**GWEN LACY,**

**Grievant,**

**v.**

**DOCKET NO. 03-33-081**

**MCDOWELL COUNTY BOARD OF EDUCATION,**

**Respondent.**

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

Grievant, Gwen Lacy, filed a grievance against her employer, the McDowell County Board of Education ("Board"), on October 29, 2002, alleging a violation of W. Va. Code § 18-29-2. As relief she seeks "[p]ayment for the two days of extra time it will take, at minimum, to replace the classroom to its former condition." The grievance was denied at level one by decision of Barbara Smith, Principal of Fall River Elementary, dated November 13, 2002. A level two hearing was held on November 25, 2002, and the grievance denied by decision of the grievance evaluator, Peggy Freeman, on December 17, 2002. On March 5, 2003, the West Virginia State Board of Education (See footnote 1) waived the right to participate at level three pursuant to W. Va. Code § 18-29-4(c), and Grievant appealed to level four on March 14, 2003. (See footnote 2) A level four hearing was held in the Grievance Board's Beckley, WestVirginia, office on May 6, 2003, and this matter became mature for decision on June 6, 2003, the deadline for the parties' submission of proposed findings of fact and conclusions of law. Grievant was represented by Ben Barkey, West Virginia Education Association, and the Board was represented by Kathryn Reed Bayless, Esq.

SUMMARY OF EVIDENCE

LIII Grievant's Exhibits

Ex. 1 -

September 30, 2002 memorandum from Barbara P.T. Smith to Gwen Lacy.

Ex. 2 -

October 9, 2002 letter from Ben Barkey to Barbara Smith.

Ex. 3 -

November 12, 2002 letter from Ben Barkey to Barbara Smith.

LIII Board Exhibits

Ex. 1 -

October 29, 2002 grievance statement.

Ex. 2 -

November 13, 2002 level one response.

Ex. 3 -

November 15, 2002 level two appeal.

Ex. 4 -

November 20, 2002 letter from Peggy E. Freeman to Ben Barkey.

LIV Grievant's Exhibits

Ex. 4 -

October 29, 2002 letter from Ben Barkey to Barbara Smith.

Ex. 5 -

February 27, 2002 letter from Ben Barkey to Dr. Mark A. Manchin.

Testimony

Grievant testified in her own behalf, and presented the testimony of Barbara Smith. The Board presented the testimony of Dr. Mark A. Manchin.

Based upon a review of the record in its entirety, I find the following facts have been proven by a preponderance of the evidence.

## FINDINGS OF FACT

1. Grievant is an elementary school teacher with over 25 years of teaching experience working for the Board. She currently teacher at Fall River Elementary. 2. Principal Barbara Smith wanted the primary classes and teachers located together in the building in order to permit them to function better. In addition, she wanted to improve the younger students' access to bathroom facilities. Principal Smith so advised her faculty in the first faculty senate meeting of the school year.

3. She advised Grievant her classroom would be relocated once she obtained dry erasable boards. (See footnote 3)

4. Some delay occurred in relocating Grievant's room because the dry erasable boards had to be ordered and installed. There were several “false starts” when Grievant was notified the change would occur over a weekend, but did not.

5. Finally, Principal Smith scheduled the actual physical move of the classroom materials and furnishings for October 19, 2002, because she believed both custodians would be available to assist. One custodian had a family emergency and did not appear to assist on October 19. Principal Smith and the other custodian moved the items in Grievant's classroom and tried to put things in order as best they could.

6. Grievant had been advised the previous Wednesday that the move would occur that Saturday, and had been previously told to “prepare to be moved.” Grievant had not boxed any items or otherwise prepared for the move.

7. Grievant could not be present on October 19, 2002, due to a previously scheduled meeting. Principal Smith asked her to draw a blueprint showing where she wanted items placed in her new room and she declined, stating she did not know how to draw such a design. 8. Grievant was disturbed that she was not asked if October 19, 2002, was a “good” day for the move, but testified she would not have appeared and supervised the move on any Saturday unless she received extra

payment for that day.

9. Some delay occurred in moving as many computers as Grievant needed into the new classroom. Barbara Miller from the central office was the person responsible for moving and installing the computers. Principal Smith made multiple inquiries of Ms. Miller as to status of moving the computers, but ultimately that portion of the move was out of her control.

10. Grievant spent time after normal working hours straightening and organizing her classroom after the relocation on October 19, 2002.

DISCUSSION

As this is a non-disciplinary grievance, Grievant bears the burden of proving the grievance by a preponderance of the evidence. 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. Dept. 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. Lake v. Cabell County Bd. of Educ., Docket No. 02-06-370 (Jan. 21, 2003).

