**DAVID JONES,**

**Grievant,**

**v. Docket No. 97-04-311**

**BRAXTON COUNTY BOARD OF EDUCATION,**

**Respondent.**

**D E C I S I O N**

**Grievant, David Jones, appeals his June 7, 1996 evaluation and states "[t]he Braxton County Board of Education ("BCBOE") has conducted performance evaluations and implemented improvement plans in a manner contrary to the procedures outlined in WV Board of Education policies 5300/5310 and WV Code 18-29-2(m)." The parties agreed to allow Grievant to amend his grievance on July 1, 1996, to add "[e]valuation procedures failed to comply with WV Code 18A-2-12 and 18-29-2 as well as WV Bd. of Education Policies 5300/5310 and county policy." He requests as relief that "the Bd. of Ed. conduct evaluations and implement improvement plans in accordance with established policies and statutory requirements and without harassment and discrimination. (See footnote 1) I also request that my evaluation be expunged from my personnel record." This grievance was denied at Levels I and II. BCBOE waived participation at Level III. The parties (See footnote 2) mistakenly believed that when they filed a grievance dealing with Grievant's Fall 1995 evaluation to Level IV, they consolidated it with Grievant's evaluation for the Spring of 1996. That first grievance was denied at Level IV. See Jones v. Braxton County Bd. of Educ., Docket No. 96-04-282 (May 28, 1997). (See footnote 3) The present grievance had not been filed with this Grievance Board. Following a phone conference with the parties on April 11, 1997, the parties agreed to file this second grievance separately, and any timelines would be waived so that it would be considered timely filed. The parties decided to submit the case on the record. This grievance became mature for decision on May 1, 1997, the deadline for the parties' proposed findings of fact and conclusions of law. Although, Grievant's counsel originally indicated he planned to submit portions of Grievant's termination hearing to add to the record, this was not done.**

**Therefore, this decision is based on the evidence submitted at Level II, and Respondent's submissions to Level IV.** (See footnote 4)

**The undersigned Administrative Law Judge makes the following Findings of Fact from the record below.**

## Findings of Fact

**1. Grievant is currently employed at Braxton County High School ("BCHS") as a math instructor. At the time of filing this grievance, he had approximately fifteen years of seniority.**

**2. Grievant has been both a "regular" math teacher, instructing in transitional math, algebra, and geometry, and a Chapter I math teacher, assisting eligible students who experience difficulty, to pass certain math courses.**

**3. Grievant has been placed on numerous Improvement Plans ("IP") because of unsatisfactory performance. He had been on four consecutive IP's prior to the unsatisfactory evaluation at issue in this grievance, and was on an IP during the time frame of the Spring evaluation, which is the subject of this grievance.**

**4. Grievant received an unsatisfactory evaluation in the Fall of 1995, which resulted in his placement on an IP for the Spring of 1996. Grievant was rated as unsatisfactory in two of the six areas which make up the evaluation. This evaluation also divides the five areas into multiple subsections.**

**5. Grievant was deficient in Section I: “Programs of Study” subsection D, “Employs appropriate instructional strategies.”**

**6. Grievant was rated as unsatisfactory in all subsections of Section III titled "Instructional Management System.” This area relates to "strategies for teaching to maximize the use of allocated instructional time to increase student learning" and includes such areas as lessons plans, organization of class time and materials, appropriate presentation of instructional materials, and assessing student understanding. The specific subsections of this section are: "Prepares and implements lesson plans"; "Begins lessonor instructional activity with a review of previous materials as appropriate"; “Has materials, supplies and equipment ready at the start of the lesson or instructional activity”; "Introduces the instructional activity and specifies instructional objectives"; “Directs students to be on task**

quickly at the beginning of each instructional activity"; "Presents reading, writing, speaking, and listening strategies using concepts and language which students understand"; "Provides relevant examples and demonstrations to illustrate concepts and skills"; "Assigns developmentally appropriate tasks"; "Provides instructional pacing that ensures student understanding"; "Maximizes student time-on tasks"; "Makes effective transitions between instructional activities"; "Summarizes the main point(s) of the instructional activity"; "Encourages students to express ideas clearly and accurately"; "Incorporates higher level thinking skills"; "Assists students to develop productive work habits and study skills"; and "Provides remediation activities for students."

