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IDA GROB

v.

DOCKET NO. 48-86-349-2

TAYLOR COUNTY BOARD OF EDUCATION

DECISION

Grievant, Ida Grob, had been employed by the Taylor County Board of Education as a classroom teacher since 1968 and was assigned to Grafton Middle School when, in November, 1986, Superintendent Ronald Dellinger recommended dismissal based on nineteen charges of immorality. The board approved the recommendation to be effective December 1, 1986. A level four hearing was scheduled for December 29 but due to numerous delays was conducted on April 28 through May 1, 1987.¹

¹By letter dated December 18, 1986 Perry Bryant, WVEA Consultant, requested a continuance of the hearing which was granted with no objection by the respondent. A hearing scheduled for January 22 was continued at the request of Thomas Rodd, an attorney retained on behalf of the grievant. On February 19th this examiner received a letter from the grievant requesting a continuance of the hearing scheduled February 24th due to health problems which had prohibited the preparation of her case and because she was consulting with new counsel. Both parties finally agreed to April 28, 1987.

The nineteen charges of immorality and the evidence presented regarding each of them are summarized as follows:²

1. In the spring of 1985, Ida Grob did attempt to persuade a fellow teacher to commit perjury at a hearing to be held before the West Virginia State Workers' Compensation Commission.

This charge was withdrawn by the respondent during the level four proceedings.

2. During the month of May 1986, Ida Grob did attempt to coerce an 8th grade female student under her supervision to commit perjury and to testify falsely at a hearing to be held before the West Virginia State Workers' Compensation Commission. Ida Grob caused a subpoena to be served upon the said 8th grade female student commanding the said student to appear before the State Workers' Compensation Commissioner at a hearing to be held May 27, 1986 at 9:00 a.m. to give the evidence on behalf of Ida Grob, after having asked the child to testify falsely. As a result of the request by Ida Grob to have the child testify falsely and the subsequent subpoena (sic) which was served on said child, the parents caused the hearing to be continued and thereafter demanded that their child be removed from the class of Ida Grob and have no further contact with her, with the request of the parents.

²The charges are identified by their original numbers but are addressed out of order according to related issues.

being honored³ by Kermit Bias, Principal of Grafton Middle School.

The student testified that the grievant had approached her at school, showed her a subpoena, asked her to appear at the hearing and to say that the grievant had sustained the injury during a physical education class. The student indicated to the grievant that she had not been present at the time of the injury but the grievant persisted in her request that she testify at the hearing.

The student's father, who is not native to the United States, testified that due to concern for his daughter and being unsure of legal matters, he contacted Nancy Fowler, Clerk of the Taylor County Circuit Court and a family friend. Ms. Fowler contacted school officials and others regarding the subpoena and requested that the hearing be continued. Upon the advice of the sheriff, the student's father requested that the student be removed from the grievant's class and began transporting her from school

³There appears to be two stories regarding the accident. According to the grievant, she fell off or across a chair while substituting in a physical education class. The second story related by Assistant Principal Livengood was that the grievant had told him that she had fallen in the school parking lot and asked if it would be "covered". Upon the advice of Principal Bias, Mr. Livengood documented that conversation by memorandum. The grievant denies this account and states that she had told Mr. Livengood that she had fallen in the gym.

himself as he was concerned for her physical well being and wished to avoid any repercussions which might affect her academically.

The grievant states that she never suggested the student lie and that she does not believe the student actually witnessed the injury but that she had discussed the incident and resulting impairment with her on more than one occasion and intended that the student testify to that extent. The grievant stated that she did not subpoena any of the students who were in the vicinity of the accident as they were seventh graders and she did not know their names.

