JAMIL M. CHAUDRI,

Grievant,

v. **DOCKET NOs. 02-HEPC-211/213**

HIGHER EDUCATION POLICY

COMMISSION/MARSHALL UNIVERSITY,

Respondent.

DECISION

Grievant Jamil M. Chaudri filed two separate grievances on May 15, 2002. The first Statement of Grievance reads, "Pursuance of unapproved policy "No summer school or class overload for those whose student evaluations are low," lead to denial of summer school (Summer 2002) as well as denial of class overload (in Spring 2002 and [F]all, 2003)." As relief, he seeks compensation for the loss of summer school and class overload in the Fall of 2003. His second Statement of Grievance reads, "The Internet version of CSD101 course was granted to a non-[Computer Science Department (CSD)] faculty, on basis of favoritism. The favored person earns around $10,000 per annum for the course." His Relief Sought states, "I am a CSD faculty and have taught the class-room version of the course for 18 years. I am a Professor of Computer Science and have no problem in teaching the Internet version of the course. The course should be restored to CSD faculty." After being denied at the lower levels, the grievances were consolidated at level four and a hearing was held March 10, 2003, at the Grievance Board's Charleston Office. (See footnote 1) Grievant appeared *pro se*, (See footnote 2) and Respondent was represented by its counsel, Jendonnae Houdyschell, Esq. The parties agreed to submit their proposed findings of fact and conclusions of law by June 9, 2003, whereupon the matter became mature for decision. (See footnote 3)

I find the following facts have been proven by a preponderance of the evidence:

FINDINGS OF FACT

1. Grievant is a tenured Professor of Computer Science at Marshall University (MU), Division of

Math and Applied Sciences.

2. In 1996, MU decided to phase out its computer science program, and discontinue teaching CSD-101. The 2001-2002 school year was supposed to be the last for the program.

3. The CSD-101 course, the last remaining CSD class, was to be replaced by an equivalent course, IT-101, in MU's Community and Technical College, in the Summer, 2002 semester.

4. The Community and Technical College was able to accommodate the course for the Summer of 2002, but was unable to arrange coverage for all the needed sectionsin the Fall, 2002 Semester. Respondent decided to offer nine sections of CSD-101 in the Fall and Spring of 2002 to help with the transition.

5. The Division of Math and Applied Sciences has no policy nor practice of restricting summer school assignments based on student evaluations. The reason Grievant was not permitted to teach CSD-101 in the summer of 2002 is because the class had effectively been eliminated by then. (See footnote 4)

6. CSD-101E is an Internet version of the CSD-101 classroom course, developed by Dr. Ishmel Al-Haddad in 1998, who also taught CSD-101 at the time. Dr. Al- Haddad resigned in 2000.

7. Brian Morgan, Director of the Center for Instructional Technology (CIT) assisted Dr. Al-Haddad in developing the CSD-101E course. He is a Web-CT (See footnote 5) certified trainer. When Dr. Al-Haddad left, he and Dr. Tom Storch, then-Dean of the College of Science, decided to give the CSD-101E Course to Mr. Morgan.

8. Mr. Morgan, after consulting with Grievant, "revamped" the class to update it, and applied for and received a grant to redesign the course in the Summer of 2000. He has taught the course since the Fall of 2000, and has updated it regularly since then.

9. MU Executive Policy Bulletin No. 13 [Level four Respondent's Exhibit No. 1] covers "E-Courses" such as CSD-101E. This policy provides in part:

> When the revision of electronic instructional content becomes appropriate, the original developer will be granted the first right of refusal to the work of revision. If the original developer refuses, the University may agree withanother party to perform the revising, at which point the original developer loses any ownership of or financial interest in the content.
>
> Under ordinary circumstances, and as a general premise, the creator (or creators) of electronic instructional content shall be deemed the owner of the content in the sense

that the creator has the right to market content directly or through arrangements with commercial enterprises or the university.

10. The Policy also provides, in part, "Possession of skills in the delivery of course content using distance technologies will be considered a criterion in hiring of faculty for E-courses."

11. All faculty, including Dr. Chaudri, are eligible to develop their own E-courses, and are encouraged to do so, "with approval by the appropriate Dean and E-Course Development Committee in accordance with published guidelines." Id.

12. Although Mr. Morgan was not on the CSD faculty, he had experience teaching classroom courses and had experience developing and teaching E-courses; Dr. Chaudri had not developed nor taught an E-course, but has taught CSD-101 since 1984.

13. The CSD-101E course has been phased out along with all other CSD courses, and is no longer taught by anyone.

DISCUSSION

This is a non-disciplinary grievance in which Grievant bears the burden of proof. Grievant's allegations must be proven by a preponderance of the evidence. *See*, W. Va. Code § 18-29-6, 156 W. Va. C. S. R. 1 § 4.21.

Grievant presented virtually no evidence. His testimony covered many immaterial and collateral matters, but very little relevant to support or even explain his claim. He frequently rambled off-topic to subjects having nothing to do with his stated claim, and made broad and unfounded allusions to a conspiracy to get him to leave the University. Specifically, Grievant presented absolutely no evidence of a policy or practice tyingsummer or overload assignments to student or classroom evaluations, and no evidence he was entitled to take over the CSD-101E Internet course. It may be that Grievant had low evaluations, and that he also was not allowed to teach CSD-101 in the summer, but no professor was allowed to teach CSD-101 in the summer on the Huntington campus. Grievant presented no evidence of his evaluations, none of any other professor's evaluations, and nothing on which to base a comparison. Nevertheless, Respondent did show that the reason for denying Grievant the opportunity to teach a CSD-101 summer class was that the program had been eliminated, and there were no CSD-101 classes to teach. Grievant categorically failed to met his burden of proof on this

issue.

