LISA TAYLOR,

Grievant,

v. **Docket No. 02-02-183**

BERKELEY COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

___Lisa Taylor ("Grievant") filed this grievance directly at level four on June 19, 2002, when her probationary contract was not renewed at the conclusion of the 2001-2002 school year. (See footnote 1) She seeks reinstatement to her position as a classroom teacher. Upon appeal to level four, the parties agreed that a decision could be rendered based upon the record developed at the hearing before the Berkeley County Board of Education ("BCBOE") on June 7, 2002. Grievant was represented by Harvey Bane of the West Virginia Education Association, and Respondent was represented by its attorney, Laura Lilly Sutton. This matter became mature for consideration upon receipt of the parties' fact/law proposals on August 22, 2002.

The following findings of fact are made based upon a preponderance of the evidence of record.

Findings of Fact

1. Grievant began probationary employment with BCBOE as a third grade teacher at Valley View Elementary School ("Valley View") on August 22, 2001. She hadreceived her teaching degree in December of 2000 and had not previously taught prior to being hired by Respondent.

2. Because she was hired less than one week before school began, Grievant did not get the opportunity to participate in a formal new teacher orientation program. However, she did participate in informal staff meetings and meetings with other teachers.

3. Grievant received mentor training in mid-October of 2001, but she was not given the opportunity to meet with her mentor teacher prior to that time.

4. Valley View has an “open classroom” setup, meaning that the classrooms do not have walls. Grievant's classroom was open on two sides, with a window and a partition on the other two sides.

5. Grievant was formally observed by Assistant Principal Jeanette Sites on October 12, 2001, at which time it was noted that Grievant was following the curriculum well, giving positive reinforcement to students, and using good instructional strategies. Deficiencies were noted in the area of classroom climate, including a need for more awareness of students not being on task, enforcement of class rules, and better control over the classroom.

6. Grievant's difficulties with control of her classroom were discussed informally with Principal Fred Johnson in September and October of 2001, and Principal Johnson decided to consult Beverly Hoffmaster, Coordinator of Elementary Education and Instructional Specialist for BCBOE, to assist Grievant.

7. Ms. Hoffmaster observed Grievant's class on October 19, 2001. She noted problems with classrooom climate, including students not being on task, specifically walking around the classroom, talking, and roughhousing during a test. She gave Grievantrecommendations for improving rule enforcement and maximizing on-task time of the students by improving preparation and lesson plans.

8. Ms. Hoffmaster visited Grievant's classroom on numerous occasions between October of 2001 and May of 2002. Many times she assisted Grievant with teaching, model taught the class for her, conducted meetings with the students on improving their behavior, and provided instructional materials and numerous suggestions to Grievant. Most of Grievant's deficiencies noted by Ms. Hoffmaster were in the areas of students not being on task, lack of control of the classroom, and lack of rule enforcement. Grievant's teaching techniques were otherwise generally seen as positive and improved over time.

9. As late as April of 2002, when Ms. Hoffmaster observed Grievant's class, students were still talking and out of their seats when they should not have been, and Grievant was having difficulty getting students to focus on the lesson.

10. Formal observations of Grievant's class were conducted by Principal Johnson on November 15 and December 4, 2001. On both occasions, it was noted that some students were not on task and engaging in disruptive behavior, and Grievant needed to improve her

organization and planning techniques.

11. An observation conducted by Principal Johnson on November 7, 2001, indicated that Grievant was improving in the area of classroom climate, and students were generally on task.

12. On December 11, 2001, Grievant received a formal performance evaluation. She received unsatisfactory ratings in the areas of classroom climate, instructional management, and professional work habits. It was noted that she had made progress ingetting her class under control, but that she needed to work harder at getting students to behave appropriately and needed a “take charge” attitude.

13. As a result of the December performance evaluation, Grievant was placed on an improvement plan, and an improvement team was appointed, which included Grievant's mentor teacher. The plan included numerous specific suggestions for improving Grievant's classroom control and management. The improvement team met with Grievant twice per month, and Grievant's mentor teacher met with her biweekly.

14. Grievant received another performance evaluation on January 23, 2002. It was noted that she continued to struggle with discipline and, although she had assistance in “establishing a classroom procedure and routine,” she had not kept it firmly in place. She was rated as unsatisfactory in the areas of classroom climate, instructional management, communication, and professional work habits. Grievant still was not imposing adequate discipline and control over the students, who were “up and moving around unnecessarily” and engaging in physical altercations while she was teaching. Grievant's improvement plan was extended through March of 2002.

15. Observations conducted by Principal Johnson on March 21, 2002, and April 1, 2002, indicated Grievant was improving in the area of classroom climate, but some students were still causing disturbances.

