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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

ARCH A. MOORE, JR.
Governor

Offices

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

WILLIAM ZBAN

v.

CABELL COUNTY BOARD OF EDUCATION

Docket Nos. 06-87-010
06-87-011
06-87-012
06-87-021
06-87-033

DECISION

Grievant, William Zban, is employed by the Cabell County Board of Education as service personnel director. Commencing in October 1986 he filed a series of grievances alleging: harassment by the superintendent, a violation of Cabell County Policy CD on line and staff relations and violation of statutory salary uniformity provisions. A level two evidentiary hearing was conducted by the superintendent on these three grievances on November 12, 1986, and grievant thereafter filed two additional grievances alleging a denial of due process in the conduct of the level two hearing and reprisal. The grievances were appealed to the Education Employees Grievance Board and ultimately consolidated for hearing;

the hearings were conducted on several days, concluding on June 8, 1987.¹

Grievant has been employed by Cabell County Schools for twenty nine years, twenty one of which has been served in the central office; he has been director of service personnel for five years. His job entails the personnel management responsibilities for 700 regular and substitute service personnel employees of Cabell County Schools.

Dr. Robert Frum assumed the responsibilities as superintendent of Cabell County Schools in July 1985, having previously served nine years as superintendent of Columbiana County Board of Education, vocational school district, in Lisbon, Ohio. Shortly after assuming his duties as superintendent some unknown factor caused the relationship between Dr. Frum and grievant to deteriorate to the extent that although their offices were across the hall they were conducting

¹ The three initial grievances were set for hearing on February 27, 1987, and continued on motion of grievant's WVEA representative to permit the fourth and fifth grievances to be consolidated. The hearing was rescheduled for March 13, 1987, and continued to permit counsel for the board and grievant's representative to pursue settlement negotiations. On April 9, 1987, grievant's representative advised the hearing examiner that settlement attempts had been unsuccessful and a new hearing date was set on May 15, 1987.

The grievances were submitted on the level two transcript (T. __), the voluminous evidence and exhibits at level four and the legal memoranda of the parties received on June 18, 1987.

their affairs via memoranda.² The following discussion of the individual grievances will reflect the difficulties engendered as a result of that relationship.

HARASSMENT

Docket Number 06-87-010

Grievant's evidence is that Dr. Frum "barged" into his office on August 30, 1985, and instructed him to gather information on all service personnel reclassification since January 1, 1984, and to include documentation for those classifications. Dr. Frum also instructed grievant to stop sending him memoranda recommending experience credit for service personnel employees without first discussing it with him and to stop sending copies of such memoranda to the affected employees (T. 7). Dr. Frum also inquired as to grievant's whereabouts the previous day and an argument ensued (T. 8). Grievant provided what he considered to be the data requested by Dr. Frum but he (Dr. Frum) was apparently dissatisfied and responded that he had not asked for grievant's "rationale or opinion" in a memorandum dated September 11, 1985 (T. 9). Grievant

² Various reasons were offered to account for this breakdown, e.g., that in July 1985 Dr. Frum had told grievant he noticed that grievant was not speaking to him (T. 7), that Dr. Frum had listened to untruths about grievant without trying to get to know grievant, that Dr. Frum had resented two long time friends of grievant who were members of the Cabell County Board of Education visiting with grievant in grievant's office, that grievant refused to cooperate with Dr. Frum and to familiarize him with West Virginia school law, that Dr. Frum had been accustomed to having absolute authority in school matters in Ohio, that grievant had become more difficult to deal with and testy as a result of the diagnosis and treatment for bone cancer, etc.

concluded that Dr. Frum was unsure of the data he wanted and considered his persistence in seeking this material as harassment.

