WEST VIRGINIA EDUCATION EMPLOYEES GRIEVANCE BOARD
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ALICE HIGGINBOTHAM

v. Docket No. 20-87-087-1

KANAWHA COUNTY BOARD OF EDUCATION

DECISION

Grievant, Alice Higginbotham, was employed as a EMR-ISU classroom teacher at Stonewall Jackson High School until Friday, February 6, 1987, when she was sent home by principal Alvin Anderson after an incident in the cafeteria involving another EMR-ISU teacher. On Monday, February 9, 1987, superintendent Trumble notified grievant to report to a local psychiatrist for an examination and advised her that she was suspended with pay pending receipt of the psychiatric report; on February 25 grievant respectfully declined to submit to the examination. During this period principal Anderson became aware that the permanent record card of one of grievant's students had been altered and he concluded that grievant had performed the alteration. Accordingly, on March 3, 1987, superintendent Trumble informed grievant that a hearing would be conducted

on March 17, 1987, on the following charges:

1. Grievant's refusal to submit to a psychiatric examination as directed by the superintendent, and,

2. Coercing a student into grievant's car for the purpose of soliciting testimony from the student, and,

3. Retaliation against a special education student, David B., by altering his permanent record card.[1]

On April 8, 1987, at the conclusion of the hearing, a decision containing findings of fact and conclusions of law was rendered by the hearing officer along with a recommendation to superintendent Trumble that grievant's employment be terminated. The board of education adopted the recommendation of the superintendent and terminated grievant's employment; on April 14, 1987, grievant appealed to the Education Employees Grievance Board and evidentiary hearings were conducted on May 6, 7, 19 and 27, 1987.[2]

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[1] In the letter grievant was informed that at the hearing she could be represented by counsel, present any evidence she deemed necessary and to cross-examine witnesses testifying against her. Deputy superintendent David Acord was designated to conduct the hearing.

[2] A prehearing conference was held on May 6, 1987, to delineate the issues and resolve evidentiary and procedural questions created by the pendency of six grievances at the Education Employees Grievance Board (EEGB) level. These grievances had been pending in the EEGB office since December, 1985, and continued throughout this period by the parties; the grievances involved two suspensions, letters of reprimand and allegations of harassment.

A de novo hearing was conducted at level four and the only evidence submitted to the hearing examiner which had been presented at the March 17 hearing was the testimony of Cindy C., an EMI student who could not testify at level four. This testimony was transcribed but not presented to the hearing examiner until July 28, 1987, although stipulated by the parties. Memoranda and proposed findings of fact and conclusions of law were received from the parties on July 2, 1987.

At the prehearing conference and during and after the hearing counsel for grievant raised several substantive and procedural issues which were characterized as follows:

> 1. Whether the failure of superintendent Trumble to state grounds for the termination as enumerated in W.Va. Code, 18A-2-8 in the notice to grievant rendered the notice fatally defective.
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> 2. Whether the Kanawha County Board of Education failed to afford the grievant due process of law by denying her an opportunity to appear in opposition to her termination.
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> 3. Whether the Kanawha County Board of Education, in adopting the recommendation of the superintendent to terminate grievant's employment, denied grievant due process by acting upon that recommendation without having the record of the March 17 hearing.
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> 4. Whether State Board of Education Policy No. 5300 (6)(a) precluded termination upon any or all of the grounds in this grievance.
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> 5. Whether grievant's refusal to submit to a psychiatric examination constituted a proper basis for termination.
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> 6. Whether grievant did, in fact, coerce a student into her car to solicit testimony and, if so, whether that conduct constituted a proper basis for termination.[3]
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> 7. Whether grievant retaliated against a student, David B., by improperly altering his permanent record card. (Grievant's memorandum of law, pp. 2,3).

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[3] Counsel for the board concedes that grievant's alleged episodes with the two students would not, in and of themselves, constitute cause for termination but urges that the conduct was inappropriate and inconsistent with grievant's duty to preserve the student-teacher relationship. (Board's memorandum of law, pp. 8,9).

See W. Joseph Wyatt v. Marshall University, Docket No. 06-86-086 wherein a similar finding was made as to the effect of this type of conduct.