7. Grievant was rated as satisfactory, in the Fall evaluation, in the other four areas which are: "Classroom Climate"; "Student Progress"; "Communication"; and "Professional Work Habits."

8. To assist Grievant with the areas of deficiency, noted on his Fall evaluation, he was placed on another IP and given an Improvement Team ("Team") to assist him in developing appropriate teaching and classroom skills.

9. Per the requirements of Policy 5310, Grievant's Team consisted of his direct Supervisor, James Lambert, Principal of BCHS; Principal Wes Dobbins, an elementary principal certified in math; and Ms. Janell Wine, a Chapter I math teacher with sixteen years of experience. Ms. Wine was the individual Grievant selected to be on his Team. (See footnote 5) Ms. Barbara Cox and Karen Huffman, Curriculum Directors, were also identified as resources available to Grievant.

10. Principal Lambert, Ms. Cox, and Mr. Dobbins had received the training required by the State Department of Education to perform evaluations. Ms. Wine had not received this training and was not required to complete this training to be a member of the Team.

11. Grievant received his unsatisfactory Fall evaluation in early February. Thereafter Grievant , Principal Lambert, and Grievant's Representative, Gary Archer, jointly developed an IP based on the deficiencies identified in this Fall Evaluation.

12. Grievant actively participated in formulating his IP. Many of the areas brought to Grievant's attention were the same as those noted on his Fall IP with some additional unsatisfactory areas. This IP noted the deficient areas, specified corrections to be made,

identified resources to assist Grievant in successfully meeting a satisfactory standard, and stated what specific behaviors the Team would be looking for in order to identify improvement.

13. Grievant and Principal Lambert signed the IP on March 15, 1996. The paragraph directly above the signature line states: "Signatures below indicate that this planincludes input from the employee and has been read and discussed by the employee and evaluator."

14. This IP clearly identified unsatisfactory areas, the corrective action to be taken, and resources to utilize to assist Grievant in organizing, planning, and presenting class materials. The types of behaviors and changes for which the Team would be checking were specified. Specific comments were made to indicate that certain areas needed concentrated effort, and the type of activities to utilize or change were delineated. These areas included: 1) preparing and implementing lesson plans; 2) utilizing manipulatives and other hand-on approaches to aid student understanding of concepts; 3) introducing succeeding learning objectives and their placement within the course as a whole; 4) pacing instructional materials to insure comprehension; 5) assessing student feedback to determine if concepts are understood, and if reteaching is needed; and 6) summarizing the lesson's main points on a daily basis. Additionally, Grievant was directed to clarify his method of grading students.

15. As part of his involvement in the IP, Grievant selected the Madeline Hunter lesson plan format for his classroom instruction. Ms. Hunter's plan delineates the need for setting objectives prior to class and outlines seven basic steps to planning a lesson. Although each step does not have to be performed each time, it is clear from the handout that much time and thought must go into planning each class presentation. It is also clear it is important for the teacher to have these plans written out in some detail. 16. Grievant's Lesson Plan Format contained the following areas: Subject; Period; Date; Objectives (SWBAT) (See footnote 6) ; Anticipatory Set; Presentation Activity (input, modeling, and check for understanding); Guided Practice; Independent Practice; Closure; and Materials: Textbook, Pencil, Paper, Chalkboard.

17. The IP required Grievant to add a section to his lesson plans to include a section called Resources. Grievant was to identify in this additional section "the materials supplies, and equipment, particularly which math manipulatives and calculators [he would] be using for

each lesson."