3. During the spring of 1985, Ida Grob created a public disturbance on U.S. Route 50 in front of the Taylor County Medical Center located in Grafton, West Virginia, at approximately 8:45 p.m. Ida Grob was in her car on U.S. Route 50 with her son standing directly in front of the car pleading with his mother not to run over him. An employee at the Taylor County Medical Center and a patient witnessed this conduct. Out of fear from what was happening, they re-entered the Taylor County Medical Center and watched from a side window. Ida Grob saw them looking out the window, recklessly drove her car across the parking lot coming to a rest beneath the window from where the employee and patient were watching and thereafter in a deranged manner threatened, verbally abused and berated the employee and patient using extremely vulgar and profane language. The employee and patient out of fear for their safety contacted the Grafton City Policy Department and refused to leave the building prior to the arrival of a police officer.

The clinic employee testified that she had witnessed the grievant in her car, backing it up and driving it forward towards her son who was pleading with her not to kill him.⁴ When the grievant noticed her, a nine year old patient and the patient's mother watching from the clinic, she drove over to the window where they were standing and began ranting and raving and using extreme profanity at them. The witness stated that she and the others were so terrified that she called both her husband and the police to come to their assistance.

The grievant testified that she did drive over to the clinic and addressed the women in a "critical" manner as she perceived them to be eavesdropping on an embarrassing private matter. No one had contacted her regarding this incident until the dismissal.⁵

⁴The incident occurred in front of the grievant's home which is directly across U.S. Route 50 from the medical center. On cross examination the witness conceded that the grievant may have been trying to drive away and that her son was trying to stop her but reinstated her belief that the grievant was trying to run over him.

⁵At this time the grievant was the sole caretaker of her thirty year old son who has suffered from mental illness since approximately 1982. Her son is quite large in stature and this together with his erratic behavior has brought him much community notoriety. While many rumors regarding the grievant and her son may have contributed to her community reputation of being an immoral person, testimony regarding such rumors was not permitted unless it was related to specific incidents set forth in the dismissal charges. However, hearsay evidence of her general reputation was admitted as character was a crucial issue. See James v. W. Va. Board of Regents, 522 F. Supp. 217 (S.D. W. Va.) affirmed 448 F. 2d 785 (4th Cir. 1971); White v. Logan County Board of Education, Docket No. 23-86-361-1 and Rogliano v. Fayette County Board of Education, 317 S.E. 2d 220 (W. Va. 1986).

4. During the fall school term of 1986, Ida Grob threatened to kill a male student in her class. The father of the student thereafter contacted Kermit Bias, Principal of Grafton Middle School, and demanded that his son be removed from the class of Ida Grob and that Ida Grob have no further contact with his son.

6. During the fall of 1986, while in a class session, Ida Grob pointed her finger at one of the female students saying "Bang, you're dead. I wish it (my finger) was a real gun so that I could watch your blood run out on the floor." The father of the child thereafter contacted the administration of Grafton Middle School demanding that corrective action be taken.

The respondent determined that based on parental requests students would not be involved in the grievance hearing with the exception of the student named in charge number two. Therefore, testimony of two parents was offered in support of charges four and six.

Sam McDaniel, a substitute teacher and author of computer software, testified that his daughter had told him that when a student gave an incorrect response in the grievant's class she would go "Bang. You're dead." On one occasion she indicated regret that she didn't have a real gun because she could then shoot them and watch the blood ooze out. Mr. McDaniel indicated that his daughter had not perceived a physical threat but thought the comment about watching blood ooze out was a strange or

wierd comment for a teacher to make. He also felt it was a bizarre comment and later met with the assistant principal to report the incident.

Allen Collins, a city police officer, testified that his son informed him that during class the grievant had told him that she was going to kill him. Mr. Collins contacted Principal Bias and explained that due to his position as a police officer which had required some professional contact with the grievant's son, he thought that it would be a good idea to transfer his son out of her class.⁶

The grievant states that neither of these incidents or any repercussions were brought to her attention prior to her dismissal. She did not recall threatening any student and believes that the alleged comments were taken out of context from a hunting story which she enacts each year.

⁶The testimony of these two witnesses was admitted over the strenuous objection by counsel who asserted that his client had a right to confront the witnesses against her when they were clearly available. The testimony was permitted as the parents could restate their children's stories, evaluate their reaction to the situation and subsequent discussions with school administrators.