The hearing conducted on March 17, 1987, was upon the three specific incidents, supra, as well as upon grievant's "history of disciplinary problems" and for the stated purpose of receiving evidence on the question of whether the superintendent should recommend grievant's dismissal to the board of education. (Board Exhibit 16). Subsequent to the hearing the hearing officer made comprehensive findings of fact and conclusions of law, the pertinent portions of which are as follows:

> 32. Ms. Higginbotham was guilty of conduct which amounted to insubordination in her refusal to submit to a psychiatric examination after being directed to do so by Superintendent Trumble.
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> . . .
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> 34. Ms. Higginbotham's conduct toward student David B., including the alteration of his records to take away prior credit, amounted to willful neglect of duty.[4]

By letter dated April 9, 1987, grievant was advised that the board of education had adopted a motion accepting the recommendation of the superintendent to terminate grievant's employment and adopted by reference the findings of fact and conclusions of law authored by deputy superintendent Acord; a copy of the Acord recommendation was attached to grievant's letter (Board Exhibit 17).

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[4] Other alleged incidents evidencing an animosity between grievant and David B. included an incident on December 9, 1986, in which grievant allegedly attempted to deny David B. his lunch, grievant's obtaining a warrant for David B. on December 9, 1986, for alleged threats, grievant's obtaining a second warrant for David B. on December 18, 1986, for alleged threats, allegations that David B. had slashed grievant's tires, etc. Most, if not all, of these incidents had resulted in some sort of disciplinary measure and were the subject of pending grievances filed by grievant.

THE DUE PROCESS ISSUES

It is generally accepted that some measure of due process must be given before an individual may be deprived of a property or liberty interest unless a compelling public policy dictates otherwise. North v. West Virginia Board of Regents, 233 S.E.2d 411 (W.Va. 1977); Clarke v. West Virginia Board of Regents, 279 S.E.2d 169 (W.Va. 1981). The measure of pretermination due process required is flexible and will vary depending upon the particular circumstances; one test frequently used is a balancing of the employee's interest in continued employment against the interest of the State in the expeditious removal of an unsatisfactory employee, the avoidance of additional administrative burdens and the risk of erroneous termination. Loudermill v. Cleveland Board of Education, 470 U.S.532, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985); Luzader v. West Virginia University, Docket No. BOR1-86-345-2.[5]

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[5] On remand the district court in Loudermill held that due process required notice which was "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Loudermill v. Cleveland Board of Education, 651 F.Supp. 92, 94 (N.D. Ohio 1986). The Court also noted that since Ohio law provided for a full post-termination hearing all that was required was to determine whether the meeting gave Loudermill adequate notice of the charges and an opportunity to respond. See also, Pesce v. J. Sterling Morton High School District, 651 F.Supp. 152 (N.D. Ill. 1986).

In Luzader it was held that while the initial deprivation must be surrounded by some due process procedures these may be minimal if there are prompt post-deprivation hearing procedures assuring the employee a more full measure of due process.

Grievant was entitled to specificity of the charges to prepare a defense thereto, Guine v. Civil Service Commission, 149 W.Va. 461, 141 S.E.2d 364 (1965), but there has been no showing that counsel for grievant was surprised by any of the evidence or unaware of the nature of the charges. At the time of the instant hearing counsel had participated in or had access to the record of the evidentiary hearing before deputy superintendent Acord and no prejudice is apparent or has been shown in the form of the termination notice given to grievant. Fox v. Board of Education of Doddridge County, 160 W.Va. 668, 236 S.E.2d 243 (1977); David R. Allison, Jr. v. Kanawha County Board of Education, Docket No. 20-86-273-1.

The other alleged procedural irregularities were corrected by the complete and full de novo hearing conducted pursuant to W.Va. Code, 18A-2-8 at the Education Employees Grievance Board level. Golden v. Board of Education of Harrison County, 285 S.E.2d 665, 627 (W.Va. 1981); Gary Copenhaver v. Raleigh County Board of Education, Docket No. 41-86-175-1.[6]

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[6] W.Va. Code, 18A-2-8, as amended in 1985, provides a separate procedure in suspension and dismissal cases for the employee to proceed directly to the hearing examiner level without the necessity of a hearing before the board of education. Ostensibly, this grievance did not originate under W.Va. Code, 18-29-1, et seq., thereby setting in motion the various grievance levels, but was initiated pursuant to W.Va. Code, 18A-2-8 and a pretermination process to determine if cause existed to terminate and to afford grievant an opportunity to respond. No useful purpose would have been served to have an informal conference, etc. State ex rel. Board of Education v. Casey, 349 S.E.2d 436 (W.Va. 1986).