18. The first IP Team meeting was held on March 20, 1996. A review of the prior unsatisfactory evaluation and the IP was conducted. The National Council of Teachers of Math ("NCTM") standards were distributed and discussed, and the role of the Team was reviewed. All observations were to be conducted as a team.

19. The lesson plans submitted as exhibits in this grievance varied widely. Plans were completed in a cursory manner, did not contain the requested new section, were incomplete, and, for closure, each one read "summarize." Evidence demonstrated plans were made a week at a time and were not changed as needed, and thus, did not indicate the plan for the day.

20. The Team was to perform three evaluations of at least 30 minutes in length during the semester and to notify Grievant of the first observation. These requirements of Policy 5310 were met. Grievant was notified of the first observation. It is unknown, if he knew of all the observations in advance. 21. All Team members evaluated Grievant together. All observation were longer than 30 minutes and usually lasted three or four class periods.

22. The observation notes of the Team were consistent. They noted recurring and continuing problems with Grievant's lesson plans, pacing of course material, review of previous material, and summarization of the day's content at the end of class. Grievant also continued to have difficulty in assessing student feedback. The Team noted students were frequently confused and that, at times, Grievant did not demonstrate mastery of the course content. (See footnote 7) Other problem and improved areas were also noted.

23. Grievant was specifically required by the IP to implement a variety of teaching strategies. Included in this requirement was the direction for Grievant to use manipulatives or "hands-on" examples, in class, and to use graphing calculators in Algebra and Geometry and scientific calculators in the other math courses. This recommendation was consistent with NCTM standards. The Team observed the use of manipulatives once, and although this was a good example of the type of "hands-on" activity required, the timing of the exercise was incorrect. No instruction on the use of regular calculators was observed, little use of these instruments was seen, and at times, Grievant discouraged their use. The use of graphing calculators was not observed. (See footnote 8) 24. Other recommendations and

suggestions given by the Team and stated in the IP were implemented inconsistently. For example, Grievant did use the overhead projector, but at times his examples were confusing. Colored chalk was used a suggested, but the color chosen by Grievant, yellow, did not show up well on the board and could not be easily differentiated from the regular white chalk..

25. Grievant continued to have difficulty with introducing and teaching new topics. He frequently directed students to begin their homework/independent practice before they were ready, which resulted in reactive rather than proactive teaching. Students did not appear to understand the previous day's lesson and reteaching was frequently required, or Grievant would continue on to the next concept without students possessing the necessary building blocks for the lesson.

26. Feedback from all observations was shared with Grievant in a timely manner as required by Policy 5310. Multiple deficiencies and some strengths were noted. Grievant signed these observation forms each time after he had been told of their content. These feedback sessions included directions for improving teaching skills to meet the goals set out in the IP.

27. The students' grades in Grievant's classes for the second semester were:

Transitional Math; Second Period: 0=A; 3=B; 2=C; 4=D; 4=F

Transitional Math; Third Period: 1=A; 1=B; 2=C; 3=D; 4=F

Geometry (Honors); Fourth Period: 3=A; 4=B; 7=C; 3=D; 3=F

Algebra I; Fifth Period: 3=A; 2=B; 6=C; 2=D; 5=F (2W/F)

Algebra I; Sixth Period: 4=A; 3=B; 5=C; 1=D; 3=F (2 W/F)

Algebra I; Seventh Period: 1=A; 3=B; 0=C; 1=D; 5=F

The total grades were: A=12; B=16; C=22; D=14; F=24; W/F=4. Further, some students were given an additional ten points for attendance to achieve their final grade. In the threeAlgebra classes, all students were given a 100% daily average. No explanation was given for that action, and it was clear from the record that these students did not make 100% on all their homework. (See footnote 9) Additionally, final grades were apparently increased through completing homework, obtaining parental signatures, in certain classes, and turning in notebooks.