In an attempt to impeach the students' stories counsel for the grievant raised the issue of their academic progress. Mr. McDaniel stated that his daughter, usually an A/B student, received a deficiency notice at mid-semester and the grievant attributed it to a failure to turn in homework and take a mid-term examination. At a conference the grievant indicated some of the missing material had been found and the rest, if completed, would show up. The student received a semester grade of "B". Mr. Collins stated that his son's grades were mediocre.

5. Kermit Bias, Principal of Grafton Middle School, has been notified by the parents of many students at Grafton Middle School demanding that their children either be removed from the classroom of Ida Grob or that Ida Grob not be assigned as the teacher of their children due to their perception of her as being an immoral person and her reputation in the community as being an immoral person.

Principal Bias testified that during his seven years as chief administrator of Grafton Middle School he has received from twelve to fifteen requests annually to remove children from the grievant's classroom. The usual reason given for the request is the perception of the grievant as an unfit teacher. Both a local insurance agent and a pharmacist testified that they believed the grievant to be of bad moral character and had either removed their children from her class or asked in advance that they not be assigned to the grievant.⁷

The grievant stated that she had not been evaluated since 1981, that she was unaware of students being withdrawn from her classes for any reason other than schedule changes and that she had received no notice that her classroom performance had been anything less than satisfactory.

⁷These were but two examples, many others are noted throughout this decision.

7. On November 16, 1986, a fire occurred at the residence of Ida Grob located on U.S. Route 50 in Grafton, West Virginia. Members of the Grafton City Fire Department were called to the scene, as well as members of the Taylor County Sheriff's Department and other law enforcement officers as well as emergency medical personnel. Ida Grob threatened, harassed, impeded, and hampered the law enforcement officers, emergency medical personnel and fire fighters in the operation of their duties. Further, Ida Grob was abusive to by-standers and used extremely obscene and profane language directed at the by-standers.

Testimony was offered by two of the grievant's neighbors, a paramedic who is also a teacher, a deputy sheriff and a state trooper who were present and witnessed the grievant's behavior. According to these witnesses the grievant was screaming at them and others that she hated "every god-damned fucking person in Grafton", that the fire was "not a fucking side show and that everyone could go home", refused an offer of a "fucking jacket", requested that the firemen get "those bastards" off the property and advised the crowd that "you sons of bitches can go home now, you fucking bastards".

The grievant does not recall the exact words she may have used during the fire but states that such terms are not part of her daily language and that any such outbreak was attributable to the highly stressful situation and concern for her son's safety.

8. During the late evening hours of November 16, or early morning hours of November 17, 1986 Ida Grob appeared at the Grafton City Hospital Emergency Room with her adult son and on two separate occasions completely disrupted the operations of the Grafton City Hospital Emergency Room by screaming and using obscene and profane language directed towards the staff and patients of the Grafton City Hospital Emergency Room. As a result of her conduct law enforcement officers were summoned to the emergency room of the hospital.

An emergency room technician on duty the evening in question testified that both the grievant and her son were loud, disruptive and referred to "this Grafton fucking Hospital". The behavior was so disturbing to the patients that the witness summoned the city police for assistance.

The grievant testified she had taken her son to the emergency room for an injection to calm him down but left without receiving treatment when members of the law enforcement agencies appeared and ordered her and her son out of town. She has no recollection of what she may have said.⁸

9. On the morning of November 17, 1986 Ida Grob visited the drive-thru area of McDonald's Restaurant located in the Blueville Area of Grafton, Taylor County. While sitting in her vehicle at the window of the

⁸Grievant and her son apparently returned to the emergency room later that evening although it is not clear if either ever received treatment.

