

TOM JEFFREY,
Grievant,

v. Docket No. 01-06-055

CABELL COUNTY BOARD OF EDUCATION,
Respondent.

D E C I S I O N

Grievant, Tom Jeffrey, employed by Cabell County Board of Education ("CCBOE" or "Board") as a third grade teacher, appealed this grievance to Level IV on February 22, 2001. His Statement of Grievance reads:

Violation of WV Code 18A-4-14 with regard to assigned responsibility to meet with grade level teachers and principal each Monday causing loss of grievant's individual planning period each week.

Relief Sought: Relief sought is to not be assigned such responsibility during scheduled planning period and compensation for lack of said planning period this school year. [\(See footnote 1\)](#)

This grievance was denied at Levels I and II. Grievant elected to bypass Level III and appealed directly to Level IV. By agreement, a Level IV hearing was held at CCBOE's board offices on May 8, 2001. [\(See footnote 2\)](#) Grievant could not attend due to a death in the family, but the parties agreed to allow Grievant's representative to make an additional statement for the record. This grievance became mature for decision on May 24, 2001, the due date for the parties' proposed findings of fact and conclusions of law. [\(See footnote 3\)](#)

Issues and Arguments

Grievant argues that requiring him to attend training and group planning during his forty-five minute planning period once a week or once every other week is a violation of W. Va.

Code § 18A-4-14, as that time is for his own use, and it is his decision how best to utilize his planning period. He also avers the time he spends in "Discussion Mondays", approximately 20 to 25 minutes, is not planning, but is staff development. Although Grievant was uncertain of the number of times he has been required to go to "Discussion Mondays" in the 2000-2001 school year, his request is for twenty-five to thirty minutes of compensation for each "Discussion Mondays" he attended this school year during his planning period time.

Respondent asserts the time spent in "Discussion Mondays" is planning, and useful to Grievant and his students in understanding how to implement a new, required reading program. Respondent maintains one of the reasons teachers receive planning periods is to assist students in the mastery of learning outcomes, and if Grievant did not attend these sessions, he would be required to plan the implementation of this new and demanding program on his own without the benefit of experts. Respondent also notes Grievant's planning period is longer than required by statute, and this school year "Discussion Mondays" are only held once every two weeks, and frequently on faculty senate days. [\(See footnote 4\)](#) Further, Respondent notes the normal length of time for "Discussion Mondays" is only a portion of Grievant's planning period. After a detailed review of the record in its entirety, the undersigned Administrative Law Judge makes the following Findings of Fact.

Findings of Fact

- 1. Grievant is employed as a third grade teacher at Salt Rock Elementary ("SRE"). He has a daily planning period of forty-five minutes. By statute, the school must insure that Grievant has a thirty-minute uninterrupted planning period each school day.**
- 2. During the 1999-2000 school year, Grievant was required to attend a weekly meeting called "Discussion Mondays" with other grade level teachers, the principal, and a literacy facilitator. The purpose of these meetings was to implement the "Balanced Literacy Program" to insure all students could read on grade level by the end of the third grade. This step was taken because of poor test scores.**
- 3. The Balanced Literacy Program originated in Australia, and CCBOE teachers, including Grievant, were unfamiliar with this approach.**
- 4. On "Discussion Mondays" the teachers are instructed how to teach the upcoming**

material. Open discussions are conducted, and questions are answered. These sessions usually lasted twenty to twenty-five minutes.

5. Grievant agrees the sessions are helpful in increasing his understanding of the material he is to teach in the subsequent weeks.

6. These "Discussion Mondays" continued once a week during the 2000-2001 school year, but on November 3, 2000, Superintendent David Roach suggested they be conducted every other week. Since that time at Grievant's school, "Discussion Mondays" have been held on days when students are not in attendance, but there is no assurance this schedule will always be the case. [\(See footnote 5\)](#)

7. Grievant requested an informal conference on November 1, 2000. Following this conference Grievant filed at Level I, and the grievance was denied at Level I on December 7, 2000.

Discussion

___As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his 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); Toney v. Lincoln County Bd. of Educ., Docket No. 99-22-046 (Apr. 23, 1999); Bowen v. Kanawha County Bd. of Educ., Docket No. 99-20-039 (Mar. 30, 1999); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997). 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 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.

W. Va. Code § 18A-4-14(2) states in pertinent part:

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 a result of such teacher being granted a planning period subsequent to the adoption of this section (March 13, 1982).

(Emphasis Added.)