16. Grievant was again evaluated on April 1, 2002, and she received unsatisfactory ratings in the same four areas. It was noted that the classroom climate was “somewhat better,” but she still had difficulty enforcing rules, did not demonstrate sufficient awareness of disruptive student behavior, and she continued to fail to stop instruction untilshe had the class' attention, which she had repeatedly been advised to do. Students were still not on task,

speaking out of turn, and walking around the room as they pleased.

17. Beginning in October of 2001, Grievant's mentor teacher either met with her or "dropped by" her class on a frequent basis, offering assistance.

18. Grievant's mentor teacher was a fifth grade teacher, and she had her planning period at a different time of day from Grievant's.

19. Pursuant to Principal Johnson's recommendation to the superintendent, on May 6, 2002, Grievant was notified that she was not being recommended to be rehired for the 2002-2003 school year.

20. Grievant requested and received a hearing before BCBOE on June 7, 2002, regarding the recommendation that her probationary contract not be renewed.

Discussion

When a probationary employee's contract has not been renewed, it is the employee's burden to prove by a preponderance of the evidence that her non-retention was improper by showing that she did not receive a full and complete hearing on the reasons for the non-renewal of her contract; that the evidence did not support the reasons; and/or she was denied her rights under State Board Policy 5300. Warner v. Putnam County Bd. of Educ., Docket No. 97-40-548 (June 25, 1998); Toler v. Wyoming County Bd. of Educ., Docket No. 94-55-306 (May 4,1995). The rights in general of probationary employees who receive notice of termination were extensively discussed in Cordray v. Wood County Bd. of Educ., Docket No. 90-54-267 (Jan. 31, 1991). Specifically, the case held that a county board of education may not refuse to rehire a probationary employee for "just any, or no, cause," but that the board need not do more than afford the employeea "full and complete hearing which supports" that the reasons for the action are "substantive." There is no "for cause" standard in cases involving a Board's decision to terminate a probationary employee's employment per Code §18A-2-8a. Toler, supra.

When a board of education elects not to renew a probationary contract, it must follow the provisions of Code § 18A-2-8a, which provides:

> **The superintendent at a meeting of the board on or before the first Monday in May of each year shall provide in writing to the board a list of all probationary teachers that he recommends to be rehired for the next ensuing school year. The board shall act upon the superintendent's recommendations at that meeting**

> **in accordance with section one of this article. The board at this same meeting shall also act upon the retention of other probationary employees as provided in sections four and five of this article. Any such probationary teacher or other probationary employee who is not rehired by the board at that meeting shall be notified in writing, by certified mail, return receipt requested, to such persons' last-known addresses within ten days following said board meeting, of their not having been rehired or not having been recommended for rehiring.**
>
> **Any probationary teacher who receives notice that he has not been recommended for rehiring or other probationary employee who has not been reemployed may within ten days after receiving the written notice request a statement of the reasons for not having been rehired and may request a hearing before the board. Such hearing shall be held at the next regularly scheduled board of education meeting or a special meeting of the board called within thirty days of the request for hearing. At the hearing, the reasons for the nonrehiring must be shown.**

In the instant case, Grievant contends that the provision set forth above is superseded by the provisions of W. Va Code § 18A-3-2b, governing beginning teacher internships. That statute provides, in part:

> **The beginning teacher internship program is a school based program intended to provide appropriate staff development activities and supervision to beginning teachers to assure their competency for licensure to teach in the public schools of this state. The beginning teacher internship program shall consist of the following components:**
>
> **(1) A professional support team comprised of the school principal, who shall be the chair of the professional support team, a member of the county professional staff development council and an experienced classroom teacher at the school who teaches the same or similar subject and grade level as the beginning teacher and who shall serve as a mentor for the beginning teacher;**
>
> **(2) An orientation program to be conducted prior to the beginning of the instructional term, but within the employment term, supervised by the mentor teacher;**
>
> **(3) The scheduling of joint planning periods for the mentor and beginning teacher throughout the school year ;**
>
> **(4) Mentor observation of the classroom teaching skills of the beginning teacher for at least one hour per week during the first half of the school year and which may be reduced at the discretion of the mentor to one hour every two weeks during the second half of the school year;**
>
> **(5) Weekly meetings between the mentor and the beginning teacher at which the mentor and the beginning teacher discuss the performance of the beginning teacher and any needed improvements, which meetings may be reduced at the discretion of the mentor to biweekly meetings during the second half of the school year;**
>
> **(6) Monthly meetings of the professional support team to discuss the performance of the beginning teacher . . . ;**

(7) In-service professional development programs . . . for beginning teachers and for mentors both of which will be held in the first half of the school year;

(8) The provision of necessary release time from regular duties for the mentor teacher . . . ;

(9) A final evaluation of the performance of the beginning teacher . . . ;

Grievant contends that she was not afforded all of the provisions of the beginning teacher internship program required by statute, resulting in her inability to gain adequatecontrol over her classroom. Although forthright about her deficiencies, Grievant testified that she did not believe her mentor was available as she should have been--until after the improvement plan was implemented--and that assistance at the very beginning of the school year could have helped her avoid some of the problems that she experienced.