drive-thru area, Ida Grob proceeded to scream and verbally berate the employees working in McDonald's Restaurant, calling the employees obscene names and in general using obscene and profane language and either directly or indirectly threatened to burn the homes of the employees, placing the employees in great fear for themselves and their families. As a result of her fear, one of the employees thereafter contacted Kermit Bias, Principal of Grafton Middle School, demanding that her son who was scheduled to enter the class of Ida Grob be reassigned to another class. Further, an individual in the car immediately behind that of Ida Grob who heard and witnessed the threats and verbal abuse directed by Ida Grob at the employees of McDonald's Restaurant immediately contacted Kermit Bias, Principal of Grafton Middle School, relating what he had witnessed and advising that Ida Grob was an unfit person to be a school teacher in the school system of Taylor County, West Virginia.

Two McDonalds employees testified that they were on duty when the grievant and her son arrived on November 17. The employee assigned to the drive-thru window stated that the grievant instructed her to tell the other "bitches" inside the restaurant to shut up, they (the grievant and her son) had burned their house down and would burn the employees' houses. The grievant's son repeated that he would torch their houses. The inside waitress testified that she took the threat of burning her house seriously and as her oldest son was in a study hall which was occasionally monitored by the grievant, she called Mr. Smith at the board of education and spoke with Mr. Bias at which

time she demanded that her son not be in the grievant's class. A local businessman in the next vehicle testified that he heard the grievant refer to the waitress as a "bitch" and stated that her son repeatedly told the girl he would torch her home. When he approached the window to receive his order he observed the waitress to be upset and later that day called Principal Bias to report the grievant's behavior.

The grievant states that her son was verbalizing loudly while at the drive-thru but that she recalls speaking only to a supervisor. She believes the employees may have misunderstood a statement to the effect of "How would you feel if someone burnt your house down? How would you feel if I burnt your house down tonight?" (T. Vol. 4 P. 192)

10. On the morning of November 17, 1986 Ida Grob appeared at Crislip Motor Lodge located in Grafton, West Virginia, and after a verbal exchange, the manager of Crislip Motor Lodge caused the Grafton City Police Department to be notified and summoned to the area. The manager of Crislip Motor Lodge thereafter contacted Ronald Dellinger, Superintendent of Taylor County Schools, questioning the fitness of Ida Grob to be a teacher in the school system in Taylor County.

The office manager testified that the grievant had appeared at the lodge the day after the fire to rent a room. She was not given one at that time and returned the following morning at which time she stated that she had seen an individual leave, knew there was a vacancy and demanded a room. The manager called the police department to evict the grievant and later Superintendent Dellinger as she felt the children in the school were in danger.⁹ (T. Vol I. p. 112 - 121)

11. On November 18, 1986, John Grob, son of Ida Grob, was placed in the custody of the Sheriff's Department of Taylor County, West Virginia, and transported to West Virginia University Medical Center for purposes of an examination to be held in conjunction with a mental hygiene hearing. Ida Grob followed the police officers to the West Virginia University Medical Center. She thereafter directed her son, who is 29 years of age, to not answer any questions asked by the examining physician. She was thereafter physically removed from the examining room by a police officer and thereafter screamed through the door directing her son not to answer any questions or to cooperate with the examining physician, causing the police officer to have to further restrain her and physically remove her to a separate room of the hospital.

⁹ According to this witness the grievant asked for a room and told her that the supervisor at the Department of Human Services would be paying for the room as she was unemployed. She further stated that the supervisor had not called her regarding a room but even had the grievant offered cash she would not have given her a room, with or without her son, based upon her actions and appearance.

The Deputy Sheriff who assisted in the transportation of the grievant's son to the medical center testified that she was asked to leave the examination room but hesitated until he took hold of her arm at which time she voluntarily left the room but later shouted to her son not to say anything to the "bastards". The deputy requested that she not shout through the door but a few minutes later she began again and he escorted her to a room across the hallway.

The grievant stated that she did enter the examination room and instructed her son not to say anything as she had been previously advised that he was entitled to legal counsel at all stages, but that she left the room when requested.