Deputy superintendent Acord and his report were available at the board meeting and no deprivation is discernible by virtue of the failure of the school board to have the transcript of the pretermination hearing available. Pettiford v. South Carolina State Board of Education, 62 S.E.2d 780 (S.C. 1950).

REFUSAL TO SUBMIT TO THE PSYCHIATRIC EXAMINATION

In order to evaluate and address the merits of this assignment of error it is necessary to review a series of incidents not otherwise germane to this grievance proceeding.[7] Specifically, grievant had been admonished by principal Anderson in September 1985 for disturbing an assembly with loud talking, for grabbing an EMI student by the shirt, shaking her finger in his face and screaming at him and for failing to carry out instructional activity as directed by the principal (Board Exhibit 1). On February 3, 1986, grievant was reprimanded for denying lunch to David B. in violation of board policy, (Board Exhibit 2), on February 19, 1986, for removing a book case from another teacher's room without her knowledge or permission (Board Exhibit 3)and on September 30, 1986, for failing to follow appropriate discipline procedures and removing materials from the principal's office without permission (Board Exhibit 4).[8]

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[7] At the prehearing conference and during the course of the instant hearing it was agreed that evidence concerning these incidents would not be considered by the hearing examiner except as to their relationship to the decision to request that grievant submit to the psychiatric examination. Because of the disposition of the grievance on this point no consideration whatsoever was afforded this evidence on the other two grounds of dismissal.

[8] Principal Anderson and vice principal Garland Barnhart also testified about another incident wherein, in response to a query by Mr. Anderson as to her absence from class, grievant responded that she would "dance on his (Anderson's) grave."

Grievant apparently had long standing difficulties with Messrs. Anderson and Barnhart since Anderson became principal in August 1985 and from at least April 1985 when, as acting principal, Barnhart had given her a poor evaluation and recommended she not be rehired. This evaluation had been subsequently destroyed by principal Dillinger.

As vice principal Barnhart was responsible for imposing student discipline and he was keenly aware of the problems between grievant and the student David B.; Barnhart had been at Stonewall Jackson for 31 years and had been vice principal for 21 years.

On February 6, 1987, principal Anderson saw grievant in his office on two occasions - once when grievant was there to discuss the placement of a student in a classroom on a trial basis, which occurred without incident, and again at the lunch period when grievant came into his office while he was talking on the telephone. Mr. Anderson motioned for grievant to wait and grievant commenced pacing the floor and becoming "animated". He concluded his telephone conversation abruptly and inquired as to grievant's problem, seeking to calm grievant. He could not discern the nature of her problem other than it involved Diane Wilder, another EMR-ISU teacher, and a "field trip". He repeatedly asked grievant to "be calm" and told her that they would discuss it the following day, whereupon grievant "threw" the letter on Anderson's desk stating "whatever you do doesn't make a difference - I'll do what I want to do."[9]

Witnesses in the cafeteria reported that grievant confronted Diane Wilder in an angry manner and was either poking or attempting to shove the memorandum into Ms. Wilder's dress. Ms. Wilder

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[9] After grievant left the office Anderson read the memorandum, directed to Diane Wilder which, inter alia, directed Ms. Wilder to either take all of her students on field trips or none of them; to stay in her room and do her job. Mr. Anderson had marked on his copy of the memo to "Talk with Alice and Diane about this. Alice was upset (?) No apparent reason." (Board Exhibit 5).

retreated, her hands in the air, while grievant attempted to hand the paper to her; it fell to the floor and grievant departed. This incident created much commotion in the cafeteria and was the subject of conversation and embarrassment to those present.[10]

Ms. Wilder proceeded to Mr. Anderson's office in a "stunned" and "shaking" condition and upon learning of the incident he requested that Ms. Wilder, Mr. Barnhart, Mr. Siesay and others reduce the details of the incident to writing. Mr. Anderson proceeded to grievant's classroom and observed grievant as "calm". After an initial investigation Mr. Anderson telephoned Mr. Joe Beavers, assistant superintendent for secondary education, who recommended that grievant be sent home immediately and a substitute teacher arranged for her classes. Mr. Anderson prepared a memorandum to Dr. Trumble on February 6, 1987, describing the incident in the cafeteria and attached the written statements of the witnesses (Board Exhibit 6). On Monday, February 9, 1987, Dr. Trumble convened a meeting with Messrs. Anderson, Beavers and two attorneys, Gregory W. Bailey, staff attorney, and William H. Courtney, director of employer/employee relations. Mr. Anderson related the details

