CINDY MCCOY, ET AL.,

Grievants,

v. **Docket No. 97-BOD-182**

BOARD OF DIRECTORS/SOUTHERN WEST VIRGINIA COMMUNITY AND TECHNICAL COLLEGE,

Respondent.

DECISION

This grievance was filed by Cindy McCoy, George Morrison and George Trimble, (See footnote 1) members of the faculty, against their employer, Respondent Board of Directors/Southern West Virginia Community and Technical College ("SWVCTC"), on or about March 4, 1997, protesting the decision by SWVCTC President Travis P. Kirkland that all faculty members must use a particular software program to produce course syllabi. The statement of grievance alleged a violation of State College System of West Virginia Procedure No. 9, regarding the failure to involve faculty and faculty committees in the assessment process, and that the faculty Constitution requires the review of the software by the Faculty Senate, and its recommendation, prior to requiring faculty to use it. At the Level II hearing,Grievants added, without objection, that President Kirkland's decision infringes on academic freedom, and that the curriculum, assessment, and academic affairs committees, and the college council, should have reviewed the software before its mandatory implementation. As relief, Grievants sought the rescission of President Kirkland's directive that faculty use a particular software program to produce course syllabi. (See footnote 2)

The following Findings of Fact necessary to the decision reached, are made based upon the evidence presented at Levels II and IV.

Findings of Fact

1. Grievants are members of the faculty in the Humanities Division at Southern West Virginia Community and Technical College ("SWVCTC").

2. The Instructional Performance System, Inc. ("IPSI"), is a computer software program which will allow the user to generate class syllabi, lesson plans, and test banks.

3. IPSI generates short bullet point objectives in a syllabus, and leads the user in a direction designed to achieve this result. However, using the editor function, the IPSI- generated syllabus can be made to look like a syllabus generated manually, except that IPSI-generated course objectives will be more specific in some courses. 4. Faculty were first informed that SWVCTC was exploring using IPSI software on August 6, 1996, when President Kirkland sent them copies of the draft college assessment plan, seeking faculty comments. That document listed IPSI software as a possible means of assessing student achievement. It stated, "[f]or example, if the faculty have chosen to utilize the IPSI software provided by the State of West Virginia for syllabus development, it is likely that subject matter and general cognitive ability can be measured through the same exit measure. It will be the responsibility of the Assessment Committee to monitor and move along the process." On August 16, 1996, some faculty members were briefed on IPSI software at an Academic Affairs Committee meeting. Sometime in August or September 1996, at the all-college meeting, faculty were informed that use of IPSI software would be voluntary, and training would be provided, but that SWVCTC hoped to have all course syllabi in IPSI format by 1999.

5. The draft Institutional Self-Study, prepared in anticipation of a visit from the North Central Association, and distributed to faculty for comment in August 1996, contained the same language as the draft assessment plan, quoted in the preceding finding of fact. Grievants' Level IV Exhibit 14.

6. The Faculty Senate discussed the IPSI software with President Travis P. Kirkland on October 16, 1996, when he attended a Faculty Senate meeting.

7. Grievant McCoy, Chair of the Faculty Senate, discussed IPSI with President Kirkland on several occasions, and expressed her opinion to him.

8. The Faculty Senate, the Academic Affairs Committee, the Curriculum Committee, the Assessment Committee, and the College Council, may take up issues of concern to the faculty within their respective subject matter areas, and provide PresidentKirkland with the faculty's advice on any issue relevant to each group's purpose, without President Kirkland asking for faculty advice on the topic. These groups did not choose to formally take up the issue of use of IPSI software and present a recommendation to President Kirkland.

9. Late in the Fall of 1996, President Kirkland mandated the use of IPSI software by all faculty,

to produce course syllabi.

10. SWVCTC faculty are not required to use IPSI software to generate lesson plans or test banks for assessing student performance, nor will there be a decision on this until the Assessment Committee has completed its review of this use of IPSI and made a recommendation.

Discussion

The burden of proof is upon Grievants to prove the elements of their grievance by a preponderance of the evidence. Conner v. Mingo County Bd. of Educ., Docket No. 95- 29-476 (Mar. 28, 1996). Grievants alleged President Kirkland's decision that faculty would use IPSI software was made without allowing faculty input, in violation of State College System of West Virginia Procedure No. 9, bypassing the Faculty Senate, in violation of the Faculty Constitution, bypassing various other committees, in violation of institutional policies and procedures, and was an infringement on academic freedom.

Grievants' allegations that President Kirkland violated State College System of West Virginia Procedure No. 9 were not proven. That Procedure provides, in relevant part, that the President shall assure that faculty members have significant involvement in the development and implementation of the assessment process, for "assessing student learning of the general education core curriculum." Grievants asserted the test bankcomponent of IPSI would be used in the assessment process. However, they produced no evidence that IPSI software is being used in the assessment process. The only evidence produced by Grievants to prove a decision had already been made that IPSI software would be used in student assessment, was that IPSI software could be used to generate test banks, and a memorandum to Grievant McCoy, dated January 13, 1997, from Mike Browning, Associate Vice President for Academic Affairs, where he stated:

> Common syllabi are also important as we move toward the implementation of our assessment plan.