12. On the evening of November 18, 1986, Ida Grob appeared before the Mental Hygiene Commissioner of Taylor County, West Virginia, and after the hearing at which her son, John Grob, was ordered to be transported to the Weston State Hospital for an evaluation, Ida Grob flew into a rage screaming, cursing and berating the officials present and officers involved in the hearing.

A deputy sheriff, a state trooper and a mental hygiene commissioner testified as to the grievant's outburst at the mental hygiene hearing; that she referred to them as "bastards" or "fucking bastards", used other profanity and stated "you'll want to put me away next".

The grievant states that she did not scream or curse during the hearing but it was possible that she may have used foul language afterwards as she was nervous and upset.

13. The immoral conduct of Ida Grob has disrupted the school community of Grafton Middle School.

14. The immoral conduct of Ida Grob has exhibited her as a person unfit to teach school children and be involved in influencing the values of children or shaping their thoughts and judgments.

15. The general conduct of Ida Grob and her reputation for being an immoral person has seriously jeopardized and threatened the environment of the school community of Grafton Middle School.

16. Ida Grob's immoral conduct has become the subject of local media coverage and other such notoriety that she has lost the respect and goodwill of the community to the degree of rendering her unfit to teach in the Taylor County School system.

17. Her immoral conduct has been in direct violation of accepted principles of right and wrong behavior and completely contrary to the moral code of the Taylor County community.

18. The Office of the Superintendent has been inundated with inquiries and concerns due to the immoral conduct of Ida Grob which has disrupted the orderly administration of the Superintendent's office, as well as the operation of the Taylor County school system.

19. Ida Grob has exhibited immoral conduct in her classroom. She has conducted classroom activities not in conformity with the moral code of the Taylor County community.

The board offered the opinion of approximately twenty individuals that the grievant has a general reputation in the community of having a bad moral character and being unfit as a teacher. These witnesses indicated that the grievant's reputation was based at least in part on rumors concerning the events listed in the dismissal charges and other matters; however, the board denies any responsibility for the creation of this reputation and notes that the grievant has brought public attention to herself through television interviews and newspaper articles which she instigated.

The grievant argues that the community perception of her has been greatly influenced by her son and that the actions stated in the charges are atypical and the result of prolonged and intense stress which has been alleviated with his institutionalization.

The grievant offered the testimony of thirty witnesses in rebuttal to the charges of immoral behavior. She was prepared to call many more witnesses on her behalf (counsel indicated more than eighty, less than one hundred) but was limited to thirty, for this purpose. Although many of these witnesses indicated that they knew the grievant to be a decent, honest woman and a good teacher it is noteworthy that several had little contact with her for many years prior to the dismissal. A substantial number were students, parents of students who knew her through their children, school personnel who had limited contact with her and relatives. The testimony of these witnesses could be accorded little weight for obvious reasons.

Three witnesses called by the grievant offered damaging testimony. Howard Ferris, a local attorney who had been involved in the mental hygiene hearings for the grievant's son, stated that he would not want his child in her class because of his educational concerns and because she appeared to be on the edge of instability at times.

Kathryn Magnifico, a teacher at Grafton Middle School, stated that she believes the grievant's son, through his behavior and reputation, has affected her ability to do her job by putting undue pressure on her as a mother and working person and affected her credibility with the students in that he would enter her

classroom and distract her from her job. When asked by the grievant's counsel if she would have any qualms about the grievant teaching her children the witness indicated that she would, as she believes, her reputation interferes with her ability to do her job. (T. Vol. III, pp. 51 - 52)

Dr. Rosemary Srebalus of the University Counseling Service at West Virginia University has served as counselor for the grievant since her dismissal and appeared as an expert witness. Based upon nine hours of counseling and the results of the Minnesota Multiphasic Personality Inventory, Dr. Srebalus determined that the grievant has been under extreme stress for a long period of time due in part to her decision to keep her son at home. Making the choice of home care to spare her son the humiliation of going to the state mental hospital was a considerable detriment to her mental health. (T. Vol. IV, pp. 70 - 71) Dr. Srebalus sees the grievant as being a strong individual who did not suffer a nervous breakdown under situations which might warrant such a response and who has subsequently pulled her life together by enrolling in college courses and maintaining herself; she shows no indication that she is unable to meet commitments or obligations at this time. Most importantly, Dr. Srebalus indicated her hope that the grievant will leave