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[10] Several students made inquiry to Mr. Barnhart about the incident and Benson M. Seisay, a special education ISU substitute teacher at Stonewall Jackson since August 1986 and an African national, was embarrassed because he was reared in a culture which had respect for teachers, where not only did "students respect teachers but teachers respect teachers." He told Mr. Barnhart that the incident was a "disgrace to the profession."

of the cafeteria incident and other incidents involving grievant and it was decided that Dr. Trumble should require grievant to be examined by a psychiatrist before resuming her teaching duties to ascertain if grievant might have some emotional problem which would interfere with her ability to function as a teacher.

On February 9, 1987, Gregory Bailey, staff counsel, prepared a confidential letter to Ralph S. Smith, Jr., M.D., a psychiatrist, noting that grievant's recent behavior suggested that she might be suffering from an emotional or mental disorder and, in order to allow Dr. Trumbleto make informed decisions as to grievant's employment status, an evaluation and opinion was requested on the following questions:

> 1. Does the impairment affect the teacher's ability to teach, to discipline, or to associate with students?
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> 2. Is the teacher currently able to render consistent and effective services as a teacher?
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> 3. Would the condition impair student-teacher relationships?
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> 4. Would the condition cause a description (sic) of the educational process?
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> 5. What is the recommended treatment and prognosis? (Board Exhibit 14).

On the same day, February 9, 1987, Dr. Trumble wrote a confidential letter to grievant directing that she submit to an examination by Dr. Smith and advising her that until further notice she was suspended with pay; that upon receipt of a report from Dr. Smith she would be provided with further notice concerning her employment status (Board Exhibit 13).

By letter dated February 25, 1987, grievant respectfully declined to be examined by the psychiatrist chosen by Dr. Trumble and noted that:

> I feel that this action simply reveals the administration's predisposition to judge these matters before they are fairly heard by the appropriate body. Further, I feel that this action is a harassment technique and resent those implications.
> Finally, I feel such action is not warranted by law. (Board Exhibit 15).

Counsel for the grievant contends that there is no authority in West Virginia requiring a teacher to submit to a psychiatric examination for any reason and that even those States which authorize such an examination by statute have enacted safeguards to protect the rights of the affected employee;[11] that the school board personnel apparently knew Dr. Smith personally and that it was a "set up" from the very outset. Counsel also contends that, apart from the absence of statutory authority, there is no factual basis for a psychiatric examination and that no one appeared to be very upset about the cafeteria incident until principal Anderson and the "High Level Committee at the Board office parlayed the event

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[11] One of the cases cited by counsel, McNamara v. Commissioner of Education, 80 A.D.2d 660, 436 N.Y.S.2d 406 (1981), held that the board had the authority to require the teacher to complete a psychological test under New York law or to suspend her without pay until she submitted to a complete psychological examination. New York law also permits the school officials to appoint the doctor of their choice. Claim of Hirsh, 510 N.Y.S.2d 728 (1987).
New York is one of the states having statutory authority for such procedure and Dr. Trumble testified that Minnesota, where he served previously, had such statutory authority.

into a dismissal" [12] (Grievant's memorandum, pp. 3-8).

Counsel for the school board acknowledges that there is no specific provision in West Virginia law requiring a school employee to undergo such an examination upon the direction of a superintendent but contends that our law clearly considers mental and emotional fitness as an indispensable element of the general qualifications and competency of one to be a teacher; that a certification to teach cannot be granted to a person who is not mentally and emotionally qualified to perform the duties of a teacher, citing W.Va. Code, 18A-3-1.[13] It is urged that the Legislature would not have

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[12] Counsel for the school board denies that there was any evidence of a "set-up" and the only oral communication with Dr. Smith was by George Manon, a board employee, who telephoned Dr. Smith's office to assure that his fee for the appointment would be paid irrespective of grievant's attendance.

Counsel notes that if grievant truly feared a pre-ordained and prejudicial result of the examination she could have filed a grievance seeking the right to be examined by a psychiatrist of her choosing with the report to be considered along with the report of Dr. Smith; that she should have obeyed Dr. Trumble's directive and grieved later if she thought the result was unfair and,having failed to do this,she was guilty of insubordination (School board's memorandum, page 7).

