieve her 1992-93 evaluation. First, it is clear from the foregoing recitation of facts that Respondent strictly adhered to the directives and guidelines of Policy 5310 in evaluating Grievant, and in implementing the Plans of Improvement. The Plans of Improvement included numerous suggestions for improvement in the various areas, and various resources were provided to Grievant to aid in the implementation of those suggestions.

The aim of Policies 5300 and 5310 is to provide a teacher (or administrator) with timely notice about the administration's views regarding his/her job performance as reflected by evaluations, observations, letters and conferences. Brown v. Wood County Bd. of Educ., 400 S.E.2d 213 (W. Va. 1990); Baker v. Fayette County Bd. of Educ., Docket No. 94-10-427 (Jan. 24, 1995). Failure by a board of education to follow the evaluation procedure in Policy 5300 prohibits the board 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. Trimboli v. Bd. of Educ. of County of Wayne, 254 S.E.2d 561 (W. Va. 1979). W. Va. Code § 18A-2-12 further provides that under a plan of improvement, "the professional shall be given a reasonable period of time for remediation of the deficiencies . . .". Grievant's claim that she was not given a reasonable period of time to correct the deficiencies in her Plans of Improvement is without merit. Grievant received her first Plan of Improvement in November, 1992. The second Plan of Improvement in April, 1993, contained the same deficiencies noted in the first. Thus, Grievant had approximately 6 months to correct the deficiencies. This was ample time for an administrator with 9 years of experience. An employer does not have the burden of proving deficiencies which it has presented in a Plan of Improvement, because, while certain aspects of improvement plans can be considered disciplinary in nature, such plans are more "rehabilitative" than punitive. Accordingly, an employee who makes allegations that a plan of improvement is arbitrary or violative of some policy or regulation of the employer, must bear the burden of proving those charges by a preponderance of the evidence. Baker v. Fayette County Bd. of Educ., Docket No. 94-10-427 (Jan. 24, 1995); Oni v. BOD/Bluefield State College, Docket Nos. 93-BOD-515/408/302 (Dec. 30, 1994); Goodman v.

Putnam County Bd. of Educ., Docket No. 93-40-133 (Jul. 8, 1993).

Grievant has not proven that the two Plans of Improvement violated Policy 5310 or any policy of Respondent. Grievant has also failed to prove that the Plans were arbitrary and capricious. The Plans addressed all areas of unsatisfactory performance found in Grievant's evaluation. The Plans provided ample recommendations and suggestions for improvement, and provided Grievant ample time to improve in all areas of deficiency. Grievant had been put on notice of her deficiencies through two Plans of Improvement, numerous directives from her superiors, parental complaints, and faculty complaints. As will be discussed, Grievant's behavior and inability to accept responsibility for any of the areas of deficiency indicate an unwillingness and inability to comply with the terms of the Plans.

Based upon the foregoing facts and discussion, the undersigned finds that Respondent adhered to the mandate of Policy 5300 and 5310 in evaluating Grievant, imposing two improvement plans, and the subsequent termination of her administrative assignment for failure to successfully complete the terms of the improvement plans.

Respondent offered much testimony and evidence of Grievant's deficiencies in each of the areas noted on her IPs to prove the charges of unsatisfactory performance and incompetence. As the hearings in this grievance lasted five days, every single incident testified to and cross-examined at length will not be detailed. Although the Decision is based upon all the 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 performance in the year prior to her demotion. See generally, Williams v. Cabell County Bd. of Educ., Docket No. 95-06-325 (Oct. 31, 1996).

In the summer preceding the 1992-93 school year, Grievant's second full year as principal at MMS, she decided to rearrange some classrooms. Grievant unilaterally decided that the science lab classroom was not the best place to conduct science classes and moved the science classes out of that room, in order to free the lab for others who might want to use it. Given that this is a middle school environment, the undersigned wonders who else might be using the lab if not the science classes. Grievant also decided to move the school computers into a room which was not electrically outfitted to accommodate their use. Grievant testified that the computers at MMS had not been operational at all the previous school year, not because they did not work, but because she believed the school would soon be getting new computers, and thought, apparently, that installing the existing computers would be a waste of time. After moving the computers to another room in the 1992-93

school year, Grievant did not requisition the electrical work to render the computers operational until October 1992. Linda Goode, Grievant's secretary, testified that the work was not completed until December or January of that school year. Goode, p. 517. [\(See footnote 2\)](#) Thus, the students at MMS had no use of the school computers for 1-1/2 years, although there were operational computers available.