Grafton. "I think it is my impression from hearing her talk that her son's emotional problems and the visibility of them have been far too great for her to be able to live comfortably in Grafton. If she were my client on an ongoing basis, I think I would do all I could to encourage her to pull up roots and find a new place to live." (T. Vol. IV, p. 106)

The grievant argues that the board of education has failed to meet the test set forth in Golden v. Board of Education, 285 S.E. 2d 665 (W. Va. 1981) and prove that the actions contained within the charges constitute immorality and/or to show a rational nexus between the conduct complained of and the duties which she performs. She asserts that evidence relating to community reputation cannot be relied upon as proof of immoral conduct as it is not relevant to the specific charges for dismissal but may only be used in determining the individual's fitness to teach. She further argues that the use of reputation as evidence of immoral conduct would render W.Va. Code, 18A-2-8 unconstitutionally vague and would authorize dismissal without

a showing of immoral conduct resulting in a deprivation of liberty and property interest, an arbitrary stigmatization and intrusion on academic freedom.

The grievant further argues that her behavior did not warrant termination particularly in consideration of her years of successful service in the public schools, the circumstances under which the behavior occurred and her contractual interest in continuing in her profession.

The grievant's final argument is that she was deprived of an improvement period as required by State Board of Education Policy 5300 (6)(a).

The respondent contends that the conduct exhibited by the grievant: abusive, vulgar and profane language witnessed by children, parents and other members of the community and the intimidation and coercion of a student to commit perjury at a Workers' Compensation hearing is behavior not in conformity with accepted principles of right and wrong behavior and contrary to the moral code of the community. Further, the grievant's behavior has destroyed her ability to act as a role model for impressionable

children, a primary occupational responsibility for a teacher, has resulted in numerous parents withdrawing their children from her classes and has contributed to and confirmed her general reputation throughout the community as being an immoral person unfit to be a teacher.

The respondent argues that the character of a teacher of children of immature years is a proper concern of those held responsible for their education and that the traditional manner of determining character has been by ascertaining the general opinion of the community concerning the general reputation of the party in question. The grievant has become the subject of such notoriety as to significantly and reasonably impair her capability to perform the responsibilities of a teaching position without any contribution on the part of school officials, but rather as a result of her own actions.

Finally, the respondent contends that the broad statutory grounds for dismissal include no definitions and that while the question of whether the behavior of grievant constitutes immorality has not been addressed by the West Virginia Supreme Court of Appeals, dismissal for such behavior has been upheld in many other jurisdictions as "conduct unbecoming a teacher", a category analogous to immorality.

W. Va. Code, 18A-2-8 authorizes a board of education to dismiss any person in its employment for immorality, an imprecise term which has been defined as conduct "not in conformity with accepted principles of right and wrong behavior and contrary to the moral code of the community....". Golden v. Board of Education of Harrison County, 285 S.E. 2d 665, 668 (W.Va. 1981). Disciplinary action for conduct outside the job is proper only where there is a proven "rational nexus" between the conduct and the duties to be performed. Golden, supra, Thurman v. Steel, 225 S.E. 2d 210 (W.Va. 1976).

In a departure from a strict application of Golden it has been held that disciplinary action may be taken when the conduct directly involves minor students and is patently inappropriate. This holding has been applied in situations involving a teacher who was dismissed for exposing his genitals to students in Miller v. Grand Haven Board of Education, 151 Mich. App. 412, 390 N.W. 255 (1986) and when a teacher was dismissed for permitting two sixteen year old students to consume alcohol on his premises, Coupeville School District No. 204 v. Vivian, 36 Wash. App. 728, 677 P. 2d 192 (1984). The clear impact of these decisions is that a teacher may be discharged on evidence that either his conduct indicates a potential for misconduct with a student

or that his conduct, while not necessarily indicating such a potential, has gained sufficient notoriety so as to impair the student relationship. There appears to be no requirement that both the potential and the notoriety be present in each case. Allison v. Kanawha County Board of Education, Docket No. 20-86-273-1.