[13] Counsel cited Hamburg v. North Penn School District, 86 Pa. Cmwlth. 311, 484 A.2d 867 (1984) for the proposition that "incompetency" as used in the dismissal statute encompassed deficiencies in personality, composure, judgment and attitude which have a detrimental effect upon a teacher's effectiveness. See, Pinson v. Cabell County Board of Education, Docket No. 06-87-100-1, for a similar holding by the Education Employees Grievance Board. In Pinson the teacher was permitted to remain in the fourth grade classroom in spite of obvious emotional problems and several children suffered emotional injury as a result thereof.

Counsel also cites W.Va. Code, 18A-3-6, which provides for revocation of a teaching certificate for any mental defect which would render a person unfit for the proper performance of the duties of a teacher.

required a showing of mental and emotional fitness before one could receive a teaching certificate if those factors were not considered to be an integral part of the overall competency of a teacher; that a defect in either mental or emotional fitness must be deemed to constitute incompetency as grounds for dismissal contemplated by W.Va. Code, 18A-2-8. Counsel concludes that the evidence in this case should have communicated to any reasonable person that grievant's behavior was becoming quite bizarre and sufficient to at least give rise to the question of whether grievant was mentally or emotionally able to carry out her duties, especially where she was dealing with special education students whose emotional vulnerability and needs are greater than those of the average student (School board's memorandum, pp. 2-7).[14]

Clearly, the private interest of grievant to continue teaching free of any stigma flowing from submitting to a psychiatric examination or suffer disciplinary measures for refusal to submit is a substantial interest, Lombard v. Board of Education, 502 F.2d 631 (2nd Cir. 1974), cert. denied, 420 U.S.976 (1978), and must be balanced against the public interest of school officials to preserve

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[14] None of the school board participants were qualified to render an opinion as to the emotional state of grievant during this period and counsel for the board noted that this could not be determined without the aid of an expert in the field of mental health, citing Board of Trustees of Placerville School District v. Superior Court, 79 Cal.Rptr. 58, 59, 274 Cal.App. 2d 377 (1969).

the safety and welfare of students. In such a situation Courts generally find a paramount interest in the safety and welfare of school children and therefore an overriding interest. Child Protection Group v. Cline, 350 S.E.2d 541 (W.Va. 1986).[15] Accordingly, under the circumstances, superintendent Trumble had the inherent and implied authority to direct grievant to undergo a psychiatric examination and her refusal to do so constituted sufficient cause for dismissal in accordance with W.Va. Code, 18A-2-8.[16]

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[15] In the Cline case the Court reluctantly overrode the rights of privacy of the employee, a school bus driver, noting, at page 545 that:

> The scales weigh heavy on both sides with some factors weighing for Mr. Roberts and some for the parents. There is no question that disclosure would cause an invasion of privacy. An individual's medical records are classically a private interest. Further, it is difficult to imagine an item more potentially embarrassing than individual psychiatric reports...
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> Nevertheless, we believe that the parents of the children assigned to Mr. Roberts' bus have such a compelling interest in his medical condition. Mr. Roberts' statements and actions in front of the children raise serious concerns about his ability to safely pilot his school bus...In order to make an informed decision as to allow Mr. Roberts to drive their children to school, the parents need more than short, ambiguous quotes from his psychiatrists. The parents deserve to see all of the evidence of Mr. Roberts' condition.

Cf. West Virginia Department of Human Services v. Boley and Fayette County Board of Education, No. 17032, decided by the Supreme Court of Appeals on June 3, 1987.

[16] For the same considerations set out in this discussion it is unnecessary to address the Policy 5300(6)(a) and 5310 issues since those provisions apply 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). Cf. Mott v. Endicott School District No. 308, 713 P.2d 98 (Wash. 1986).

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

FINDINGS OF FACT

1. Grievant was employed as a special education EMR-ISU teacher at Stonewall Jackson High School until February 6, 1987, when she was sent home by principal Anderson for engaging in a physical confrontation with another teacher, Diane Wilder, in the school cafeteria during the lunch period. This confrontation occurred before a large number of students and staff who were dining in the cafeteria and was the cause of much consternation. The details of that incident are set out in the body of this decision and will not be reiterated in these findings.

