

**ROSA JEFFREY, JADA HUNTER, AND
DEBORAH HARRIS**

v. DOCKET NO. 95-29-105

MINGO COUNTY BOARD OF EDUCATION

DECISION

This grievance was filed by Jada Hunter, Rosa Jeffrey, and Deborah Harris ([See footnote 1](#)) ("Grievants") against the Mingo County Board of Education ("MBOE") on September 20, 1994. All three Grievants are employed by MBOE in the position of Dean of Students. They grieve that they are not being paid an "'Assistant Principal stipend' as per §18A-4-5a", and seek as relief payment of the stipend retroactive to the beginning of the 1994-95 academic year. ([See footnote 2](#)) This matter became mature for decision on September 25, 1995. ([See footnote 3](#)) The following findings of fact have been properly made from the Level II and Level IV records.

Findings of Fact

1. Grievants are employed by MBOE as Deans of Students. Each holds a valid administrative certificate.
2. Grievants are performing essentially all the duties listed in the Job Descriptions for Assistant Principal and for Dean of Students.
3. Grievants are receiving the salary supplement set by MBOE for Dean of Students. ([See footnote 4](#)) Their contracts are for 210 days, 10 days more than a classroom teacher.
4. MBOE has been phasing out the job title Assistant Principal, and has only one employee with that title, Phyllis White. She has a 215 day contract, and receives a salary supplement for performing the duties of Assistant Principal. The amount of the supplement is based upon the number of days in her contract and the size of the school for which she is Assistant Principal. ([See footnote 5](#))
5. Ms. White is paid more than any of the Grievants.

Discussion

It has already been determined by this Grievance Board that the Mingo County Dean of Students position is "in essence an assistant principal post . . .". Ward/Cantees v. Mingo County Bd. of Educ., Docket No. 94-29-1134 (Apr. 26, 1995); See also Talbert v. Mingo County Bd. of Educ., Docket No. 93-29-166 (Jan. 20, 1993); Muncy v. Mingo County Bd. of Educ., Docket No. 95-29-278 (Nov. 30, 1995). [\(See footnote 6\)](#) In this case, Grievants themselves testified that they perform nearly all the duties listed in the job description for Assistant Principal. However, in order to be credited with administrative seniority, the individual holding the title "Dean of Students" must also hold a valid administrative certificate and be performing the duties enumerated in the job description for Dean of Students. Ward/Cantees.

In addition to the Code provision cited by Grievants in their grievance statement, Grievants cited W. Va. Code § 18A-4-3 for the proposition that they should be paid an Assistant Principal stipend. That Code Section provides in pertinent part:

In addition to any salary increments for principals and assistant principals, in effect on the first day of January, one thousand nine hundred eighty-six and paid from local funds, and in addition to the county schedule in effect for teachers, the county board shall pay each principal a principal's salary increment and each assistant principal an assistant principal's salary increment as prescribed by this section commencing on the first day of July, one thousand nine hundred eighty-six, from state funds appropriated therefor.

State funds for this purpose shall be paid within the West Virginia public school support plan in accordance with article nine-a [§ 18-9A-1 et seq.], chapter eighteen of this code.

The salary increment herein for each principal shall be determined by multiplying the basic salary for teachers in accordance with the classification of certification and of training of said principal as prescribed in this article, by the appropriate percentage rate prescribed herein according to the number of teachers supervised.

STATE MINIMUM SALARY INCREMENT RATES FOR PRINCIPALS

No. of Teachers Supervised	Rates
1-7	5.0%

8-14	5.5%
15-24	6.0%
25-38	6.5%
39-57	7.0%
58 and up	7.5%

The salary increment herein for each assistant principal shall be determined in the same manner as that for principals, utilizing the number of teachers supervised by the principal under whose direction the assistant principal works, except that the percentage rate shall be fifty percent of the rate prescribed for said principal.

MBOE's argument in support of not paying Grievants the Assistant Principal salary supplement, while paying it to Phyllis White, was that it was required by (Worker's Compensation) law, specifically W. Va. Code § 23-5A-3, to return Phyllis White to the position of Assistant Principal. [\(See footnote 7\)](#). While this explains why Ms. White holds the only Assistant Principal title in the county, it sheds no light on the issue of why Grievants are not being paid the Assistant Principal salary supplement.

Regardless of the title held by Grievants, Grievants are Assistant Principals for purposes of applying the provisions of the West Virginia Code. See Talbert and Ward/Cantees, *supra*. Accordingly, Grievants must be paid in accordance with the above-cited Code provision. See Spears v. Admin. Council of The James Rumsey Tech. Institute, Docket No. 93-MCVTC-461 (June 1, 1994). As noted in Talbert and Ward/Cantees, only those Deans of Students who hold a valid administrative certificate and are performing the duties of Dean of Students can receive the benefits statutorily conferred upon an Assistant Principal. Grievants meet these two requirements.