In the memorandum Dr. Frum directed that grievant was not to discuss or respond to questions or to initiate discussion with service personnel employees about the structure of the board's wage scale or other "sensitive matters" pertaining to employment, re-employment or payment of service personnel; that violation of those directions would be considered insubordination (T. 13). Grievant asserts that as service personnel director this memorandum prevented him from fulfilling his job requirements and resulted in much unrest with service personnel employees.³

On September 30, 1986, after a leak of the alleged "gag" order of Dr. Frum in 1985 had been made to a local newspaper reporter, Dr. Frum "ran" to grievant's office, then down a hallway in full view of service personnel employees and then halfway across the parking lot to intercept grievant as he was leaving for the day to request grievant to return to the building to discuss the "leak" (T. 30). The newspaper article was printed the following day and quoted Dr. Frum as denying that he had forbidden grievant from

³ As a direct result of this alleged "gag" order and its effects grievant contends that Linda Thompson, president of the Cabell County School Service Personnel Association, filed a grievance culminating in an agreement of understanding being executed whereby Dr. Frum agreed, inter alia, that "open communication and discussion of employees concerned are to be encouraged in an open and forthright manner regardless of the sensitive nature of a situation" (T. 13).

discussing topics with employees; grievant considered that as untrue (T. 35), as an effort by Dr. Frum to cast him in a bad light and another incident of harassment.⁴ Grievant contends that it was a combination of those incidents that, upon reflection, he considered as harassment by Dr. Frum (T. 35).

Dr. Frum testified that one of the first problems he encountered with grievant occurred when two or three secretaries informed him

⁴ Grievant testified that between September 25, 1986, and September 30, 1986, there were other incidents of harassment but that he did not elect to grieve them separately; it was after the newspaper incident that grievant decided to file the grievance.

Other incidents related by grievant occurred on August 7, 1986, whereby Dr. Frum pointed out Cabell County Policy CD requiring employees to go through the superintendent to communicate with school board members (T. 10), constant inquiries by Dr. Frum of grievant's whereabouts and about his companions (T. 11), etc.

Although none of the witnesses subpoenaed by grievant recalled Dr. Frum ever stating that "he would get grievant" one school board member, Claude H. Thornbury, testified that Dr. Frum stated in an executive session of the board that grievant was not cooperating and that "he intended to do something about it".

Grievant's secretary, Jean Ann Harker, could not articulate specific acts of harassment by Dr. Frum but described him as angry most of the time and a general atmosphere of tension as a result of the strained relationship. She testified that in her fourteen years with the school board and five years in private industry she had never encountered such a stressful situation as existed at her office. Part of this was attributed to grievant's unsuccessful attempts to obtain information from the superintendent's office after grievant was excluded from staff meetings.

that grievant had told them the county supplemental salary schedule for secretaries was unfair to females and should be changed. Grievant would also put Dr. Frum on the "spot" by sending copies of memoranda directed to Dr. Frum to the affected service personnel employees before he could discuss the matter with grievant. Dr. Frum was unfamiliar with the legal ramifications inherent in West Virginia school law and was having problems getting things done. His supervisory style is to develop a relationship with his staff whereby he would set the general policy and permit the administrators to put it into operation. However, with grievant things were viewed in a narrow sense and when he (Dr. Frum) requested information from grievant it would not be forthcoming. Grievant never explained West Virginia school law to him and the only response he could ever provoke from grievant was in memorandum form. He had never intended to harass grievant but was attempting unsuccessfully to get an understanding of how the system worked.⁵ He cited specific instances of alleged refusal by grievant to follow his directions

⁵ Dr. Frum testified that he had been instrumental in quashing what could have been an effort to remove grievant from his position as director of service personnel in October, 1985. This was corroborated by Linda Thompson, president of the Cabell County School Service Personnel Association.

Significantly, Superintendent Frum apparently never did an evaluation reflecting these alleged deficiencies or put grievant on a plan of improvement to correct them. No explanation is offered for the failure to utilize Policy 5300 or 5310 if, in fact, grievant's performance was as described by Dr. Frum.

and part of grievant's problem resulted from his inability to comprehend the "equity concept" in salary scales.⁶ Dr. Frum acknowledges the existence of a strained relationship but denies any intention to harass grievant.