During the same summer of 1992, the building at MMS was painted. The library was disassembled so that it could be painted. It was never put back together again. Grievant blamed the teachers and parents for this failure. Grievant had scheduled several teachers to teach Study Skills in the 1992-93 school year. These teachers had never taught a Study Skills program before, had no materials for the classes, and were not consulted before being assigned these classes. Engle, p. 251; Cooper, p. 376; John, p. 401. Grievant blamed these teachers for the failure to put the library back together, because, in her view, as part of the Study Skills curriculum, the students would learn about the library by having to put the books and other materials back on the shelves. Floyd, p. 826. It is unclear why the disarray in the library was the fault of the parents.

Grievant's responsibilities as principal included developing and implementing a classroom schedule for the 1992-93 school year. From the outset, Grievant's schedule was unworkable and created confusion and disarray at MMS. Students did not know which classes they were assigned to, teachers did not know which students were in their classes, and many students were assigned classes they did not want, or conversely, did not get classes they wanted. During one week at the beginning of the school year, students had to report to the school auditorium in the morning, where Grievant would instruct them where to go. She would give one student a blank piece of paper to take to a certain classroom, and the teacher was then to fill in the sheet with the names of the students that reported to that class. The teacher had no other means of knowing which students to expect in his or her class that day. During this particular period of time, some of the students' schedules changed every day. Julia Wilder, a teacher at MMS, testified that some of the older, more experienced students took advantage of this confusion and simply would not report to any classes, claiming they did not know where they were supposed to go. Wilder, p. 429. In the most extreme instance of the confusion created by Grievant's unworkable schedule, a parent of one student complained that her son had band and physical education twice a day. Karen Jackson, p. 216. This confusion was especially detrimental for the special education students, who do not usually adjust

well to changes. Ann Nunnery, the special education teacher at MMS, testified that her students' behavior deteriorated, and they were never able to catch up academically as a result of the many schedule changes that occurred that first nine weeks of school. Nunnery, p. 307.

Grievant was offered assistance by Mr. Mustoe, Mr. Crist, Superintendent Powell, and faculty members to correct the scheduling problems. On October 19, 1992, Mr. Mustoe met with the faculty to discuss the problems at MMS, and formed a committee of faculty members to assist Grievant in devising a workable schedule. He informed the committee and Grievant that they were to meet by October 23, 1992, to work out the scheduling problems. Mr. Ayers, one of the teachers assigned to the committee, informed Mr. Mustoe on October 22, 1992, that Grievant still had not met with them. Mustoe, p. 536. Mr. Mustoe called Grievant and told her she must meet with the faculty. She ultimately did meet with them. The faculty members informed Mr. Mustoe they had no input into the schedule, but that Grievant just came to the meeting with a schedule and gave it to them. Mustoe, p. 536. Teachers had to keep 2 or 3 different grade books because the constitution of their classes changed so many times. Many parents complained, and the faculty complained to the Superintendent about Grievant's inability to organize the school, and that the students missed any meaningful instruction for the first nine weeks of the school year. Tony Colagrosso, p. 285. An emergency faculty senate meeting was called, which had never happened before, which included Grievant and Mr. Mustoe, to discuss the organizational problems at the school. Finally, at the end of October, Grievant was ordered to report to the Board's central office, where she, Mr. Mustoe and Mr. Crist spent two days working on MMS' schedule. [\(See footnote 3\)](#)

Grievant testified that the problems with the schedule were the fault of others, including Mr. Mustoe and her secretary. Specifically, she testified that Mr. Mustoe had offered his assistance in the summer of 1992 in developing the MMS schedule for the 1992-93 school year, but never gave it. Grievant testified, however, that she never asked Mr. Mustoe for assistance in developing the schedule; she assumed he would contact her. In Grievant's words, Mr. Mustoe's failure to contact her or help with the schedule was "why the mess was when school started." Floyd, p. 1142. Additionally, Grievant blames her secretary for the scheduling problems. She testified that there were no schedules or schedule cards at the school when she arrived in the summer of 1992. She testified that "Mrs. Goode should have seen to it that she got them if they were there so she wouldn't have had to develop a new schedule." Floyd, p. 1140.

Finally, and most importantly, despite all of the confusion and problems resulting from her schedule, Grievant was simply not aware that problems existed. It wasn't until about the third week of school that she finally became aware there were scheduling problems, when she was informed that there were too many children enrolled in a physical education class. Floyd, p. 832. Grievant denies that the problems testified to by faculty members existed with the schedules, and disagreed with their opinion that it was "chaotic." Grievant testified she had only one or two "hints" of problems with the schedule. Floyd, p. 1186. She testified that the emergency faculty senate meeting was called merely to get the faculty's input into things that were going on, "not because there were problems." Floyd, p. 1187. Also, Grievant does not remember being offered assistance from the Superintendent, Mr. Mustoe, or Mr. Crist during this time period. Nor does she remember having conversations with Mr. Mustoe regarding these problems, despite the fact that Mr. Mustoe was at MMS at least eight different times from September through November. Mustoe, pp. 19-20. The undersigned can only deduce that Grievant is either lying about her lack of memory, or that she just did not understand the import of the conversations she had with these individuals as they were happening.