28. Grievant's method of grading students was an on-going problem. The Team

requested a written explanation of his system. This explanation was somewhat unclear. After further clarification, the Team attempted to utilize Grievant's directions to calculate students grades from the data in Grievant's grade book. These attempts were unsuccessful. For example, two algebra students should have received a B and a C, but Grievant's grade book indicated they received a C and an A, respectively.

29. Although improvement was noted in some areas, at some times, in some observations, the overall impression and eventual evaluation reflect Grievant's failure to improve consistently in the problem areas identified in the IP. Grievant continued to have difficulty in the areas of writing lesson plans (See footnote 10) , reviewing materials, stating objectives, pacing materials, assessing student feedback, and organizing and summarizing class material. Additionally, Grievant did not consistently utilize or apply the teaching strategies required by the IP. 30. On June 7, 1996, Grievant received an unsatisfactory evaluation in the areas of "Programs of Study" and "Instructional Management System". He was also rated as unsatisfactory in an additional section, “Student Progress.” This rating reflected Grievant's continuing problems with grading student progress.

31. This evaluation indicated Grievant's instructional strategies were confusing and ineffective, and Grievant was poorly organized and unprepared for class. It was also noted that students were not understanding the content; pacing of the materials presented was not appropriate or based on student feedback; introductions and summaries to begin and end the classes were not consistently done; and Grievant did not interact with all the students in the class. This evaluation also noted Grievant usually had his materials ready for use, usually provided good examples, and usually kept students on task.

32. Grievant placed an addendum on this evaluation indicating his belief that the evaluation was not performed properly.

33. Grievant originally filed this grievance on June 17, 1996.

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## Issues

The grievance form states Grievant's IP and evaluation did not conform to the standards required by Policies 5300 and 5310, W. Va. Code § 18A-2-12, W. Va. Code § 18-29-2(m), and

county policies. Respondent argues Grievant's evaluation met all the requirements of Policies 5300 and 5310, and the above-cited Code Sections, and his evaluation was performed in an open and honest manner.

Clearly, the issue before the undersigned is whether Grievant's IP and June 7, 1996 evaluation were properly performed. To meet this standard of proper performance, anevaluation must be handled according to Policies 5300 and 5310; conducted in the open and honest manner required by these Policies and W. Va. Code § 18A-2-12; be based on the observations of the Team; reflect the timely feedback given to a grievant after these observations; and demonstrate that classroom teaching remained unsatisfactory. Additionally, inherent in this discussion, is the issue of whether Grievant's IP (See footnote 11) and evaluation were handled in a discriminatory manner. (See footnote 12)

## Discussion

Because a grievance concerning an employee's evaluation is not a disciplinary grievance, the grievant has the burden of proving his case by a preponderance of the evidence. Baker v. Fayette County Bd. of Educ., Docket No. 94-10-427 (Jan. 24, 1995).

W. Va. Code § 18A-2-12(3) states that the purpose of an evaluation is to "serve as a basis for the improvement of the performance of the personnel in their assigned duties . . . and serve as a basis for programs to increase the professional growth and development of professional standards." Evaluations should contain the standards for "satisfactory performance and criteria to be used to determine whether the performanceof each professional meets such standards . . .". Id. at (4). Further, improvement plans shall be specific as to what improvements are needed and "shall clearly set forth recommendations for improvements . . .". Id. at (5).

Additionally, W. Va. Code § 18A-2-12 states:

> A professional whose performance is deemed to be unsatisfactory shall be given 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 time for remediation of the deficiencies and shall receive a statement of the resources and assistance available for the purposes of correcting the deficiencies.

Policy 5300 states:

> 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. . . . 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 the assistance of regular evaluation.

