



**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

**JAMES A. WHITE**

**v.**

**Docket No. 23-86-361-1**

**LOGAN COUNTY BOARD OF EDUCATION**

**DECISION**

Grievant, James White, was employed by the Logan County Board of Education in 1984 and assigned to Man High School as a French and English teacher. By letter dated November 7, 1986, Superintendent of Schools Sentelle advised grievant of his suspension pursuant to W.Va. Code, 18A-2-8 for immorality, incompetency and intemperance. On November 24, the Logan County Board of Education adopted Dr. Sentelle's recommendation to terminate employment for the following reasons:

1. About one month ago at Man High School you wilfully placed your hand on the buttocks of Sherry Stepp, a minor and student at the school. This was witnessed by Mary Ann Pruitt, another student. You also made suggestive remarks to the Stepp child as to her age, and dating habits. You solicited a visit by her to your private apartment.
2. You have missed twenty days of school already this year. You are unable to teach effectively with the poor attendance you have had on the job. This is a consistent pattern.

3. You misrepresented your credentials to us on your application in failing to report your most recent professional experience. While you reported teaching a summer school in Lee County, Virginia, in 1970, you failed to include your teaching at Iaeger High School in 1971-74 and Iaeger Intermediate for 4½ months in 1974-75. This information would have determined your classification for salary purposes. (Employer's Exhibit 2)<sup>1</sup>

Upon reviewing the evidence it is apparent that the only viable ground to be considered in this grievance is the charge of "immorality", which is predicated primarily on grievant's sexually suggestive conduct with a student.<sup>2</sup> More specifically, Sherry Stepp is sixteen years of age and enrolled in the eleventh grade at Man High School.

---

1

In the November 7, 1986, letter grievant was advised that he had a right to a hearing by the board of education but instead grievant requested a level four hearing before the Education Employees Grievance Board.

Counsel for the grievant and the board agreed to January 2 as a hearing date and then rescheduled the hearing for January 22; the hearing was again mutually continued as a result of inclement weather and reset for February 5, 1987. Findings of fact and conclusions of law were filed by counsel on February 23, 1987.

2

The "absenteeism" charge was never brought to grievant's attention by evaluation or otherwise except via a letter dated February 6, 1986, from Principal Kerley. However, Mr. Kerley did not place the letter in grievant's personnel file or pursue it in any manner as required by Policy 5300 or otherwise. Wilt v. Flanigan, 294 S.E.2d 189 (W.Va. 1982); Williams v. Roane County Board of Education, Docket No. 44-86-160-1.

There was no evidence whatsoever of "intemperance" and evidence of the "misrepresentation of credentials" charge was inadequate as a matter of law.

She had not known grievant prior to enrolling in his French II class in September, 1986, and testified that initially grievant began making personal inquiries into her social affairs such as how often she dated, how late she was permitted to stay out, whom she dated, etc.<sup>3</sup> Ms. Stepp eventually told grievant to "mind his own business" and about September 15 grievant told her that he had a real nice apartment in Logan and that she should come see it. On another occasion Ms. Stepp had received a "C" as one of her grades and grievant made it an "A"; he told her "if you want an A you got to play."

Ms. Stepp had decided to ignore these remarks and to obtain a transfer from the class<sup>4</sup> when an incident occurred in the hallway which made her conclude that grievant had intentionally put his hand on her buttocks.<sup>5</sup> She became upset over this incident and informed her mother but requested that her mother not do anything;

---

3

Ms. Stepp had attended Kistler Christian Academy in Kistler, outside Man, West Virginia, from grades nine through ten and entered Man High School on September 3, 1986. She had completed the French I course at Kistler, where she had been a "mostly A" student.

4

She had inquired of other students if grievant also acted that way with them and was told that was the "way he was"; that after a week or so from the beginning of the term grievant would be absent most of the time.

5

She testified that grievant intended to make it appear that it was accidental but that she believed it to be intentional because his hand seemed to remain on her buttocks for a couple of seconds.

she liked French and needed the credit and would stay in the class and keep her distance. However, the following week grievant allegedly shoved her into the coach's office near the gym and rubbed his hands over her body; she allegedly kneed him in the groin and ran. She telephoned her mother to pick her up and later that evening told her of the incident. Mrs. Stepp attempted to contact the principal, Mr. Kerley, and the vice-principal at home that evening but was unable to do so.<sup>6</sup>

Mrs. Stepp and Sherry met with Mr. Kerley the following day and Sherry was removed from the class; Mr. Kerley instructed Sherry to come to his office during that class period until other arrangements were made. Accordingly, Sherry never returned to grievant's class and received no grade for French. There was another meeting with Mr. Kerley attended by Mrs. Stepp, Sherry, the assistant principal and grievant but no action was taken because Mrs. Stepp indicated she wished to pursue the matter with Superintendent Sentelle and the