Grievant contends that the conduct engaged in by Dr. Frum is violative of W.Va. Code, 18-29-2(n), Cabell County School Policy GADB⁷, the Fair Labor Standard Act of 1938, sections 11(b), 16 and 17, the Civil Rights Act of 1964, Title VII, H.R. 1546, Cancer Patient's Employment Rights Act (d)(1) and the Rehabilitation Act of 1973, sections 503 and 504.⁸ As relief on the harassment grievance grievant seeks an apology from Dr. Frum and a written assurance that the harassment will cease.

⁶ Other incidents cited by Dr. Frum included grievant's refusal to put personnel matters on the board agenda involving Jane Baldwin and Donna Perry and his refusal to repost two custodian supervisor positions.

As a result of the situation surrounding Donna Perry an incident occurred on May 6, 1987, whereby grievant allegedly struck another employee, Sam Stanley, with his fist (Joint Exhibit 2).

⁷ "Harassment" is defined in the Code as repeated or continual disturbance, irritation or annoyance of an employee which would be contrary to the demeanor expected by law, policy or profession; Policy GADB generally prohibits harassment of employees.

⁸ As indicated to the grievant at the level four hearing it is highly unlikely that the hearing examiner would have jurisdiction of or the authority to enforce any rights asserted beyond those enumerated in W.Va. Code, 18-29-1, et seq.

Counsel for the board contends that the harassment grievance is untimely⁹ and that all of the alleged incidents of harassment arise from a lack of communication; that actions are not harassment simply because they are perceived as such in the mind of the grievant.

VIOLATION OF CABELL COUNTY POLICY CD

Docket Number 06-87-011

Policy CD was adopted September 5, 1978, is titled Line and Staff Relations and provides, in pertinent part, that:

All personnel shall refer matters requiring personnel action to the person (superintendent, assistant superintendent, principal and other supervisors) immediately in charge of the area. When necessary, persons in charge of the area shall refer such matters to the next higher authority...(Grievant's Exhibit No. 5).

The evidence on this grievance was that in July 1986 Dr. Frum requested an assistant superintendent, Jerry Brewster, to handle the filling of the Milton bus garage foreman's position. Mr. Brewster requested grievant's secretary to post the position and encountered several problems which ultimately required the intervention of grievant. This was the first service personnel position

⁹ Counsel for grievant interposed a motion to dismiss all of the grievances on several grounds at the outset of the level four hearing. These motions will be dealt with herein as they pertain to each grievance. As to the untimeliness issue on this grievance it is found that the grievance was timely filed within fifteen days of the most recent occurrence of a continuing practice giving rise to the grievance. W.Va. Code, 18-29-4(a)(1).

which had not been handled by grievant's office in the five years he had held that position (T. 39-41). Another incident occurred in a warehouse clerk vacancy in which grievant was not involved by Dr. Frum and which resulted in numerous complaints from service personnel and an unnecessary expense to the school board of \$40,000 in wages (T. 42, 43). A voc-tech custodial vacancy was another example cited by grievant wherein a principal had moved a custodian from his regular midnight shift and posted that position in spite of grievant's advice to the contrary. The principal informed grievant that Dr. Frum had authorized the in-house move without discussing it with grievant (T. 44), etc.¹⁰ The failure and refusal by Dr. Frum to involve grievant in school service personnel matters created numerous problems resulting in an inordinate number of grievances and bad morale (T. 45-50).

¹⁰ Several other instances were cited by grievant at level two and again at the level four hearing, e.g., in July, 1985, a pay scale problem for an employee arose and it was referred to the board attorney and treasurer (T. 46), a grievance involving pay for a school bus operator in which the board attorney wrongly settled it for \$400.00 or \$500.00 (T. 49), use of substitute service personnel as supplemental or extra help wrongfully (T. 50), removing grievant as custodian and recipient of state superintendent interpretations (T. 51), etc.