> Accountability and assessment mandates, with the requirement that college- wide student outcomes be documented, require that each course offered at Southern has institutionally (i.e., faculty)-established goals and objectives. Without college-wide course goals and objectives, we will be unable to document that a student completing Course a will know X, Y, and Z.

> IPSI is the college adopted format for all college syllabi. The competencies and test elements will become important parts of our efforts to insure that we are delivering common course content for lower division courses throughout the college.

Grievants' Level IV Exhibit 4.

Despite that Mr. Browning's memorandum says that the test element of IPSI will become a part of student assessment, Respondent presented the testimony of two witnesses, Dr. Michael Allkins, Executive Vice-President for Instruction and Student Services, and Merle Dempsey, Acting Chief Academic Officer and Vice-President of Student Affairs, that IPSI was not being used for assessment purposes, and that the faculty Assessment Committee would discuss whether IPSI would be used for assessment purposes, and provide its recommendation on this. In fact, Mr. Dempsey testified that the Assessment Committee is currently working on this issue. In order to determine whether President Kirkland's decision to require faculty to use IPSI software to produce course syllabi has infringed upon academic freedom, it is necessary to understand what academic freedom is. "Academic freedom is defined as `liberty to pursue and teach relevant knowledge and to discuss it freely without restriction from school or public officials or from sources of influence.' The American Heritage Dictionary at 70." Kilburn v. Bd. of Directors/W. Va. State College, Docket No. 94-BOD-1046 (Dec. 29, 1995). The Board of Directors of the State College System recognizes the importance of Academic Freedom. "All faculty members shall be entitled to full freedom in research and in the publication of the results of such research, ... Further, each faculty member is entitled to freedom in the classroom in discussing the subject taught." 131 C.S.R. 36 § 2.2. President Kirkland defined academic freedom as the freedom to be able to do research or teach controversial subjects without fear of retaliation. He stated it is not a license, but is intended to protect faculty members.

Grievant McCoy explained that academic freedom has been infringed upon by requiring faculty to use IPSI, because what she will do in the classroom is being mandated, and IPSI develops a syllabus which is not what she would develop. However, she testified she knows very little about IPSI.

Requiring the use of IPSI software to produce course syllabi in no way infringes upon academic freedom. The only difference between generating a syllabus using IPSI and the editor function, and generating a syllabus manually, is that the IPSI-generated course objectives may be more specific than those generated manually. Grievant McCoy, however, did not testify that she could not generate the exact objectives she would like to have in a syllabus using IPSI. Her testimony was that it was difficult. Requiring a faculty member to state specific minimum course objectives has no effect

upon the "liberty to pursue and teach relevant knowledge and to discuss it freely without restriction." Further, the SWVCTC Faculty Handbook already required that each syllabus contain course objectives. The faculty member chooses the minimum course objectives, and may pursue and teach other more general objectives as well. Grievants failed to prove any infringement on academic freedom. (See footnote 3)

Finally, Grievants' argument that President Kirkland could not require faculty to use the IPSI software to develop course syllabi without first bringing this issue to various faculty committees for input, is not supported by the evidence presented. Grievants presented evidence that various committees may make recommendations on various matters. However, everyone agreed that these committees may take up any relevant topic on their own initiative, without the President asking the committee for input. Further, nothing presented by Grievants states that President Kirkland could not take the action he did without first getting faculty input. While it may have been good employee relations to ask the faculty for its input on IPSI, and both the draft and final versions of the Institutional Self-Study represent that whether IPSI will be used will be a faculty decision, (See footnote 4) this does not mean President Kirkland had to have faculty approval, or even a faculty recommendation, before deciding IPSI software would be used.

Significantly, during the more than a year this grievance was pending, nothing has prevented the faculty, either individually or through some committee, from taking up the topic of whether IPSI software meets the needs of the faculty, and presenting their findings and recommendations to the President. In fact, both the Faculty Senate and Grievant McCoy individually and as Chair of the Faculty Senate, have spoken with President Kirkland about IPSI, and were allowed to express their views. While there seemed to be a sentiment that because President Kirkland had already made a decision, he would not have listened to the faculty views, no one disputes that President Kirkland is not required to adopt the views of individual faculty members, or the Faculty Senate, or any other committee, and certainly the undersigned has no authority to make President Kirkland listen to the faculty or adopt the faculty recommendation. The only different result whichcould be assured by the undersigned rescinding President Kirkland's decision, and directing a period of time for faculty input, is delay.