---

6

Sherry testified that she had first requested her mother not to do anything but to get her out of that class but Mrs. Stepp refused; Sherry later concurred because this type of thing should not be permitted to occur in the school system.

prosecuting attorney's office.<sup>7</sup>

Over objection, Ladonna Merritt, a 1986 graduate of Man High School, was permitted to testify to similar incidents involving grievant the previous school year and summer.<sup>8</sup> She testified that grievant had asked her to go out with him and when she inquired if he was serious he replied that he was serious. She refused to go out with him and on another occasion grievant told her he would "like to temporarily kidnap her and rub oil all over her body and lick it off." She also stopped attending grievant's classes because she was afraid of him but nevertheless received an A for

---

<sup>7</sup> The dates are unclear but it appears that Mrs. Stepp and Sherry first met with Mr. Kerley about September 25, 1986. Grievant was absent from school the day following the alleged incident in the coach's office and almost continuously from September 29 to October 17, 1986.

Superintendent Sentelle had first heard of the incident from Ken Sigler, a member of the board of education, and later when Mrs. Stepp and Sherry came to his office and told him she had been to the prosecutor's office. He testified that the extent of his involvement was to collect these allegations and turn them over to his counsel, Roger Perry, an assistant prosecutor, to investigate. Superintendent Sentelle stated that Mr. Kerley had advised him of other alleged incidents involving suggestive remarks and telephone calls made by grievant. According to Sentelle, grievant wanted to make a "deal" whereby he would resign if the county would pay out his contract and Sentelle refused.

<sup>8</sup> Counsel for grievant's objection to all evidence of similar incidents was overruled and another student witness, Candice Armstrong, had been permitted to testify that grievant had told the class that "he was living with a woman in Logan" and told some students he "needed a couple of young girls." This witness had also refused to go to grievant's class and was pulled from grievant's class by her grandfather when this situation gained notoriety.

Even hearsay evidence of a teacher's general reputation in the community is admissible in a proceeding such as this where character becomes a crucial issue, James v. West Virginia (footnote continued)

the course. Miss Merritt did not tell anyone of these incidents except her mother a couple of weeks after their occurrence because she did not want to jeopardize her graduation.<sup>9</sup>

Grievant summarily denied the allegations of the three student witnesses involving the charge of "immorality" stating that Sherry Stepp had emotional problems and that Candice Armstrong was disoriented and talked to water fountains. Grievant could not account for the testimony of Ladonna Merritt and acknowledged that she was a good student when she was in class but she missed a lot;

---

(footnote continued)

Board of Regents, 322 F. Supp. 217 (S.D.W.Va.), affirmed 448 F.2d 785 (4th Cir. 1971), and this type of evidence would also be admissible in a criminal proceeding as an exception to the stringent rules of criminal evidence involving collateral offenses. State v. Dolin, 347 S.E.2d 208 (W.Va. 1986). Cf. Rogliano v. Fayette County Board of Education, 347 S.E.2d 220, 225 (W.Va. 1986); Conway v. Hampshire County Board of Education, 352 S.E.2d 739 (W.Va. 1986).

<sup>9</sup> A friend at school had known of the incidents and also knew that grievant followed Ladonna around at school. Mr. Kerley had talked with her about these incidents in October at a night college class at Man High School, apparently when the incidents became the topic of conversation.

Gloria Merritt, Ladonna's mother, confirmed that Ladonna had told her of the incidents at school and identified grievant as the person who called the Merritt home on four or five occasions in the summer of 1986, which calls had been very upsetting to Ladonna. The telephone calls ceased when Mr. Merritt took the telephone, told the caller he knew that he was James White and he was coming to Man High School when school opened in September and "whip" him.

that he gave her an A because she did the work.<sup>10</sup>

In several decisions of the Education Employees Grievance Board involving dismissals for "immorality" it has been consistently held that such dismissal must be based upon a showing of just cause and any doubt is to be resolved in favor of the employee. Copenhaver v. Raleigh County Board of Education, Docket No. 41-86-175-1; Rosenburg v. Nicholas County Board of Education, Docket No. 34-86-125-1. It has also been recognized that a teacher works in a sensitive area in a schoolroom and shapes the attitudes of young minds towards the society in which they live; that teachers, like parents, are role models. Accordingly, a teacher is held to a standard of personal conduct which does not permit the commission

---

<sup>10</sup> Counsel for grievant called several witnesses who testified that it would be highly improbable if not impossible for grievant to have pushed Sherry Stepp into the coach's office at the time she stated it occurred without someone either being in the office or in the hall; that 95% of the time someone was in that area.

In addition, witnesses as well as grievant's wife, Margaret White, did not believe grievant was the type of person who would engage in this type of conduct with high school students.

of lewd, indecent or offensive conduct because of the harmful impression made on the students. Allison v. Kanawha County Board of Education, Docket No. 20-86-273-1.<sup>11</sup>

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

#### FINDINGS OF FACT

1. Grievant has been employed by the Logan County Board of Education since 1984 as a French and English teacher and is assigned to Man High School. He lives in Richlands, Virginia, and commutes to Logan County on a daily basis.

