REBECCA STALNAKER, et al.,

Grievants,

v. **Docket No. 06-21-063**

LEWIS COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Rebecca Stalnaker, Rebecca Hall, Debra Wyman, and Janet McIntyre ("Grievants"), employed by the Lewis County Board of Education ("LCBE") as teachers, filed a level one grievance on October 20, 2005, in which they alleged a violation of *W. Va. Code* § 18A-4- 14. For relief, they seek a full hour of individual planning time per day, and back pay for all time lost. After the grievance was denied at levels one and two, a level four appeal was filed on February 15, 2006. An evidentiary hearing was conducted in the Grievance Board's Elkins office on April 14, 2006. Grievants were represented by Mary Snelson, West Virginia Education Association Uniserv Representative, and LCBE was represented by Harry M. Rubenstein, Esq., of Kay Casto & Chaney. The grievance became mature for decision on May 22, 2006, the due date for submission of responses to proposed findings of fact and conclusions of law.

The following facts essential to the disposition of this case are undisputed, and may be set forth as findings of fact.

Findings of Fact

1. Grievants are employed by LCBE as teachers, and have been assigned to the Robert L. Bland Middle School, grades 5-8, at all times pertinent to this grievance. 2. As a result of curriculum changes in reading and anticipated changes in mathematics, LCBE amended the teaching schedule effective the 2005-2006 school year. The primary change was to increase the seventh and eighth grade English and math classes from forty-five to ninety minutes in length. The remaining classes: social studies, science, related arts and vocational classes are forty-five minutes in length.

3. Grievants are provided one daily, forty-five minute planning period. Additionally they are provided a forty-five minute team planning period. However, beginning in 2005, they are required to

use this time two days a week to provide tutoring to students. The remaining three days are used for parent conferences and planning.

4. The length of the usual class period at Robert L. Bland Middle School is forty- five minutes.

5. The level one grievance was filed on October 20, 2005, and the issue of whether the grievance was timely filed was raised by LCBE at level two of the grievance procedure.

Discussion

As this grievance does not involve a disciplinary matter, Grievants have the burden of proving their 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 (2004); *Holly v. Logan County Bd. of Educ*., Docket No. 96-23-174 (Apr. 30, 1997); *Hanshaw v. McDowell CountyBd. of Educ.,* Docket No. 33-88-130 (Aug. 19, 1988). *See W. Va. Code* § 18-29-6. "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 & Human Res*., Docket No. 92-HHR-486 (May 17, 1993).

Initially, LCBE asserts that the grievance was not timely filed since Grievant's were notified by Principal Grace Tallhammer on September 2, 2005, that they would be required to tutor during their team planning time, but did not file this grievance until October 20, 2005. Grievants argue that the grievance involves a continuing practice, and was therefore timely filed. The Grievance Board has previously determined that the alleged failure to provide adequate planning periods is a continuing practice which can be grieved at any time, but relief is limited to prospective relief and to back relief from and after fifteen days preceding the filing of the grievance. *Chapman*, *et al. v. Cabell County Bd. of Educ.*, Docket No. 01-06-036 (Nov. 21, 2001) *citing Martin v. Randolph County Board of Education*, 195 W. Va. 297, 465 S.E.3d 399 (1995), Accordingly, if proven, the failure to grant Grievants a sufficient planning period would be seen as a continuing practice, but the relief would be limited to fifteen days before October 20, 2005,

As for the merits of the case, *W. Va. Code* § 18A-4-14 provides as follows with regard to planning periods:

(2) Every teacher who is regularly employed for a period of time more than one-half the class periods of the regular school day shall be provided at least one planning period within each school instructional day to be used to complete necessary preparations for the instruction of pupils. Such

planning period shall be the length of the usual class period in the school to which such teacher is assigned, and shall be not less than thirty minutes. No teacher shall be assigned any responsibilities during this period, and no county shall increase the number of hours to be worked by a teacher as aresult of such teacher being granted a planning period subsequent to the adoption of this section (March 13, 1982).

Grievants argue that the seventh and eighth grade teachers should be considered separate and apart from the fifth and sixth grade teachers, as was done in *Gant v. Waggy*, 180 W. Va. 481, 377 S.E.2d 473 (1988). With that limitation, they assert more than half of the teachers are assigned ninety minute classes, and they are entitled to a planning period of the same duration. (See footnote 1) LCBE asserts that Grievants are provided a planning period equal to the usual class period in the school, and that the assigned use of the team planning time is an exercise of discretion that is in the best interest of the school in terms of meeting curriculum requirements.

The "usual class period for determining the length of the planning period pursuant to *W. Va. Code* § 18A-4-14(2) is the class period that most frequently occurs on any given day of a weekly class schedule." *Chapman*, *et al. v. Cabell County Bd. of Educ.*, Docket No. 01-06-036 (Nov. 21, 2001); *Miller v. Kanawha County Bd. of Educ.*, Docket No. 94-20-409 (Oct. 28, 1994). Math and English are the only ninety-minute classes, while science, social studies, vocational and related arts, physical education, music, art, and Spanish are all forty-five minutes in duration. Grievants' reliance on the number of teachers involved is misplaced. The length of the usual class period at Robert L. Bland Middle School is forty-five minutes, and the required length of the planning period should be and is the same. In addition to the foregoing findings of fact and discussion, it is appropriate to make the following formal conclusions of law.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievants have the burden of proving their 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 (2004); *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. "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 & Human Res., Docket No. 92-HHR-486 (May 17, 1993).

2. A change in the length of the planning period is a continuing practice, but relief is limited to prospective relief and to back relief from and after fifteen days preceding the filing of the grievance. *Chapman*, *et al. v. Cabell County Bd. of Educ.*, Docket No. 01- 06-036 (Nov. 21, 2001) *citing Martin v. Randolph County Bd. of Educ*., 195 W. Va. 297, 465 S.E.3d 399 (1995).

3. *W. Va. Code* § 18A-4-14 requires a teacher be provided an uninterrupted planning period within each school instructional day which is the length of the usual class period in the school. *Gant v. Waggy*, 180 W. Va. 481, 377 S.E.2d 473 (1988).

4. The "usual class period for determining the length of the planning period pursuant to *W. Va. Code* § 18A-4-14(2) is the class period that most frequently occurs onany given day of a weekly class schedule." *Miller v. Kanawha County Bd. of Educ.*, Docket No. 94-20-409 (Oct. 28, 1994).

5. Grievants have not met their burden of proof and demonstrated LCBE violated *W. Va. Code* § 18A-4-14(2) by allotting them forty-five minute planning periods.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of the Lewis 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 29, 2006

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SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

In fact, only Grievants Wyman and Hall are assigned ninety minute classes; however, Grievants Stalnaker and McIntyre assert they also need the longer planning period because they serve double the number of students taught by those teachers with the longer classes.