At level four grievant recited an additional nine incidents occurring since the grievance was filed whereby grievant was excluded from attending meetings, workshops, conferences, etc., and service personnel employees were directed to Mr. McNeel, the professional employee counterpart of grievant. Ms. Dorothy Barber, a secretary and officer in the School Service Personnel Association, testified about a meeting called by Dr. Frum concerning secretaries where, in her opinion, Dr. Frum intentionally ignored grievant and directed questions to Mr. McNeel instead of grievant.

According to Dr. Frum he was compelled to circumvent grievant because of the strained relationship existing between them but apparently believed that Policy CD was unclear and antiquated. Dr. Frum had served as the grievance evaluator at level two and made the following findings on this grievance:

Therefore, I conclude that, to the extent that Policy CD appears to be antiquated and unclear, and that it was instituted and promulgated by pre-existing superintendents of the Cabell County School System, and to the extent that there is no clear cut staffing chart or chain of command structure, I do hereby order myself to prepare such documents and submit them to the Cabell County Board of Education as soon as possible.

In that the only relief which you sought under this grievance was to follow Cabell County Board of Education Policy CD, and an apology I can apologize for the unknown superintendent and the unknown board of education who prepared and passed Policy CD sometime in the distant past. I can further represent to you that Policy CD, or its replacement, will be followed in the future. (Findings of fact dated November 19, 1986; Joint Exhibit No. 1).¹¹

Grievant contends that Dr. Frum admitted that he had violated Policy CD by, inter alia, agreeing to follow it in the future; that notwithstanding the representation that he would follow Policy CD in the future Dr. Frum has refused to do so.

¹¹ At level four Dr. Frum testified that the reason he noted in his level two decision that Policy CD would be followed in the future was to placate grievant by admitting to some blame in the situation and thereby alleviate some of the tension between them.

It is noted that grievant seeks apologies from Dr. Frum as relief in several of these grievances as Dr. Frum had done in the Linda Thompson grievance. However, the hearing examiner is not disposed to award that type of relief but would encourage the individuals to pursue that relief on their own initiative.

Counsel for grievant asserts that as grievant's supervisor Dr. Frum has the authority to direct grievant's actions and Policy CD assumes subordinates will carry out instructions and will not attempt to obstruct directives; that Policy CD is not mandatory but is a "courtesy" which may be withheld by the superintendent. Finally, it is contended that it was necessary for Dr. Frum to seek assistance from other administrators when it became apparent grievant would not render the assistance.

SALARY UNIFORMITY

Docket Number 06-87-012

Grievant contends that W.Va. Code, 18A-4-5a was violated in that two other administrators performing like assignments received higher salaries;¹² he requested back pay from June 15, 1982, for one instance and from July 1, 1986, in the other instance. He also requested reclassification to administrative assistant level equal to other administrators performing like assignments (T. 73).¹³

¹² This provision of the Code provides that uniformity shall also apply to additional salary increments or compensation for all persons performing like assignments and duties within the county.

¹³ At level four grievant calculated back pay to be \$15,000.00 from the date the personnel managers assumed equal duties on June 15, 1982, and \$1,000.00 from July 1, 1986, to equalize pay between his position and the director of transportation (T. 79).

Counsel for the board continued to assert that this grievance was untimely as well as devoid of any probative evidence to support it; the motion to dismiss was reasserted in the proposed findings of fact and conclusions of law. The motion to dismiss this grievance is granted on the grounds asserted and on the basis of laches. Maynard v. Wayne County Board of Education, (W.Va.), __S.E.2d__, decided by the Supreme Court on May 1, 1987.

Grievant alleges that in December 1981 grievant was appointed assistant director of personnel with the primary responsibility for employment and placement of all service personnel and accountable to the superintendent. On June 15, 1982, grievant was promoted to director of service personnel and between December 1981 and June 15, 1982, the professional personnel manager's title was changed from director of personnel to administrative assistant for personnel.¹⁴ On July 1, 1986, Dr. Frum allegedly gave a \$1,000.00 increase to the director of information and to the director of transportation but grievant did not have any information that his salary was different from that of other directors at the central office. (T. 76).¹⁵

¹⁴ Grievant's Exhibits 6 and 7 relate to the job descriptions of the personnel director - service personnel and for the assistant superintendent for personnel. A cursory review of those exhibits does not appear to support grievant's contention that the positions are similar.