Grievant's second claim, that the CSD-101E course was given to Mr. Morgan through favoritism, is also unsupported by the evidence. "'Favoritism' means unfair treatment of an employee as demonstrated by preferential, exceptional or advantageous treatment of another or other employees." W. Va. Code § 29-6A-2(h). The test to determine whether Grievant has established a *prima facie* case of favoritism requires Grievant to establish by a preponderance of the evidence:

> (a) that he is similarly situated in a pertinent way, to one or more other employee(s);
>
> (b) that the other employee(s) has/have been given advantage or treated with preference in a significant manner not similarly afforded him; and,
>
> (c) that the difference in treatment has caused a substantial inequity to him and that there is no known or apparent justification for this difference.

Prince v. Wayne County Bd. of Educ., Docket No. 90-50-281 (Jan. 28, 1990).

Grievant did not establish that he was similarly situated to Mr. Morgan. Instead, his entire claim seems to be based on the contention that he is *better* situated than Mr. Morgan. Grievant and Mr. Morgan are not in the same department, Grievant is a tenuredprofessor while Mr. Morgan is not, and Mr. Morgan is a co-developer (See footnote 6) of the CSD-101E course, while Grievant is not. Grievant identified no other professor with which he claims to be similarly situated.

Even if Grievant and Mr. Morgan were similarly situated, Grievant's claim would fail because there is an apparent justification for the difference in their treatment: Respondent was obligated by its own policy to give the CSD-101E course to Mr. Morgan as both co- developer, revisionist, and assignee of Dr. Al-Haddad. Grievant demonstrated no entitlement to the class, and produced no evidence of any other professor who had been treated differently in a similar situation.

The following conclusions of law support this discussion.

CONCLUSIONS OF LAW

1. This is a non-disciplinary grievance in which Grievant bears the burden of proof. Grievant's allegations must be proven by a preponderance of the evidence. *See*, W. Va. Code § 18-29-6, 156 W. Va. C. S. R. 1 § 4.21. "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." Leichliter v. W. Va. Dep't. of Health and Human Resources, Docket No. 92-HHR-486 (May 17, 1993). Where the

evidence equally supports both sides, the party bearing the burden has not met its burden. Id.

2. Grievant did not meet his burden of proving an improper policy was being followed.

3. "'Favoritism' means unfair treatment of an employee as demonstrated by preferential, exceptional or advantageous treatment of another or other employees." W. Va. Code § 29-6A-2(h).

4. The test to determine whether Grievant has established a *prima facie* case of favoritism requires Grievant to establish by a preponderance of the evidence:

> (a) that he is similarly situated in a pertinent way, to one or more other employee(s);
>
> (b) that the other employee(s) has/have been given advantage or treated with preference in a significant manner not similarly afforded him; and,
>
> (c) that the difference in treatment has caused a substantial inequity to him and that there is no known or apparent justification for this difference.

Prince v. Wayne County Bd. of Educ., Docket No. 90-50-281 (Jan. 28, 1990).

5. Grievant did not establish a *prima facie* case showing he had been subjected to favoritism.

For the foregoing reasons, this grievance is hereby **DENIED.**

Any party may appeal this Decision to the Circuit Court of Kanawha County or the Circuit Court of the county in which the matter originated. Any such appeal must be filed within thirty (30) days of receipt of this Decision. W. Va. Code § 29-6A-7 (1998). 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 Grievance Board with the civil action number so that the record can be prepared and transmitted to the circuit court.

Date: June 26, 2003 _____

M. Paul Marteney

Administrative Law Judge

Footnote: 1

The hearing was held after Grievant's Motion to Continue was denied. The hearing was originally scheduled for October 21, 2002, and had been continued twice. A telephonic hearing was held March 3, 2003 on Grievant's third request to continue, to which Respondent objected. The undersigned found Grievant had not shown good cause for a

continuance and denied the request. At the hearing on March 10, Grievant appeared and renewed his request for a continuance, and stated he was unprepared for the hearing and wished to resolve a separate grievance first. The undersigned again denied Grievant's motion to continue, finding he had ample notice and should have been prepared, and the other unrelated grievance was irrelevant.

Footnote: 2

Grievant was represented by Judy Davis, West Virginia Federation of Teachers, at lower levels.

Footnote: 3

No brief was received from Grievant.

Footnote: 4

A section of CSD-101 was approved for MU's School of Extended Education, Point Pleasant Campus based on a special request by the instructor. IT-101 is not offered at that campus. Level four Respondent's Exhibit No. 3.

Footnote: 5

Web-CT is the electronic course delivery software used by Respondent and other schools as the platform for all E-courses.

Footnote: 6

As part of Mr. Morgan's job is to consult with all professors developing E-courses, he could be considered a co-developer on many courses. Even if this were not part of his job function, Dr. Al-Haddad designated him as successor to the course content.