In addition to the above provisions, Grievant also points to an additional portion of the same statute, which states that the final evaluation, completed at the conclusion of the internship, shall include one of three recommendations (full professional status, continuing internship status, or discontinue employment). "Continuing internship status" is a recommendation that "the beginning teacher requires further supervision and further employment . . should be conditioned upon successful completion of an additional year [in the program]." If the "discontinue employment" option is recommended, the statute provides that this recommendation "indicates that . . . the beginning teacher has completed two years of employment under supervision in a beginning teacher internship program, but has not demonstrated competence[.]" Grievant believes that this portion of the statute guarantees a beginning teacher at least two years of employment, despite the provisions of W. Va. Code § 18A-2-8a.

W. Va. Code § 18A-2-2(b) states that a teacher's contract "shall be for a term of not less than one nor more than three years, one of which shall be for completion of a beginning teacher internship." Respondent argues that this statute obviously stands for the proposition

that a beginning teacher may be employed for only one year. However, Respondent has failed to "explain away" the portion of W. Va Code § 18A-3-2b whichappears to require that a struggling beginning teacher be given an additional year of internship status if full professional status cannot be recommended.

There is actually no conflict between the three statutes discussed above. While W. Va. Code § 18A-2-8a sets forth the procedure by which probationary contracts may either be renewed or not, it does not specifically state that a new teacher employed for only one year may or may not be renewed. Since the statute is silent on that issue, the provisions of W. Va Code § 18A-3-2b, providing for either contract renewal or an additional year of internship after the first year, would control. Similarly, the portion of W. Va. Code § 18A-2- 2(b), stating that a teacher's contract may be for either one, two or three years, is also consistent with the internship provision, in that the beginning teacher is guaranteed at least a one-year contract, at the end of which he or she is either recommended for full employment or an additional year of internship.

Accordingly, the undersigned finds that, despite Respondent's obvious compliance with W. Va. Code § 18A-2-8a regarding non-renewal of Grievant's probationary contract, it has failed to afford her all of the rights guaranteed by W. Va Code § 18A-3-2b , the least of which is an additional year of supervision in the internship program. As Grievant has argued, she did not receive many of the provisions of the internship program until she was actually placed on an improvement plan, including weekly meetings with her mentor. She was not assigned a mentor who had a joint planning period, nor did she receive an orientation program prior to the beginning of school, which she believes could have helped her get "started on the right foot." Because school has already started for the current school year, appropriate relief in this case is somewhat difficult. Nevertheless, it should be Grievant's option whether she would like to continue her internship in the current school year, or wait until the 2003-2004 school year begins. Therefore, Respondent is directed to provide Grievant an additional year of internship, providing her an orientation program and a mentor prior to beginning her teaching, along with all of the other provisions of W. Va Code § 18A-3-2b. The following conclusions of law support the decision reached.

Conclusions of Law

1. When a probationary employee's contract has not been renewed, it is the employee's burden to prove by a preponderance of the evidence that her non-retention was improper. Warner v. Putnam County Bd. of Educ., Docket No. 97-40-548 (June 25, 1998); Toler v. Wyoming County Bd. of Educ., Docket No. 94-55-306 (May 4,1995).

2. Beginning teachers are entitled to the opportunity to complete at least two years of supervision in a beginning teacher internship program prior to a recommendation that their employment should be discontinued. W. Va. Code § 18A-3-2b.

3. Respondent's failure to renew Grievant's probationary contract at the conclusion of only one year in the beginning teacher internship program violated the provisions of W. Va. Code § 18A-3-2b.

Accordingly, this grievance is GRANTED, and Respondent is directed to provide Grievant an additional year of internship, either during the current school year or beginning with the 2003-2004 school year, as Grievant chooses.

Any party may appeal this Decision to the Circuit Court of Kanawha County or the Circuit Court of Berkeley 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. However, the appealing party is required by W. Va. Code § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

Date: September 9, 2002 _____

DENISE M. SPATAFORE

Administrataive Law Judge

Footnote: 1

Although appeal directly to level four is only provided for in cases of dismissal for cause, pursuant to W. Va. Code § 18A-2-8, the parties agreed that the record developed at the Board's hearing was sufficient for rendering of a level four decision, and proceeding through the lower levels did not appear to be necessary or desired.