¹⁵ As far as grievant knew the salary of the purchasing director was the same as grievant's, i.e., \$42,000 plus, the salary of the director was \$43,000 plus and that of the administrative assistant in charge of professional personnel, Mr. McNeel, \$3,000 or \$4,000 more than grievant's salary (T. 75, 77).

Grievant asserts that he has an M.A. plus thirty hours with a major in guidance and counseling and Mr. McNeel has an M.A. plus thirty hours with a major in science, but that Mr. McNeel is the younger brother of the State Superintendent of Schools.

In the level two grievance decision written by Dr. Frum the following findings were made:

1. First of all with regards to your claim that your position ought to be that of Administrative Assistant, I find that your job duties are not the same as the other Administrative Assistants employed by the Cabell County Board of Education.

2. With regards to your claim of lack of uniformity among the other positions entitled Director, that is to say Director of Transportation, Director of Information Services, Director of Service Personnel, Director of Attendance, Director of Purchasing, and Director of ECIA - Chapter I, I find that all Directors make between \$32,189 and \$43,236. Your salary as Director of School Service Personnel is \$42,324 and that the Board of Education has complied with any salary uniformity mandate for professional personnel. (Level two decision, November 19, 1986; Joint Exhibit No. 1).

At level four Dr. Frum testified that on December 11, 1981, grievant was informed by Mr. McNeel, then director of personnel, that he was being recommended by the superintendent to the position of assistant director of personnel, effective December 28, 1981 (Employer's Exhibit 8); that effective December 2, 1982, grievant's salary was adjusted from assistant director to a salary schedule as director (Employer's Exhibit 9). Accordingly, it was not intended that grievant be co-equal with McNeel, an administrative assistant, and that was the reason grievant was excluded from staff meetings which Superintendent Frum conducted with assistant superintendents

and administrative assistants.¹⁶ Dr. Frum asserts that grievant is paid on a level comparable with most of the directors and more than others, e.g., the director of attendance and director of information services. He concludes that the positions of Mr. McNeel and grievant are not comparable if for no other reason than the number of employees handled by Mr. McNeel, i.e., 1200 to 1300 compared to 600-700 for grievant, and of the volume of activity in Mr. McNeel's office as compared to grievant's office.¹⁷

DENIAL OF DUE PROCESS AT THE LEVEL TWO HEARING Docket No. 06-87-021

At the outset of the level two hearing on November 12, 1986, grievant expressed concern that Dr. Frum was to be the grievance evaluator on a grievance alleging harassment by Dr. Frum; that:

¹⁶ This does not, however, explain the reason for grievant's exclusion from staff meetings with directors of voc-ed, transportation, purchasing, budget, etc.

¹⁷ Grievant called several witnesses at level four in an effort to refute this testimony of dissimilarity of the workload but witnesses were not familiar with either the duties or the volume of work involved in Mr. McNeel's position.

Since the hearing officer in this hearing, the superintendent, is the same individual against whom my grievances have been filed, and since the board attorney is representing the superintendent, who authorizes the payment of the attorney's fee, that the opportunity for me to be given a fair and impartial hearing and decision at this level would be very remote (T. 6).

Grievant contends that Dr. Frum refused to be sworn and this denied to him the right to examine Dr. Frum on the issues; that Dr. Frum refused to secure to him a fair and impartial hearing to ensure that all parties were accorded procedural and substantive due process as mandated by W.Va. Code, 18-29-6.¹⁸ Grievant requested that the level two decision of Dr. Frum not be considered in disposing of the issues in this grievance and that grievant be given written assurance from Dr. Frum and board counsel that employees shall not be victims of such flagrant school law violations in the future.