The parties focus on different portions of the above-quoted statute. Grievant's focus is on the portion stating "[n]o teacher shall be assigned any responsibilities during this [planning] period." Grievant argues he cannot be assigned any duties during this time, even if it is, as he terms it, "staff development". [\(See footnote 6\)](#) In his testimony at Level II, Grievant testified "Discussion Mondays" were helpful, but that it was "school planning" not "his planning". Grievant believes his planning period is for him to plan for his students himself, and the time should be utilized as he decides "to write lesson plans, where I make material that I need for my students, where I grade papers[,] and take care of things for my classroom." Test. Grievant, Level II Hearing at 7.

Respondent puts forth two arguments. First, Respondent focuses on the portion of the above-identified Code which states the planning period is "to be used to complete necessary preparations for the instruction of pupils". Respondent avers "Discussion Mondays" are planning time. The purpose is to plan for the presentation of the Balanced Literacy Program for the upcoming weeks, and to discuss the problems encountered in the prior week. As stated by Patricia Ann Porter, the Title I Reading and Literacy Facilitator assigned to SRE, "the purpose of these sessions are (sic) for us really to have grade level planning where we can help the teachers on their grade level . . . so they may better implement the balanced reading program" The Literacy Facilitator utilizes the time in a variety of ways, depending on the needs of the group and the type of expectations for the week's course work. She may answer questions, model teaching behavior, review the material for the upcoming week, and/or lead discussions on the problems experienced the prior week. Respondent's second argument appears to be that Grievant still has a portion of his individual planning period every Monday, usually twenty to twenty-five minutes; thus, the overall time spent in group planning is de minimus.

Both parties have made sound arguments, and the undersigned Administrative Law Judge believes this is a close call. W. Va. Code § 18A-4-14 does not specify that the use of the planning period must always be solely up to the individual teacher. It says the planning period is "to be used to complete necessary preparations for the instruction of pupils". It is clear

"Discussion Mondays" are for the planning of "instruction of pupils." See Jones v. Lincoln County Bd. of Educ., Docket No. 96-22-493 (Aug. 12, 1997). If "Discussion Mondays" were not held, teachers would be left on their own to plan and implement this new, complex, and important program.

Additionally, the phrase cited by Grievant is not necessarily supportive of his argument. It states "[n]o teacher shall be assigned any responsibilities during this [planning] period." The responsibilities that occur on "Discussion Mondays" are planning. Grievant is not being asked to take bus, hall, or lunch duty. He is not being asked to conduct a study hall while he plans for his students, and he is not asked to cover in-school detention while he tries to complete his own work. He is actually being offered what seems to be a great help. An expert is assisting him to plan and implement a new, required, and important program.

Grievant is correct to an extent. His planning period should not be routinely used for training which is not directly related to the day-to-day teaching process. Each case of a similar nature should be judged on its own merits, as planning periods given by law are essential to teachers in their day-to-day organizing process. See Jones, supra. In this case, "Discussion Mondays" are clearly planning for teaching reading course content which would occur in that week or the following week.

The above-discussion will be supplemented by the following Conclusions of Law.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his 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); Toney v. Lincoln County Bd. of Educ., Docket No. 99-22-046 (Apr. 23, 1999); Bowen v. Kanawha County Bd. of Educ., Docket No. 99-20-039 (Mar. 30, 1999); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997). 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 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. W. Va. Code § 18A-4-14(2) states in

pertinent part:

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 a result of such teacher being granted a planning period subsequent to the adoption of this section.

3. The time Grievant spends in "Discussion Mondays" is planning time for the implementation of a new, required reading program. As such, it is appropriate for a portion of Grievant's regular planning period to be utilized for this planning and training.

4. Grievant has not met his burden of proof and demonstrated CCBOE has violated W. Va. Code § 18A-4-14 on this set of facts.

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 Cabell 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.

JANIS I. REYNOLDS

Administrative Law Judge

Dated: July 31, 2001

Footnote: 1

Although not clarified by the parties, it was assumed by the undersigned Administrative Law Judge that Grievant was not seeking compensation for the prior school year, 1999-2000.

Footnote: 2

This was the date selected by the parties.

Footnote: 3

Grievant was represented by Susan Hubbard of the West Virginia Education Association, and Respondent was represented by attorney Howard Seufer.

Footnote: 4

For example, as of the Level II hearing on January 18, 2001, Grievant had not been required to attend "Discussion Mondays" during his planning period since approximately November 11, 2000.

Footnote: 5

The record only reflects what occurred up to the middle of January. The plan was to continue to meet on Faculty Senate and other non-instructional days.

Footnote: 6

Grievant did not argue the "Discussion Mondays" were staff development at Level II, but made this argument for the first time at Level IV. As this argument is an additional theory of the case; Respondent did not object.