2. By letter dated November 7, 1986, grievant was suspended as a teacher with Logan County Schools pursuant to W.Va. Code, 18A-2-8 on the grounds of immorality, incompetency and intemperance. On November 24, 1986, the Logan County Board of Education formally dismissed grievant from his teaching position at Man High School

---

<sup>11</sup> In Allison grievant was dismissed for giving a sixteen year old student alcoholic beverages and performing oral sex on the student. In a departure from Golden v. Board of Education of Harrison County, 285 S.E.2d 665 (W.Va. 1981), it was held, inter alia, that disciplinary action may be taken against a teacher without proof of an adverse effect of the alleged misconduct where the teacher's conduct directly involved minor students and was patently inappropriate; that such conduct was presumed to have an adverse effect on the students, teachers and staff of a school. The pertinent legal authorities are cited in Allison and will not be reiterated here.



for those reasons. Grievant was offered but declined a hearing by the board of education and requested a level four hearing.

3. The charges of incompetency and intemperance were not supported by evidence and the alleged absenteeism of grievant was never properly brought to his attention by evaluation or otherwise; the school officials did not utilize Policy 5300 prior to termination. Additionally, Logan County Schools does not have a policy on sick leave and such matters appear to be subject to the personal integrity of the individual employee at Man High School.

4. The charge of immorality was predicated primarily upon the incidents involving Sherry Stepp, a sixteen year old student at Man High School who took a French II class from grievant. Sherry Stepp had not known grievant prior to enrolling in his classroom and shortly after commencement of the school year was subjected to interrogation by grievant concerning her personal dating and other habits. These inquiries offended Ms. Stepp to the extent she told grievant to "mind his own business"; instead, grievant requested that she visit his apartment in Logan. On another occasion grievant changed a "C" grade to an "A", informing Ms. Stepp that "if you want an A you got to play."

5. Subsequently two incidents occurred whereby grievant put his hands upon Miss Stepp's body and she thereafter refused to remain in his class. Much of Miss Stepp's evidence of grievant's

conduct with female students at Man High School was corroborated by other students of grievant and the conduct evinces a similar pattern. In each case these students withdrew from grievant's class after having repeated sexually suggestive encounters with grievant. Notwithstanding, the testimony of Sherry Stepp was credible, not inherently incredible and sufficient in and of itself to sustain the dismissal. Little weight was given to the corroborating testimony of Candice Armstrong and Ladonna Merritt except as it corroborated the testimony of Sherry Stepp and added credibility thereto.

6. Grievant denies the allegations of the student witnesses but based upon the demeanor of the witnesses, the consistency of the material evidence among the complaining witnesses, the corroboration thereof by third party witnesses and the total lack of any apparent motive for these young students to make such false accusations against grievant, the conflict of evidence is resolved against grievant. The factual account set out earlier in this decision is adopted here and will not be reiterated.

7. The type of sexually suggestive comments and other misconduct of grievant as described herein is the maintenance of an unprofessional relationship with his students and a complete disregard for his responsibilities as an educator. There is no basis upon which the conduct can be either justified or excused and the conduct is inherently harmful to the student/teacher relationship and to the school district; it renders grievant unfit to teach.

8. The type of conduct engaged in by grievant is "immoral" conduct warranting dismissal and is not in conformity with accepted principles of right and wrong behavior; it is contrary to the moral code of the community. There is a rational nexus between grievant's conduct with these students and the duties he performs as a teacher and the interest of the public. He had caused students to withdraw from his classes and forfeit their right to study that subject and has created notoriety adverse to the welfare and best interests of the school community. Grievant's conduct evinces a pattern of life style which indicates a potential for future misconduct with students entrusted to his care and school officials have an interest and duty to protect minor students from exposure to this type of conduct.

#### CONCLUSIONS OF LAW

1. W.Va. Code, 18A-2-8 authorizes a county board of education to dismiss a teacher on the grounds of immorality and the preponderance of the evidence is the proper standard of proof to apply to such proceeding, including those in which conduct that might be considered a crime is charged. Copenhaver v. Raleigh County Board of Education, Docket No. 41-86-175-1; Allison v. Kanawha County Board of Education, Docket No. 20-86-273-1.

2. A teacher may be dismissed without direct proof of an adverse effect of the alleged misconduct where the teacher's 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.

3. A male teacher who makes sexually suggestive comments to female high school students, uses the grade system to encourage sexual favors from minor students and engages in unauthorized bodily contact with young female students is engaging in "immorality" as a matter of law which renders that teacher unfit to teach.

4. 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 Logan 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 Logan 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

Chief Hearing Examiner

Dated: March 30, 1987