This approach is entirely consistent with the widely accepted ideas that a teacher works in a sensitive area in a schoolroom for there he shapes the attitudes of young minds towards the society in which they live and that the State has a vital concern and must preserve the integrity of the school. Adler v. Board of Education, 342 U.S. 485, 493 (1952). Schools must teach by example the shared values of a civilized social order and teachers, like parents, are role models. The schools, as instruments of the State, may determine that the essential lessons of civil, mature conduct cannot be conveyed in a school that tolerates lewd, indecent or offensive conduct. Bethel School Dist. No. 403 v. Fraser, 478 U.S. _____, 92 L.Ed. 2d 549, 558 (1986). A teacher is held to a standard of personal conduct which does not permit the commission of immoral or criminal acts because of the harmful impression made on the students; the teacher has traditionally been regarded as a moral example for the students. Board of Education of Hopkins County v.

Wood, 717 S.W. 2d 837 (Ky. 1986). Allison and supra.

The Education Employees Grievance Board has followed this reasoning not only in the above-cited Allison case which involved a teacher giving a sixteen year old alcoholic beverages and performing oral sex on the student but also in Gary Copenhaver v. Raleigh County Board of Education, Docket No. 41-86-175-1 where a driver education and health instructor was suspended from his duties following his arrest and conviction for DUI; White v. Logan County Board of Education, Docket No. 23-86-361-1 which involved a teacher who made sexually suggestive comments and engaged in unauthorized bodily contact with female students; Rosenburg v. Nicholas County Board of Education, Docket No. 43-86-121-1 involved a bus driver dismissed for alleged sexual misconduct with a student both on and off the job; Pinson v. Cabell County Board of Education, Docket No. 06-87-100-1, a dismissal for physical and emotional abuse of children and Higginbotham v. Kanawha County Board of Education, Docket No. 20-87-087-1 where a teacher was dismissed after refusing to submit to a psychiatric examination.

Accordingly, the board's determination that the grievant's solicitation of false testimony from a student and use of extremely profane language, often at a shouting level and in public places, constitutes behavior which is not in conformity with accepted principles of right and wrong behavior and contrary to the moral code of the community must be upheld.¹⁰

The foregoing recitation and the following specific findings will serve as the findings of fact and the conclusions of law of this decision.

Findings of Fact

1. Grievant has been continuously employed by the Taylor County Board of Education as a teacher since 1968.

2. Since 1982 the grievant has been responsible for the care and welfare of her thirty year old son who suffers from serious mental health problems.

¹⁰It is unnecessary to address the Policy 5300 (6)(a) issue as that policy applies only to conduct that is correctable. Mullins v. Kiser, 331 S.E. 2d 494, 496 (W. Va. 1985); Mason County Board of Education v. State Superintendent of Schools, 294 S.E. 2d 435, 439 (W. Va. 1981); Samuel Rovello v. Lewis County Board of Education, Docket No. 21-86-081 and Alice Higginbotham v. Kanawha County Board of Education, Docket No. 20-87-087-1.

3. On November 25, 1986 Superintendent Ronald Dellinger recommended that the grievant be dismissed based on nineteen charges of immorality. The board of education approved the recommendation to be effective December 1, 1986.