Mr. Mustoe also directed Grievant to delegate some of her responsibilities to other individuals who could assist her. Grievant undertook responsibility for all discipline at MMS at the beginning of the 1992-93 school year, despite the fact there was a facilitator, Rita Wattie, who was to assist in those matters. Mr. Mustoe told Grievant she could not do everything herself, and instructed her to turn over the discipline matters to Ms. Wattie. Grievant testified she did not want to turn this responsibility over to Ms. Wattie, but wanted to do things "her way", and told Mr. Mustoe that she would take his suggestions "under advisement." Mustoe, p. 535. Grievant eventually did permit Ms. Wattie to handle the discipline at MMS, and when problems would arise with the disciplinary system at MMS, Grievant would blame Ms. Wattie for the problems, admitting that she did not "bother" to follow up with Ms. Wattie on discipline once she turned that responsibility over to her. Floyd, p. 985.

Grievant also failed to delegate simple office tasks to her secretary, such as opening and distributing the mail. Grievant instructed the postal worker to deliver the mail directly to her, not her secretary. Grievant would then go through the mail, discard items she thought were junk, keep items addressed to her, as well as items she believed should have been addressed to her, and would distribute the rest. As a result of this process, teachers failed to receive notices of events and activities in which their students could participate. Wattie, p. 142; Ford, p. 202; Engle, p. 256; Garten,

p. 340. Payroll memoranda were not acted upon, and payroll was late twice due to these oversights. Goode, p. 500. Purchase orders were not submitted in a timely fashion, which resulted in the loss of \$4,000 in revenue for the upcoming year. Goode, p. 519. Important meetings failed to get scheduled on Grievant's or her secretary's calendar, which resulted in Grievant either being late or not attending them at all. Goode, p. 510.

Grievant was directed in the November Plan of Improvement to turn over all mail duties to her secretary. Grievant did not do this. Grievant had to be instructed again by Mr. Mustoe to do this, and she finally turned over the mail to her secretary in February 1993. Even then, Grievant still would take items out of the mail stack that belonged to her, and her secretary, consequently, never saw those items.

Grievant was instructed as part of her Plan of Improvement to develop a schedule for observation and evaluation of her faculty. She did prepare a schedule, but informed Mr. Mustoe that due to illness and other reasons, she might not be able to adhere to it strictly. Mr. Mustoe told her that he understood that sometimes it was difficult to adhere strictly to a schedule. Grievant apparently thought that meant she did not have to do any observations or evaluations of her staff at all. By June 1993, Grievant had done no observations of her staff, and had not yet completed evaluating them. Grievant alleges she did not know what the deadlines were, and if she did, they were not until June. Grievant again blames Mr. Mustoe for not providing her with the proper observation and evaluation forms, and testified that he told her she did not have to do observations and evaluations. Mr. Mustoe denies ever having told Grievant that. Mustoe, p. 530. In any event, Grievant had attended the mandatory Administrators' Evaluation Leadership Institute in October 1992, wherein she was provided with a plethora of materials, including observation and evaluation forms, and the procedure and deadlines for implementing those tasks. Adm. Ex. 26. Grievant testified she did not know she could use those forms and had requested additional forms from the central office.

Also in connection with the use of proper materials, Grievant was instructed by Mr. Mustoe in the summer of 1992 to develop an employee's handbook. Mr. Mustoe offered her assistance in the preparation of the handbook. Grievant did not seek assistance from Mr. Mustoe, testifying she did not contact him because she thought he should contact her. Grievant developed an employee handbook (Adm. Ex. 27) which is, upon review, virtually worthless. The handbook is enormous, is not paginated, and contains information that is completely outdated and inaccurate, despite all of the

materials Grievant had been given at the Evaluation Leadership Institute. Grievant testified she just gathered materials that were laying around her office and assimilated them into the handbook for distribution. Floyd, p. 1132. One policy in the handbook had not been in effect in Fayette County for 5 or 6 years. Grievant testified, consistent with her inability to recognize deficiency on her part, that "[i]t's possibly Mr. Mustoe's fault because he was the one that told me he would get with me with the handbook. . . ". Floyd, p. 1132.