The Faculty Constitution provides that, "[t]he faculty assembly has the right and responsibility to express its opinion on policies of the administration of the college." Article I, Section 2. Grievants'

representative stated, "[w]hen the college implemented IPSI, it ignored the faculty's right under that section." As is clear from the language of the Faculty Constitution, supported by the testimony of several witnesses, the SWVCTC administration has no role in whether the faculty chooses to exercise its right to express its opinion, unless the administration would refuse to allow the faculty to meet and speak freely, which has not occurred. Although Dr. Allkins told the members of the Academic Affairs Committee that IPSI was "a done deal," this did not prevent that committee from studying IPSI and making a recommendation either supporting the President's decision or disagreeing with it for stated valid reasons and suggesting viable alternatives. Nothing presented by Grievants evidences a requirement that President Kirkland initiate discussion on a particular policy. The faculty have both the right and responsibility to initiate discussion on their own, and to express the opinion of the faculty to the administration in an appropriate manner.

Although Grievant McCoy testified, "[w]e were never given the opportunity to have input into IPSI. We were never allowed to review IPSI," it is clear that the faculty were introduced to IPSI at least as early as August 6, 1996, and were told in October 1996 that it would be in place by 1999. There is no indication that the faculty made any real effort to review IPSI, until they were told they would use it. The opportunity, although brief, was there. The faculty simply chose not to exercise the opportunity. Even after they were toldthey would have to use IPSI, nothing prevented the faculty from investigating IPSI and comparing it to other software programs, and presenting a rational report on their findings, and a recommendation to President Kirkland either supporting his decision, or recommending that he revisit his decision.

Finally, Respondent filed a Motion to Dismiss. Based upon the foregoing discussion of the evidence and issues involved in this grievance, it is clearly not appropriate to grant that motion in this grievance proceeding.

The following Conclusions of Law support the decision reached.

Conclusions of Law

1. Grievants bear the burden of proving the elements of their grievance by a preponderance of the evidence. Conner v. Mingo County Bd. of Educ., Docket No. 95-29- 476 (Mar. 28, 1996).

2. Grievants failed to prove a violation of State College System of West Virginia Procedure Number 9, which requires that faculty have significant involvement in the development and

implementation of the assessment process.

3. Grievants failed to prove that use of IPSI software to generate course syllabi has any affect on academic freedom.

4. Grievants failed to prove that President Kirkland was required to ask for faculty input before deciding all faculty would use IPSI software to generate course syllabi, or that faculty were denied the opportunity to address the use of IPSI software.

Accordingly, this grievance is **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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BRENDA L. GOULD

Administrative Law Judge

Dated: August 18, 1998

Footnote: 1

On May 19, 1998, between the third and fourth days of hearing, Respondent belatedly moved to dismiss Mr. Trimble as a Grievant, as his employment had been terminated by Respondent. That motion was denied at hearing for several reasons, including that Mr. Trimble has a grievance pending challenging his dismissal. Respondent renewed its motion in its post-hearing written argument, but presented no new grounds to support the motion. Accordingly, the motion is still denied.

Footnote: 2

The grievance was denied at Level I on March 18, 1997. Grievants appealed to Level II on March 20, 1997. A Level II hearing was held on March 26, 1997, and the grievance was denied at Level II on April 10, 1997. Grievants bypassed Level III, appealing to Level IV on April 14, 1997. Four days of hearing were held at Level IV before the undersigned Administrative Law Judge, on July 30, November 19, and December 17, 1997, and June 1, 1998. Grievants were represented by Robert Morgenstern, who was unavailable during the Spring 1998 Legislative Session, and Respondent was represented by Mary Roberta Brandt, Esquire. This matter became mature for decision upon receipt of the last of the

parties' post-hearing written arguments, on July 20, 1998.

Footnote: 3

While Grievants also seemed to have a problem with the idea of producing common course syllabi, that is, for example, one course syllabus would be approved by the English faculty for all English 101 classes, regardless of who taught them, whether this can be required is not at issue. Grievants made it clear that it was the way in which the decision was made to require use of the IPSI software they were grieving. Further, IPSI software does not require the production of common course syllabi. The testimony presented was that SWVCTC had as a goal the generation of common course syllabi for a long time, and that the IPSI software was a mechanism to aid in reaching this goal. Even Grievant McCoy testified that SWVCTC has intended to have common course syllabi. Apparently, however, this goal has never been unanimously approved by the faculty.

Footnote: 4

In fact, the final version of the Institutional Self-Study, dated April 6 - 9, 1997, erroneously represents, "[f]or example, if the faculty have chosen to utilize the IPSI software provided by the State of West Virginia for syllabus development, it is likely that subject matter and general cognitive ability can be measured through the same exit measure." Grievants' Level IV Exhibit 15. While this is troublesome, no evidence was presented that this statement was binding on President Kirkland. Certainly such misrepresentations do nothing, however, to foster the development of the mutual trust between faculty and the SWVCTC administration which is so obviously lacking and desperately needed. This is not to say that the SWVCTC administration is completely at fault in the degeneration of the working relationship between faculty and the administration. Certainly the faculty's vote of no confidence in President Kirkland, in January 1996, when he had only been president for six and a half months had to take a toll. It also appears to the undersigned that the faculty's reactive, rather than proactive, attitude may not be conducive to the needed growth at SWVCTC, and results in the administration throwing up its hands and just going forward without faculty input. It is obvious that the structure is in place for the faculty to involve itself in any number of issues.