



REPLY TO:
111 - 19th Street
Wheeling, WV 26003
Telephone: 233-4484

Members
James Paul Geary
Orton A. Jones
David L. White

**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**
ARCH A. MOORE, JR.
Governor

Offices
240 Capitol Street
Suite 508
Charleston, WV 25301
Telephone: 348-3361

SUELLEN SHAW

v.

Docket No. 25-87-039-3

MARSHALL COUNTY BOARD OF EDUCATION

DECISION

Grievant, Suellen Shaw, is employed by the Marshall County Board of Education as a third grade teacher at Cameron Elementary School. On November 10, 1986 she filed a level one grievance alleging harassment and cruel and unusual emotional punishment on the part of her principal when he presented her with an improvement plan on that date. The grievance was denied at levels one and two; the board of education reviewed the record at level three and affirmed the decision below. A level four appeal was filed February 20, 1987 and submitted for a decision on the existing record.¹

¹A level two hearing was conducted January 21, 1987 and the transcript of the proceedings was received by the undersigned hearing examiner in early March, 1987. Neither party submitted proposed findings or legal argument for consideration at level four.

The record reveals extensive testimony by grievant at the level two hearing and much of her factual data is laced with her impressions and feelings about the events that occurred from the first week of school until November 10, 1986. Basically, the essential facts giving rise to the grievance are not in dispute.

Grievant's principal of eight years during her tenure at Cameron Elementary gave her a handwritten improvement plan on November 10, 1986. The principal was aware that this was one day before she was to go on an extended leave of absence to undergo major surgery.

The grievant conceded that the principal had the discretionary authority and probable cause to compile the improvement plan but questions the manner in which the plan was written and presented to her.² First, she contends that when the principal presented her the plan, instead of summoning her to the privacy of his office he directed her to the library, a highly public area in the school where others could see and hear what was transpiring. Additionally, she asserts that the language of the plan was overly harsh and offered little practical help in improving the cited performance. Moreover, since she had only one day left to teach before her medical leave of absence, there was no time to implement an improvement program.

²For the purposes of this decision it would suffice to state that the content of the improvement plan related to several instances when grievant had raised her voice to discipline students. The school does not have self-contained classrooms, rather the rooms for instruction and other functions are "pods" with no walls or doors. Accordingly, classroom disruptions or overly loud voices can be readily heard by others.

Grievant also related several incidents that occurred prior to November 10. She stated that when Principal Simms had discussed the matter of her voice level at an earlier time he treated her in an angry, unpleasant fashion and made no effort to keep the encounter private, rather, he approached her in a highly visible area of the school. Another incident occurred at the beginning of school, she said, whereby she was scolded for helping the school secretary. Although two other teachers were involved only she was reprimanded and she believed the principal was "dumping" on her because the secretary, grievant's sister, had recently filed a grievance.

Grievant maintains that there would have been no grievance filed had the principal acted in a more humane and professional manner regarding her shortcomings during the period in question. Her position is that his behavior and actions added to the distress she was already experiencing facing major surgery and exacerbated by not yet having her substitute teacher designated and instructed.³

These series of events and the untimely presentation of the improvement plan, grievant alleges, amount to harassment.⁴

³Grievant believed that the principal was unduly delaying the selection of her substitute and she expressed concern that her students would not be well-served as a result.

⁴W. Va. Code, 18-29-2(n) defines harassment as, "repeated or continual disturbance, irritation or annoyance of an employee which would be contrary to the demeanor expected by law, policy and profession."

Grievant's level four filing states that the "relief sought is an acknowledgement by the principal that his actions were ill timed and created undue stress for the grievant."

Principal Simms admits that he probably did not realize grievant's emotional state when he presented the improvement plan but he felt the situation in grievant's classroom demanded immediate attention. He conceded that the cited performance deficiency that precipitated the improvement plan had not occurred prior to the present school year nor after grievant's return to her classroom in January, 1987.⁵ Mr. Simms denies that he intended to distress or harass grievant at any time or in any respect.⁶

The testimony adduced at the level two hearing reflects that some measure of antagonism existed between grievant and her principal during the period of time prior to November 10. Both demonstrated spurts of strained behavior during some of their interpersonal encounters. Grievant's behavior was somewhat understandable given the extenuating circumstances attendant to her imminent and serious surgery. Principal Simms behavior, however, was undoubtedly insensitive and counterproductive under the circumstances. It was also evident from the testimony that the stresses experienced by grievant prior to her surgery were

⁵It is noted that none of grievant's prior evaluations ever cited "needs improvement" in any performance area. Additionally, grievant felt that the principal's January 6, 1987 addendum to the improvement plan was much more constructive and acceptable than the originally tendered plan.

⁶Although Simms did not refute grievant's testimony about his demeanor during their encounters, he related some "testy" behavior on the part of grievant which she in turn did not deny.

resolved and an aura of guarded cooperation and professionalism existed between grievant and her principal at the time of the level two hearing in late January, 1987.

In addition to the foregoing recitation, the following findings of fact and conclusions of law are appropriate.

FINDINGS OF FACT

1. Grievant is employed by the Marshall County Board of Education and has taught third grade for eight years at Cameron Elementary School.

2. Sometime after the beginning of the 1986-87 school year grievant was scheduled for major surgery and would be going on a medical leave of absence during the early part of November, 1986.

3. The probative evidence in this grievance is that while grievant was waiting to enter the hospital, she did raise her voice to students in her classroom and elsewhere. She had no prior history of similar difficulties with her students.

4. There were several encounters between grievant and her principal, Wayne Simms, relating to her voice level and other matters in which each of them did not behave in an altogether pleasant, professional manner.

5. On November 10, 1986 one day before grievant was to begin her medical leave of absence and in a public area of the school, Mr. Simms presented grievant with an improvement plan citing "misuse of assertive discipline within your classroom." Although the wording in the document was strong, there was no accusation of "child abuse" but grievant interpreted it in that manner. However, the plan contained no constructive remedy other than grievant "must stop" the behavior and presented no time lines for implementation. Grievant was very upset and filed a grievance on that date.

6. Upon grievant's return to school the principal presented an addendum to the plan which grievant believed was more "palatable" and constructive. There have been no more difficulties in grievant's behavior with her students.

7. Although Principal Simms exhibited poor judgement and a lack of sensitivity to grievant during several encounters with her from the beginning of the 1986-87 school year until November 10, 1986, the evidence does not support a finding that his actions were harassment as a matter of law.

CONCLUSIONS OF LAW

1. Harassment is defined as repeated or continual disturbance, irritation or annoyance of an employee which would be contrary to the demeanor expected by law, policy and profession. W.Va. Code, 18-29-2(n).

2. Grievant has failed to prove by a preponderance of the evidence that the less than exemplary behavior of her principal rose to the level of harassment as contemplated by law.

Accordingly, the grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Marshall 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:

August 17, 1987



NEDRA KOVAL
Hearing Examiner