4. The grievant is charged with soliciting false testimony from an eighth grade student at a Workers' Compensation hearing regarding an accident involving the grievant. While the grievant denies this charge and suggests that the student misunderstood her request, there is no apparant motive for the student to fabricate such testimony. On the contrary the student stated that she liked the grievant and would probably be considered the "teacher's pet". This situation would appear to make this student an ideal candidate for such a request. Additionally, the vice principal of the school testified the grievant had indicated to him that the accident had occurred in the parking lot. These factors along with the grievant's inability to recall much of what allegedly occurred and her testimony which was contradictory or indicative that she had been misunderstood by virtually all of the board's witnesses in the recited situations lends little credibility for her explanation of this charge and for all of her testimony.

5. Many citizens testified that they were afraid of the grievant and were concerned for their own safety and that of the children assigned to her classes. One witness called on behalf of the grievant expressed his opinion that she was bordering on unstable.

6. Twelve to fifteen parents per year requested that their children be removed from, or not assigned to, the grievant's class. The reason for these requests was usually the perception of her as an unfit teacher.

7. Grievant has engaged in classroom behavior perceived by her students as physical threats or extremely unusual (e.g., wishing to watch their blood ooze onto the floor) resulting in parental complaints.

8. During November, 1986 following a fire at her home the grievant engaged in physical and verbal behavior at the local hospital, at a motel and the West Virginia University Medical Center which required the intervention of law enforcement officers. During the same time an incident at McDonalds restaurant resulted in an employee calling school officials to express her concern for the safety of her son. Similar behavior had been exhibited in 1985 when she approached two women at the Taylor County Medical Center and so frightened them that the police were summoned.

9. Numerous witnesses testified that the grievant had a general community reputation as a person of bad moral character.

10. The witnesses appearing on behalf of the grievant could be accorded little weight as they were primarily students, parents who knew the greivant through their children, co-workers who had little contact with her, relatives and individuals with whom she had little contact with for many years prior to her dismissal. Three of her witnesses provided testimony considered damaging to her case.

11. The grievant has been the subject of several newspaper accounts and a television interview which has created great notoriety for her in the Grafton area. However, there is no indication that this publicity could be attributed to any action by the board.

12. The superintendent and principal at Grafton Middle School have received numerous complaints concerning the grievant and her ability to teach.

13. Grievant's unacceptable public behavior including the profuse usage of profanity has harmed her ability to function as a role model and affected her ability to function as a teacher.

14. There is no indication that the classroom behavior which frightened and caused concern for students and parents was correctable making state Board of Education Policy 5300 inapplicable in this situation.

CONCLUSIONS OF LAW

1. W. Va. Code, 18A-2-8 provides that a school board may dismiss an employee at any time for stated reasons, including immorality. This authority is to be exercised reasonably and for good cause shown by a preponderance of the evidence. DeVito v. Board of Education, 317 S.E. 2d 159 (W.Va 1984); Higginbotham v. Kanawha County Board of Education, Docket No. 20-87-087-1.

2. Immorality is defined as conduct not in conformity with accepted principles of right and wrong behavior and contrary to the moral code of the community. Golden v. Board of Education of Harrison County, 285 S.E. 2d 665 (W.Va 1981).

3. A teacher may be dismissed without direct proof of an adverse effect of the alleged misconduct where the conduct directly involves minor students and is patently inappropriate. Such conduct is presumed to have an adverse effect on the students, teachers and staff of the school. Allison v. Kanawha County Board of Education; supra, and White v. Logan County Board of Education, supra.

4. A teacher who solicits perjured testimony from a student, threatens and frightens students and townspeople, engages in

behavior and uses language determined to be unacceptable by the community, has engaged in immorality as a matter of law which renders her unfit to teach.

5. The board of education has satisfied the burden of proof constituting "immorality" as contemplated by W.Va. Code, 18A-2-8, and acted in good faith in attempting to preserve the integrity of the school system in Taylor County.

The grievance is therefore DENIED and the dismissal is affirmed.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Taylor County and such appeal must be filed within thirty (30) days of receipt of this decision. (W. Va. Code, 18-29-7). Please advise this office of your intent to do so in order that the record can be prepared and transmitted to the Court.

DATED September 1, 1987

Sue Keller
SUE KELLER
Hearing Examiner