Grievant alleges the Board violated W. Va. Code § 18-29-2, and seeks payment for “the two days of extra time it will take, at minimum, to replace the classroom to its former condition.” Grievant essentially alleges she was prohibited from providing effective classroom instruction due to the physical relocation of her classroom after the 2002-03school year began. As a result of that relocation, Grievant alleges that student art work was destroyed, her teacher's manual for reading instruction was misplaced, a map was misplaced, computers were not timely moved and readied for student use, student workbooks were not readily located, lack of space exists in the new location to do bulletin boards, and, six months after the move, there are items which she still has not located in her classroom.

The Board denies it has interfered with Grievant's ability to instruct her students, and maintains the Principal has the discretion to determine room assignments, and utilization of space within her school building. Moreover, the Board alleges that any disorganization resulting from the move on October 19, 2002, was primarily the fault of Grievant's, for not preparing for the move by boxing up and marking the location of needed items, and failing to draw a blueprint for the location of her

furnishings and other large items.

It is well-established that, pursuant to W. Va. Code § 18A-2-9, “the principal shall assume administrative and instructional supervisor responsibility for the planning, management, operation and evaluation of the total educational program of the school or schools to which he is assigned.” Long v. Logan County Bd. of Educ., Docket No. 95-23- 506 (Apr. 29, 1996). It is within the discretion of the principal to determine room assignments for teachers within a school. Unless the principal has acted in a manner which is arbitrary and capricious, such assignments will not be second-guessed by the Grievance Board.

Generally, an action is considered arbitrary and capricious if the decision maker did not rely on criteria that were intended to be considered, explained or reached the decision in a manner contrary to the evidence before it, or reached a decision that is so implausiblethat it cannot be ascribed to a difference in opinion. Bedford County Memorial Hosp. v. Health and Human Serv., 769 F.2d 1017 (4th Cir. 1985); Yokum v. W. Va. Schools for the Deaf and the Blind, Docket No. 96-DOE-081 (Oct. 16, 1996).

While it is certainly understandable that Grievant was unhappy with having to move her classroom after the school year began, there is no evidence that Principal Smith acted arbitrarily or capriciously in determining that Grievant's room assignment should be changed. Principal Smith made the change to permit the primary block of teachers and students to function better, and to improve students' access to the bathroom in a supervised setting.

Any resulting disorganization or mess in the classroom can be attributed to Grievant's failure to cooperate in the move. She admittedly did not box up any items in preparation for the move, did not draw up a blueprint of where she wanted items placed, and did not communicate with Principal Smith in any way about the move. Any time she had to spend after the move getting her classroom in order is the result of her own decision not to cooperate, and she has failed to provide any authority to support her claim that Principal Smith interfered in her ability to provide effective classroom instruction, or that she should be compensated for having to put her room in order.

## CONCLUSIONS OF LAW

1. In a non-disciplinary grievance, Grievant bears the burden of proving the grievance by a preponderance of the evidence. 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. Dept. of Health and Human Resources, Docket No. 92-HHR-486 (May17, 1993). Where the evidence equally supports both sides, the party bearing the burden has not met its burden. Id. Lake v. Cabell County Bd. of Educ., Docket No. 02-06-370 (Jan. 21, 2003).

2. W. Va. Code § 18-29-2 provides for a grievance claim when an employer interferes with an employee's effective job performance.

3. It is well-established that, pursuant to W. Va. Code § 18A-2-9, "the principal shall assume administrative and instructional supervisor responsibility for the planning, management, operation and evaluation of the total educational program of the school or schools to which he is assigned." Long v. Logan County Bd. of Educ., Docket No. 95-23- 506 (Apr. 29, 1996). It is within the discretion of the principal to determine room assignments for teachers within a school. Unless the principal has acted in a manner which is arbitrary and capricious, such assignments will not be second-guessed by the Grievance Board.

4. Generally, an action is considered arbitrary and capricious if the decision maker did not rely on criteria that were intended to be considered, explained or reached the decision in a manner contrary to the evidence before it, or reached a decision that is so implausible that it cannot be ascribed to a difference in opinion. Bedford County Memorial Hosp. v. Health and Human Serv., 769 F.2d 1017 (4th Cir. 1985); Yokum v. W. Va. Schools for the Deaf and the Blind, Docket No. 96-DOE-081 (Oct. 16, 1996).

5. Grievant has failed to establish that Principal Smith interfered with her effective job performance, or that her decision to move Grievant's classroom was arbitrary and capricious.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of McDowell County. Any 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.

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**MARY JO SWARTZ**

**Administrative Law Judge**

**Dated: June 24, 2003**

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Footnote: 1

*The West Virginia State Board of Education intervened in the operations of the McDowell County Board of Education in December, 2001, at which time Dr. Mark A. Manchin was appointed Superintendent.*

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Footnote: 2

*Grievant claimed default at level three, but withdrew the claim at level four.*

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Footnote: 3

*Grievant is allergic to chalk dust.*