Counsel for the school board contends that this grievance is moot as a matter of law in that grievant was afforded a full and complete de novo hearing at level four during three full days of hearing; that assuming, arguendo, there was a denial of due process the sole relief would be to remand the grievance for another

¹⁸ Grievant adduced the testimony of witnesses who attended his hearing that there was a very tense atmosphere attended by a great deal of rudeness by board counsel; that the hearing reflected a badgering of grievant and was conducted in a "hateful, mean and arrogant" manner by board counsel.

3. Grievant failed to prove the allegations that Dr. Frum had violated the uniformity provisions of W.Va. Code, 18A-4-5a or that he was entitled to back pay. The motion to dismiss the grievance as untimely is granted and the claim to back pay to June 15, 1982, is barred by the doctrine of laches.

4. The level two grievance hearing conducted by Dr. Frum was violative of W.Va. Code, 18-29-6, in that it was not conducted in an impartial manner by virtue of, inter alia, Dr. Frum's designation of himself as the grievance evaluator. As a general rule it would not appear appropriate for a hearing officer to decide a grievance in which it has been alleged that the hearing officer had engaged in acts of harassment directed at the grievant therein for obvious reasons. The grievance hearing conducted at level two was also not conducted in a manner contemplated by W.Va. Code, 18-29-1, et seq., because the parties were permitted to act out their hostilities in an inappropriate manner.

5. The allegation of reprisal contained in grievance number 06-87-033 is based upon conjecture and no probative evidence was presented upon which a decision could be predicated. The motion to dismiss that grievance on that ground is granted.

level two hearing which would be a waste of judicial and administrative resources.¹⁹

REPRISAL

Docket No. 06-87-033

Grievant alleges that after he filed the grievance against Dr. Frum asserting a violation of Cabell County Board Policy CD Dr. Frum proposed a reorganization plan which will change grievant's immediate supervisor from the superintendent to Mr. McNeel; that after he filed the grievance on the salary uniformity issue involving his position and that of Mr. McNeel, Dr. Frum proposed a reorganization plan which would further widen the salary gap between grievant and Mr. McNeel.

¹⁹ Counsel was also concerned that he was being made the object of a grievance, a factor which could conceivably disqualify him from participating in the grievance as counsel.

It was apparent at the level four hearing that a good deal of animosity and hostility existed between the parties and it is to be noted that hostility and vindictiveness have no place in the grievance procedure. Not only is it important that these hearings be conducted in an impartial manner but the conduct of the hearing must also have the appearance of even-handed justice, which is at the core of due process.

In Cindi Drake v. Tucker County Board of Education, Docket No. 47-86-326-2, it was held to be a denial of due process for the superintendent to be present in executive session during the deliberation of a grievance by the school board when the superintendent represented the administration at the level three hearing. It is hornbook law that a person should not sit in judgment on his/her own case. Cf. Aetna Life Insurance Company v. Lavoie, 106 S.Ct. 1580, 89 L.Ed. 2d 823 (1986).

Dr. Frum testified that he had never attempted to demote, transfer or dismiss grievant and that he had attempted to reorganize as soon as he assumed the duties of superintendent; that under the new organization plan about which grievant complains the same basic organizational structure is retained and there were too many changes and too much effort put into the plan for it to have been directed against any individual.

Counsel for the board of education contends that the reorganization plan was merely a recommendation by Dr. Frum and was adopted by the board of education, which was under no obligation to accept any part of the recommendation. Accordingly, it is asserted that there was no probative evidence of reprisal presented by grievant and this grievance is predicated upon pure conjecture.

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. The probative evidence of harassment is such that it is impossible to assess the degree of culpability attributable to each of the principal participants, Dr. Frum and grievant. Although it appears that it was Dr. Frum who initially engaged in practices deemed offensive to grievant, it is clear that thereafter both parties engaged in a pattern of conduct which could properly be characterized

as "harassment" as contemplated by W.Va. Code, 18-29-2(n). Ostensibly, Dr. Frum would not initiate the process whereby grievant's alleged conduct could be corrected and grievant would not conform his conduct to the demands of Dr. Frum. Accordingly, neither party was willing or able to rise above their differences or to take the steps necessary to resolve these differences. The evidence in this grievance, testimonial and demonstrative, exemplifies the divisive effect this negative relationship has had upon the employees in the central office and the conduct of school affairs generally in Cabell County. It would serve no conceivable useful purpose to find Dr. Frum more culpable than grievant for this would exacerbate the situation; it is more appropriately a matter for the Cabell County Board of Education to address.