126 CSR 141 §2.6.

Policy 5310 identifies the rules and regulations governing the evaluation of school personnel. It mandates that all monitoring or observation of employees shall be "conducted openly", and that an employee whose performance is unsatisfactory shall be "given an opportunity to correct the deficiency." 126 CSR 142 §7, B&C. An employee's performance in each rating category should be rated as "Satisfactory - Performance is consistently adequate and acceptable", or as "Unsatisfactory - Performance is not consistently adequate or acceptable." Id. at § 8.

Section 10 of Policy 5310 also clarifies that the immediate supervisor is the individual responsible for the employee's evaluation. He must share the evaluation withthe employee, and the employee has a right to attach a written addendum to the evaluation. Id. at §§10.4-10.6.

Observations of teachers are to be at least thirty minutes in length and conducted during instructional activity. Id. at § 9 B. At least one of these observations must be scheduled in advance with the employee: other observations may be conducted at the discretion of the supervisor. Id. After each observation a post-observation conference must be held with the employee within five working days, and a copy of the observation form is given to the employee. Id. at § 9 C.

Generally, this Grievance Board will not intrude on the evaluations of employees unless there is evidence to demonstrate "such an arbitrary abuse on the part of a school official to show the primary purpose of the polic[ies] has been confounded." Kinder v. Berkeley County Bd. of Educ., Docket No. 02-87-199 (June 16, 1988). See Higgins v. Randolph Bd. of Educ., 286 S.E.2d 682 (W. Va. 1981); Thomas v. Greenbrier County Bd. of Educ., Docket No. 13-87-313-4 (Feb. 22, 1988); Brown v. Wood County Bd. of Educ., Docket No. 54-86-262-1 (May 5, 1987). As

previously stated, an evaluation would not be properly conducted if it were not "open and honest" and based on the requirements in the previously stated policies and statutes. See Brown v. Wood County Bd. of Educ., 400 S.E.2d 213 (W. Va. 1990); Wilt v. Flanigan, 294 S.E.2d 189 (W. Va. 1982).

In terms of the mechanics of the evaluation, such as scheduling, length of time of the observation, number of observations, timely feedback, etc., the undersigned Administrative Law Judge finds these criteria in Grievant's evaluation were performed in an open, fair, and proper manner, and met all the requirements of the above-identified policies. The next issue to examine is whether Grievant's June 7, 1996 evaluation was performed in an open and honest manner. Grievant alleged that it was not, but presented no evidence to support his contention. (See footnote 13) The mere fact that Grievant disagrees with his unfavorable evaluation does not indicate that it was unfairly performed, nor is it evidence of some type of inappropriate motive on the part of Principal Lambert. Romeo v. Harrison County Bd. of Educ., Docket No. 17-88-013 (Sept. 30, 1988).

The true test of the validity of the evaluation is whether it is based on the observations of the individual assigned to evaluate the employee. "[T]he observations conducted and the conferences held throughout the period of the improvement plan serve as evaluating tools for determining whether the employee has successfully completed the plan." Baker v. Fayette County Bd. of Educ., Docket No. 94-10-427 (Jan. 24, 1995). Because the expected teaching behaviors are somewhat vague and generalized they must be "qualified with the behaviors the evaluator observes before [they] can be validly rated." Romeo v. Harrison County Bd. of Educ., Docket No. 17-86-208-2 (June 6, 1988).

In this case, the multiple observations conducted by the Team noted the problematic teaching behaviors of Grievant. These evaluators, individually and routinely, identified the same instructional problem areas over and over. Although there may be minor inconsistencies that would be expected from evaluations from three different people, the over-all picture presented by these observations is one of a teacher who did not perform in a consistently satisfactory manner in the identified problem areas. Other facts are clear from the record. Grievant did not complete or execute his lesson plans completely or consistently. At times, he ignored these plans or did not update them as needed. A county

board of education may implement an Improvement Plan or take disciplinary action for failure to complete lesson plans. See Bierer v. Jefferson County Bd. of Educ., Docket No. 95-29-558 (Apr. 8, 1996).