The Code provision cited by Grievants in their grievance statement was § 18A-4-5a. That Code Section provides in pertinent part:

County boards of education in fixing the salaries of teachers [\(See footnote 8\)](#) shall use at least the state minimum salaries established under the provisions of this article. The board may establish salary schedules which shall be in excess of the state minimums fixed by this article, **such county schedules to be uniform throughout the county as to the classification of training, experience, responsibility and other requirements.**

Counties may fix higher salaries for teachers placed in special instructional assignments, for those assigned to or employed for duties other than regular instructional duties, and for teachers of one-teacher schools, and they may provide additional compensation for any teacher assigned duties in addition to the teacher's regular instructional duties wherein such noninstructional duties are not a part of the

scheduled hours of the regular school day. **Uniformity also shall apply to such additional salary increments or compensation for all persons performing like assignments and duties within the county.** . . (Emphasis added.)

While MBOE must pay Grievants in accordance with W. Va. Code § 18A-4-3, the uniformity provisions in Code § 18A-4-5a do not require MBOE to pay Grievants exactly the same salary as Ms. White. In addition to differences in pay due to years of service, degree level and certification (W. Va. Code §§ 18A-4-1, 18A-4-2), Grievants' contracts require them to work five days less than Ms. White, which would also justify some pay differential. See Keesecker v. Lewis County Bd. of Educ., Docket No. 21-86-020-2 (Nov.26, 1986); Wright v. Mason County Bd. of Educ., Docket No. 26-86-029 (Oct. 7, 1986). Grievants presented no evidence to suggest that the additional five days in Ms. White's contract should be disregarded.

Conclusions of Law

1. The burden of proof is upon Grievants to establish their allegations by a preponderance of the evidence. Canterbury v. Putnam County Bd. of Educ., Docket No. 40-86-325-1 (Jan. 28, 1987).
2. Grievants are Assistant Principals within the meaning of the West Virginia Code, and must be paid the salary increment for an Assistant Principal in accordance with the provisions of W. Va. Code § 18A-4-3.
3. Grievants did not establish a violation of the uniformity provisions of W. Va. Code § 18A-4-5a.

Accordingly, this grievance is **GRANTED**. To the extent Mingo County Board of Education has not paid and is not paying Grievants the salary increment for an Assistant Principal in accordance with the provisions of W. Va. Code § 18A-4-3, it is **ORDERED** to do so from the beginning of the 1994-1995 academic year.

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.

BRENDA L. GOULD

Administrative Law Judge

Dated: January 11, 1996

[Footnote: 1](#)

Deborah Harris was a Grievant in this matter at Level II, but her name was not on the grievance form submitted to Level IV. At the Level IV hearing, Ms. Harris asked to be added as a Grievant at Level IV, and with the agreement of Respondent, her request was granted by the undersigned.

[Footnote: 2](#)

Grievants raised as an additional issue at both the Level II and Level IV hearings that they were not properly classified. This argument will not be addressed as it constitutes a new grievance. See W. Va. Code § 18-29-3.

[Footnote: 3](#)

The grievance was denied at Level I, and at Level II on March 7, 1995, following a hearing. The delay between the filing of this grievance and the Level II decision occurred as a result of a remand from Level IV for a proper Level II hearing. Level III was waived by Grievantsto Level IV on March 9, 1995. The parties supplemented the Level II record at a Level IV hearing held June 6, 1995. The Level II hearing transcript was received after the Level IV hearing. The Level IV record was therefore left open following the June 6, 1995 hearing to allow the parties to review the Level II transcript to determine if additional evidence needed to be presented. Grievants submitted proposed findings of fact and conclusions of law on July 27, 1995. The undersigned did not hear from Respondent regarding whether supplementation of the record was desired, and notified the parties on September 25, 1995, that this matter was considered mature for decision.

[Footnote: 4](#)

The record does not reflect the amount of this supplement, nor how it is set.

[Footnote: 5](#)

The record does not reflect the amount of the supplement paid by MBOE to an Assistant Principal.

[Footnote: 6](#)

This prior ruling is supported by a comparison of the Dean of Students job description listed in Talbert with the one submitted as evidence in this case. They are essentially the same.

[Footnote: 7](#)

Ms. White was on leave from her position of Assistant Principal for approximately four years, during which time she was

disabled due to a work related accident and was receiving Worker's Compensation. Ms. White's position was not filled during her absence.

[Footnote: 8](#)

Assistant principals are teachers. See W. Va. Code §§ 18-1-1, 18A-1-1, and 18A-2-9; Pockl v. Ohio County Bd. of Educ., 405 S.E.2d 687, 690 (W.Va. 1991).