2. By his own admission Dr. Frum violated Cabell County School Board Policy CD by circumventing grievant in matters peculiarly within the purview of grievant's position because of the strained relationship between the parties. Although Dr. Frum stated that he would comply with Policy CD after the level two grievance hearing he failed to do so and continued to bypass grievant in the conduct of service personnel affairs. This caused unnecessary problems and expense to the school board and was contrary to the best interests of the school community.

CONCLUSIONS OF LAW

1. In the grievance procedure it is incumbent upon the grievant to prove the essential elements of the grievance by a preponderance of the evidence. W.Va. Code, 18-29-2(n) defines "harassment" as repeated or continued disturbance, irritation or annoyances of an employee which would be contrary to the demeanor expected by law, policy and profession. In the instant case the probative evidence preponderated that grievant and Dr. Frum were equally chargeable with conduct constituting "harassment" as a matter of law. Under these circumstances the granting of relief by the hearing examiner would be inappropriate and any appropriate sanctions would best be left to the discretion of the Cabell County Board of Education.

2. Policy CD was duly adopted by the Cabell County Board of Education and the superintendent was bound to follow the dictates of the Policy. Powell v. Brown, 160 W.Va. 723, 238 S.E. 2d 220 (1977); Dillon v. Wyoming County Board of Education, 351 S.E. 2d 58, (W.Va. 1986).

3. W.Va. Code, 18-29-4(a)(1) provides that before a grievance is filed and within fifteen days following the occurrence of the event upon which the grievance is based, or within fifteen days of the date on which the event became known to the grievant or

within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance, the grievant or the designated representative shall schedule a conference with the immediate supervisor and otherwise commence the grievance. These time limitations must be followed in the grievance procedure. John H. Earls v. Cabell County Board of Education, Docket No. 06-86-360-1. In addition, a party must exercise diligence when seeking to exert a right to public funds and the failure to do so constitutes laches. Maynard v. Wayne County Board of Education, (W.Va.) __S.E.2d__, decided by the Supreme Court on May 1, 1987.

Accordingly, grievance number 06-87-012 is untimely and barred by the doctrine of laches as a matter of law.

4. W.Va. Code, 18-29-6 provides that the grievance evaluator shall conduct all hearings in an impartial manner and shall ensure that all parties are accorded procedural and substantive due process. At a minimum the hearing should include notice, and a hearing with an opportunity to submit evidence relevant to the issues raised in the notice by an unbiased tribunal. State ex rel. McLendon v. Morton, 249 S.E.2d 919 (W.Va. 1978); Wyatt v. Marshall University, Docket No. 06-86-086. The hearing must not only comport with due process requirements but must also have the appearance of fairness. Cindi Drake v. Tucker County Board of Education, Docket No. 47-86-326-2.

Accordingly, it is found that the hearing afforded grievant at level two denied grievant due process as a matter of law.

5. The evidence offered by grievant on grievance 06-87-033 was entirely speculative and inadequate as a matter of law.

Accordingly, the grievances are granted in part and denied in part. Grievance 06-87-010, harassment, will be referred to the Cabell County Board of Education for any action it deems advisable. A copy of the decision will be forwarded to the President for that purpose. Grievance 06-87-011, violation of Policy CD, is granted; grievance 06-87-012, uniformity of pay, is denied; grievance 06-87-021, the due process issue, is granted and grievance 06-87-033, reprisal, is denied.

Either party may appeal this decision to the Circuit Court of Kanawha County or Cabell 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: July 31, 1987