Further, Grievant's students routinely had difficulty passing the chapter tests or retests. This subject of test scores and grades has been reviewed by the West Virginia Supreme Court of Appeals as well as this Grievance Board. The grades a student receives in a course indicate his understanding of the material and can reflect on the teacher's ability to pace instructional material, assess feedback from the students, and adjust instruction and expectations for students. Brown, 400 S.E.2d at 219-20. Thus, a student's achievement in class can be used to evaluate a teacher if he is placed on notice that this is a problem. Principal Lambert repeatedly questioned how Grievant graded his students, and how students knew where they stood in the course. He also expressed concern to Grievant about whether students were understanding the course content.

In total, the undersigned Administrative Law Judge finds Grievant's evaluation was performed correctly, fairly, and competently in all respects. The expectations set for Grievant in the IP were appropriate, clear, and set with his full knowledge. He was frequently informed where his performance needed improvement, and where he showed improvement. Grievant did not meet the standard set for satisfactory performance as stated by Policy 5310: "Performance is consistently adequate and acceptable." Although Grievant did at times show improvement, this progress was not consistent. Principal Lambert's final evaluation of Grievant was accurate, as reflected by the interveningobservations, was open and honest, and did not demonstrate any abuse of discretion in its rating.

The above-discussion will be supplemented by the following Conclusions of Law.

## Conclusions of Law

1. As a grievance about an employee's evaluation is not a disciplinary grievance, a grievant has the burden of proving his case by a preponderance of the evidence. Baker v. Fayette County Bd. of Educ., Docket No. 94-10-427 (Jan. 24, 1995).

2. Generally, this Grievance Board will not intrude on the evaluations of employees unless there is evidence to demonstrate "such an arbitrary abuse on the part of a school

official to show the primary purpose of the polic[ies] has been confounded." Kinder v. Berkeley County Bd. of Educ., Docket No. 02-87-199 (June 16, 1988). See Higgins v. Randolph Bd. of Educ., 286 S.E.2d 682 (W. Va. 1981); Thomas v. Greenbrier County Bd. of Educ., Docket No. 13-87-313-4 (Feb. 22, 1988); Brown v. Wood County Bd. of Educ., Docket No. 54-86-262-1 (May 5, 1987).

3. An evaluation is properly conducted if it is performed in an "open and honest" manner, and based on the requirements in Policies 5300 and 5310 and W. Va. Code § 18- 2-12. See Brown v. Wood County Bd. of Educ., 400 S.E.2d 213 (W. Va. 1990); Wilt v. Flanigan, 294 S.E.2d 189 (W. Va. 1982).

4. The mere fact that a grievant disagrees with his unfavorable evaluation does not indicate that it was unfairly performed, nor is it evidence of some type of inappropriate motive or conduct on the part of the evaluator. Romeo v. Harrison County Bd. of Educ., Docket No. 17-88-013 (Sept. 30, 1988). 5. The true test of the validity of the evaluation is whether it is based on the observations of the individual assigned to evaluate the employee. "[T]he observations conducted and the conferences held throughout the period of the improvement plan serve as evaluating tools for determining whether the employee has successfully completed the [improvement] plan." Baker, supra.

6. Because expected teaching behaviors maybe somewhat vague and generalized, it is important to describe and define these behaviors before rating them. See Romeo v. Harrison County Bd. of Educ., Docket No. 17-86-208-2 (June 6, 1988).

7. Failure to complete lesson plans in an appropriate manner is a significant act and justifies some action on the part of the administrator assigned to evaluate the educator who does not perform this basic task. See Bierer v. Jefferson County Bd. of Educ., Docket No. 95-29-558 (Apr. 8, 1996).

8. The grades a student receives in a course indicate his understanding of the material and can reflect on the teacher's ability to pace instructional material, assess feedback from the students, and adjust instruction and expectations for students. Brown, 400 S.E.2d at 219-20. Thus, a student's achievement in class can be used to evaluate a teacher, if he is placed on notice that this is a problem.

