MELANIE ERLEWINE,

Grievant,

v. **Docket No. 04-DOE-160**

DEPARTMENT OF EDUCATION,

Respondent.

DECISION

Melanie Erlewine ("Grievant") initiated this proceeding on August 6, 2003, alleging regulations regarding maximum class sizes at the Industrial Home for Youth ("IHY"), where she is employed, had been violated. Grievant seeks as relief to have class sizes adhered to in the absence of unforeseen circumstances; that a written plan of correction be implemented, with State Department of Education ("DOE") approval, when limits must be exceeded; and that a stipend be provided to teachers who are required to teach in excess of 12 students. The grievance was denied at level one on August 11, 2003. A level two hearing was held on March 31, 2004, and the grievance was denied in a decision dated April 19, 2004. Level three consideration was waived, and Grievant appealed to level four on April 17, 2004. Grievant was represented throughout this proceeding by Chris Barr of the AFL-CIO, and Respondent was represented by counsel, Heather L. Deskins. In lieuof a level four hearing, the parties elected to submit this matter for a decision based upon the lower level record, supplemented by written proposals submitted by May 26, 2004. (See footnote 1)

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

Findings of Fact

1. Grievant is employed by DOE as a classroom teacher at IHY.

2. IHY is a maximum security correctional facility operated by the Division of Juvenile Services, housing juveniles between the ages of 12 and 21, who have been adjudicated guilty of various

criminal offenses. DOE is charged with providing educational programs for these “residents,” otherwise known as the “committed” population at IHY.

3. IHY also operates a diagnostic unit for juveniles who have been sent to IHY for a 45 to 60-day period for educational, psychological and behavioral evaluation. These students are housed and educated separately from the committed population.

4. Grievant teaches English and Social Studies classes to the committed population. Grievant has not had more than 14 students in any of these classes at any time. Often, Grievant has fewer than 12 students, because residents are taken out of class due to being locked down for discipline, or for medical or dental treatment.

5. Grievant also teaches a group of diagnostic classes. These classes have recently exceeded 12 students on a regular basis, due to a building being closed. In addition, the number or diagnostic students varies constantly, due to the short-term nature of these students' stays at IHY. There are only two classrooms available to teach thediagnostic students, so the number of those residents is divided each day for testing and instruction. It usually varies between 12 and 20 students per class, but the average per class is 15 students.

6. DOE's Office of Institutional Education Programs (“OIEP”), which is headed by Director Frank Andrews, has adopted an operational procedure regarding class sizes for institutional education programs. Pursuant to Operational Procedure 1-20, maximum class sizes for juvenile educational programs shall not exceed 12 students.

7. Operational Procedure 1-20 also provides that exceptions to the class size limit must be approved in advance by the Director of OIEP.

8. Security officers are stationed outside classrooms where the committed population is taught, where they can observe the classrooms through glass walls on the hallways side of each room.

9. On June 27, 2003, IHY Principal Katherine Blankenship requested written permission from Director Andrews to exceed the class size limit, due to two teacher vacancies which could not be filled for the summer, along with a slight increase in students. This request was approved orally by Director Andrews.

10. Director Andrews requested that Principal Blankenship provide him ongoing information regarding class sizes, and he has approved deviations from the policy. However, Grievant has not been required to teach a class of more than 12 committed students since June of 2003.

11. Although all teachers of diagnostic students have regularly had to teach approximately 15 students per class, Operational Procedure 1-20 was not designed to address those classes. Regularly employed classroom teachers at IHY were not originallysupposed to even provide diagnostic services, but they have been required to do so over the past two years, due to inadequate space at the facility. A state diagnostic center is currently under construction, which will employ teachers just for that purpose, which will alleviate the problem.

Discussion

In a non-disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2000); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88- 130 (Aug. 19, 1988). See W. Va. Code § 18-29-6.

Grievant contends that the mandatory class size limit implemented by the OIEP has been consistently violated at IHY without sufficient justification, particularly with regard to the diagnostic classes. She seeks to have Respondent held to a more stringent standard when class sizes need to be exceeded, along with compensation for classes that exceed 12 students.

West Virginia Code § 18-2-13f provides that DOE is responsible for educational programs for school-age juveniles housed within correctional institutions. That statute also provides that DOE shall employ a full-time director of educational services for these programs. The statute is silent regarding any specific procedures for the operation or implementation of such educational programs. However, DOE Policy 1471 provides that the state superintendent of schools has the authority to develop written implementation procedures to accomplish DOE's mission and goals for education in state correctional facilities. Although Grievant maintains that DOE has violated its own policy regarding the 12- student class size, the record clearly establishes that Principal Blankenship and Director Andrews have maintained constant communication regarding this issue, and deviations have been approved by the director, as required by the policy. .An administrative body must abide by the remedies and procedures it properly establishes to conduct its affairs.. Syl. Pt. 1, Powell v. Brown, 160 W. Va. 723, 238 S.E.2d 220 (1977). Although Operational Procedure 1-20 has been somewhat loosely applied at IHY recently, specifically with regard to the diagnostic classes, this was clearly an

unanticipated situation, which is currently being remedied by the construction of a new diagnostic center. Moreover, as testimony revealed (and as would be common sense), the diagnostic students are usually well-behaved, simply because their conduct is being assessed for adjudicatory purposes, so an increase in class size does not normally pose any specific problems. As to regular classes for the committed population, which Director Andrews testified the policy was directed to, the evidence shows that, not only has Grievant not personally been required to teach in excess of 12 students for nearly a year, but that when she did so, she only had 14 students. The undersigned is simply not persuaded that a very short-term addition of two students has posed any significant problems for Grievant in accomplishing her job duties, nor would it entitle her to the relief requested.

The following conclusions of law support the decision reached.

Conclusions of Law

1. In a non-disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2000); Holly v. Logan County Bd. of Educ.,Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code § 18-29-6.

2. .An administrative body must abide by the remedies and procedures it properly establishes to conduct its affairs.. Syl. Pt. 1, Powell v. Brown, 160 W. Va. 723, 238 S.E.2d 220 (1977). Respondent has followed the provisions of its policy regarding maximum class sizes at correctional institutions.

3. Grievant has failed to prove her claims by a preponderance of the evidence.

Accordingly, this grievance is **DENIED**.

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

Date: June 16, 2004 _____

DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

The parties were mistakenly informed that this matter had been assigned to ALJ Manning, but this was a clerical error. This grievance has not been reassigned.