2. As a consequence of the cafeteria incident and other prior incidents involving grievant and/or students and staff members, principal Anderson prepared a memorandum to Dr. Trumble, superintendent of schools, in which he expressed the opinion that grievant was "very unstable, volatile, and is having some serious emotional problems." On February 9, 1987, Dr. Trumble convened a meeting in his office composed of principal Anderson, assistant superintendent Beavers and two school board attorneys, to review the events leading up to and culminating in the incident in the cafeteria

on February 6, 1987. It was concluded that Dr. Trumble should require that grievant be examined by a psychiatrist before resuming her teaching duties to determine whether grievant might be suffering from some emotional problem which would prevent her from functioning as a competent teacher. Accordingly, Dr. Trumble directed the staff to prepare a notice of suspension and a directive to grievant that she undergo a psychiatric examination and to select a psychiatrist. Gregory Bailey selected Dr. Smith for the examination and wrote him a letter on February 9, 1987, delineating the areas of concern expressed by the school officials. There is no evidence of collusion or other impropriety in the decision to direct grievant to undergo the psychiatric examination or in the selection of the psychiatrist.

3. By letter dated February 9, 1987, Dr. Trumble directed grievant to report to Dr. Smith for an examination at a time to be set by Dr. Smith and advised her that she was suspended with pay pending receipt of a report from Dr. Smith. By letter dated February 25, 1987, grievant "respectfully" declined to undergo any such examination, noting that the action was an harassment technique.

4. During this period Jim Scherr, a counselor at Stonewall Jackson High School, reported to principal Anderson that the permanent record card of one of grievant's students, David B., had been improperly altered and an investigation was undertaken. Because

of the personal animosity which had existed between grievant and David B. for some time and other circumstantial evidence it was concluded that grievant had altered the record; on March 3, 1987, Dr. Trumble informed grievant that because of her refusal to submit to a psychiatric examination and the alteration of the permanent record card he was initiating proceedings which could result in the termination of her employment. A hearing was held on March 17, 1987, to receive evidence as to whether Dr. Trumble should recommend grievant's dismissal to the board of education. At this hearing both sides were represented by counsel of their choice, testimony was taken and grievant's representative was permitted to cross-examine the witnesses against grievant. No objection has been made to the conduct of that hearing and none is apparent.

5. The evidence adduced before the hearing examiner concerning grievant's behavior justified the direction by Dr. Trumble that grievant undergo a psychiatric examination to ascertain her emotional fitness before resuming her teaching duties. The appropriate school officials and the parents of students attending Stonewall Jackson High School have a compelling interest in the mental condition of teachers at the school, which interest overrides the private interest of grievant to continue teaching free of any stigma which might flow from a disciplinary measure attributable to mental unfitness. Each case will be decided upon its own merits and the decision to compel such an examination will be upheld upon a showing of need and in absence of a showing of abuse of discretion or arbitrariness. There is no evidence that the decision in this grievance was arbitrary or capricious.

CONCLUSIONS OF LAW

1. W.Va. Code, 18A-2-8 provides that a school board may suspend or dismiss an employee at any time for stated reasons, including incompetency, insubordination and willful neglect of duty. 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); Curtiss Pinson v. Cabell County Board of Education, Docket No. 06-87-100-1.

2. As used in W.Va. Code, 18A-2-8, "incompetency" includes any mental or emotional condition which would render a teacher unfit for the proper performance of his/her duties as a teacher and encompasses deficiencies in personality, composure, judgment and attitudes which have a detrimental effect upon the teacher's students. Hamburg v. North Penn School District, 86 Pa. Cmwlth. 371, 484 A.2d 867 (1984); Curtiss Pinson v. Cabell County Board of Education, Docket No. 06-87-100-1.

3. On the basis of the information brought to the attention of superintendent Trumble he had reasonable cause to question the emotional stability of grievant and under the circumstances in this case had the implied authority to require grievant to submit to an examination by a psychiatrist; the refusal of the grievant to submit to such an examination constituted insubordination as contemplated by W.Va. Code, 18A-2-8.

4. The implied authority of a county school superintendent to direct a teacher to submit to a psychiatric examination must be exercised reasonably and only upon a showing of just cause; each case will be resolved on its own merits and must reveal that the action was not arbitrary or capricious.

Accordingly, the grievance is DENIED and the termination of grievant's employment is affirmed.

Either party may appeal this decision to the Circuit Court of Kanawha County and such appeal must be filed within thirty 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.

Leo Catsonis

LEO CATSONIS

Chief Hearing Examiner

Dated: August 12, 1987