9. Grievant's evaluation was performed correctly, fairly, and competently in all respects.

**Not only were the procedural requirements set by Policy 5310 met, but the expectations established for Grievant in the IP were appropriate, clear, and determined with his full knowledge. He was frequently informed where his performance needed improvement, and where he showed improvement. 10. Grievant did not meet the standard set for satisfactory performance as stated by Policy 5310: "Performance is consistently adequate and acceptable."**

**11. Grievant did not establish a violation of W. Va. Code § 18-2-12, Policies 5300 and 5310, or a violation of BCBOE's own policies pertaining to performance appraisals.**

**12. As Grievant presented no evidence on the issue of discrimination, W. Va. Code § 18-29-2(m), this issue is considered abandoned.**

**Accordingly, this grievance is DENIED.**

**Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Braxton 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: April 28, 1998**

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***Footnote: 1***

***It was somewhat unclear from the record whether Grievant wished to grieve the formulation of his Improvement Plan, and whether Respondent would object on the grounds of timeliness. In the interest of fairness and due to the lack of clarity, this issue will be briefly discussed and decided.***

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***Footnote: 2***

***Grievant was represented by Mr. Todd Twyman, and Respondent was represented by Mr. Erwin Conrad.***

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***Footnote: 3***

***Some basic data from the prior case was utilized to in the formulation of the Findings of Fact for this case as the parties had originally agreed to submit the cases together.***

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***Footnote: 4***

***Grievant's counsel did not submit additional proposals for the second grievance. As his proposals for the first grievance discussed issues in the second grievance, these proposals were considered in the second grievance.***

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***Footnote: 5***

***On March 15, 1996, Grievant was given a list of names from which to select a Team member. Grievant's proposed Findings of Fact allege Grievant wanted to pick another teacher for the Team, but did not because the potential Team member felt uneasy about being on the Team. No evidence was submitted to support that statement. Grievant's counsel indicated that this testimony was given at Grievant's termination hearing, but as previously noted, Grievant's counsel did not submit this data.***

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***Footnote: 6***

***There was no information in the record to explain this acronym.***

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***Footnote: 7***

***Observations noted Grievant did not appear to have previously reviewed the day's content, worked the problems, or specifically planned the day's lesson.***

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***Footnote: 8***

***Grievant did not have graphing calculators in his classroom, but was directed to borrow them from other teachers. Grievant indicated during the formulation of the IP that obtaining these calculators from other teachers would not be a problem. At the end of the year, Principal Lambert asked the other Math teachers if Grievant had asked to use these calculators, and the answer was no.***

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***Footnote: 9***

***During the observations, daily homework grades were noted. The 100% averages are inconsistent with the grades the Team saw recorded when they observed.***

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***Footnote: 10***

***It is unclear from the record whether Grievant would not or could not consistently write lesson plans, as they were frequently so incomplete or terse as to provide insufficient data to answer this question.***

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***Footnote: 11***

***Grievant made no formal complaint about his placement on the IP at the time it occurred, and did not complain about the content of the IP at the time it was formulated. His IP complaint was first noted after he received the***

***unsatisfactory evaluation. Because no evidence was submitted by Grievant to demonstrate the implementation of the IP was conducted in an improper manner, and because Grievant signed the IP as indicated at Finding of Fact 12, this allegation is deemed to be without merit. See Wright v. Gilmer County Bd. of Educ., Docket No. 95-50-260 (Mar. 27, 1996).***

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***Footnote: 12***

***Grievant submitted no evidence on the issue of discrimination. Thus, this issue is deemed abandoned.***

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***Footnote: 13***

***Grievant did not testify, which is, of course, his right pursuant to W. Va Code § 18-29- 6. The only evidence of record presented at hearing was the testimony of the Team, and the members all agreed Grievant's performance was unsatisfactory and did not meet the standards required by the IP.***