Respondent offered several examples of Grievant's inability to complete necessary reports on time, which also illustrate Grievant's lack of awareness of the importance of these items for administrative and instructional purposes. At the end of each semester, the faculty was asked to give Grievant a list of students who failed a class or classes. It had been the policy at the end of each semester to compile a list of failing students or who were in jeopardy of failing, and mail notices to the students' parents. These lists were referred to as the "F-lists". The obvious reason for this practice was to notify students and their parents of the students' progress, and to allow them ample time to adjust their grades before the end of the year. Engle, p. 232. Ms. Goode, Grievant's secretary, used to handle mailing out the F-lists, but in the 1992-93 school year, Grievant took over that responsibility. In May, 1993, a student of Ms. Engle's brought her an F- letter which he told her had been hand-delivered to him by Grievant, and inquired about it. Ms. Engle noticed that the F-letter was supposed to have been for the first semester and should have been mailed out to the student and his parents in December 1992. Engle, p. 233; Adm. Ex. 10. Ms. Goode testified that Grievant had the F-lists on her desk for several months and had not acted on them. Goode, p. 514. Not only did Grievant not handle the F-lists in a timely fashion which would give the students time to improve, but she also hand-delivered them to the students, rather than sending them to the parents. Grievant did not perceive any problems with this arrangement.

Another example of Grievant's inability to comprehend the importance of matters presented to her related to the "drop-out reports", which were to be submitted to the central office by the 10th of each month so that a county report could be made to the State Board of Education. Mustoe, p. 615. Grievant did not submit drop-out reports for MMS until she was instructed by the central office to do so. Grievant's reasoning for not turning in the drop-out reports was that MMS did not have any drop-outs, so she did not see the necessity for turning in the report. Floyd, p. 868. Again, this demonstrates an incredible lack of understanding regarding administrative processes and

procedures. Grievant simply did not comprehend that it might be important for the central office and the State Board of Education to know that MMS had no drop-outs.

Respondent offered evidence and testimony of many other areas demonstrating Grievant's inability to organize, communicate, or lead the faculty effectively at MMS. However, the undersigned believes the above illustrations are sufficient to demonstrate Grievant's deficiencies, and more importantly, her inability, or refusal, to recognize these deficiencies as her responsibility. Grievant consistently blames others for the problems at MMS. In determining whether Grievant's deficiencies are "correctable", it is important that she does not recognize or acknowledge that she was deficient in these areas, or needed improvement. If Grievant cannot accept responsibility for these problems, she cannot be expected to correct them.

Based upon the evidence, testimony, and the foregoing discussion, it is appropriate to make the following conclusions of law.

Conclusions of Law

1. In cases dealing with disciplinary matters, the burden of proof rests with the employer to prove the charges by a preponderance of the evidence. Lilly v. Fayette County Bd. of Educ., Docket No. 89-10-436 (Dec. 11, 1992).
2. When grounds for a school employee's dismissal include charges relating to unsatisfactory performance or conduct which is deemed correctable, the Board must also establish that it complied with provisions of West Virginia Board of Education Policy 5300 requiring it to inform the employee of his deficiencies and afford him a reasonable period to improve. Policy 5300 contains provisions that an employee must be assisted in this goal and not be thwarted from achieving objectives set forth in an Improvement Plan. Mason County Bd. of Educ. v. State Supt. of Schools, 274 S.E.2d 435 (W. Va. 1987).
3. The Board has established by a preponderance of the evidence that Grievant was fully apprised of her deficiencies and given a reasonable period of time to improve, yet failed to achieve the goals outlined in the Improvement Plan and failed to remediate her deficiencies.
4. The Board has established by a preponderance of the evidence that the unsatisfactory performance of Grievant and deficiencies noted in her evaluation were not satisfactorily remediated

during the period of the Improvement Plans, that Grievant failed to satisfactorily complete the Improvement Plans, and that Grievant's deficiencies were not correctable.

5. The Board has proven by a preponderance of the evidence the charges of unsatisfactory performance and incompetence against Grievant pursuant to the provisions of W. Va. Code §§ 18A-2-8 and 18A-2-12.

6. Grievant has failed to prove that the Plans of Improvement were flawed in their institution, or arbitrary and capricious.

Accordingly, this grievance is **DENIED**.

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

MARY JO SWARTZ

Administrative Law Judge

Dated: November 15, 1996

[Footnote: 1](#)

This matter was reassigned on September 13, 1996, due to administrative reasons to the undersigned Administrative Law Judge.

[Footnote: 2](#)

References to the level four transcript will be indicated as "_____, p. ____."

[Footnote: 3](#)

Grievant's counsel raised continuous objections to the admission of any evidence relating to the scheduling problems at MMS, asserting that Grievant's inability to create a workable schedule was not an item on her Plans of Improvement. In the first instance, Grievant's administrative assignment was not terminated based solely on her inability to create a workable schedule for MMS. Second, a review of the Plans of Improvement show that Grievant was instructed to

work with faculty and administrators on various items relating to the school, including the schedules, and to work with the faculty in implementing the school schedule for the upcoming year. Finally, the testimony and evidence presented about Grievant's inability to create a workable school schedule is evidence that goes directly to her deficiencies in organizational skills, communications skills, and ultimately, to her inability to take personal responsibility for the problems which existed at MMS.