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

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D. JEAN GRANT, et al.

v.

Docket No. 17-87-328-2

HARRISON COUNTY BOARD OF EDUCATION

DECISION

Grievants, who apparently are all teachers employed by Respondent Harrison County Board of Education,¹ filed a grievance in September 1987 alleging that certain sections of Harrison County Board of Education Evaluation Policy GBI are contrary to law and West Virginia Board of Education policy. The grievance, having been filed at Level III, was remanded to Level II for a hearing, held November 16, 1987. Upon issuance of an unfavorable decision of December 2, 1987, the case was appealed. The parties waived the Level III hearing and also agreed in February 1988 that this Level

¹ The representative for Grievants advises that the attached list of individuals is a proper listing of all the grievants in this matter.

IV decision can be based on the record compiled at the lower levels, supplemented by written arguments of the parties submitted through May, 1988.

The grievants contend that the following sections of Policy GBI, which relate to procedures for the evaluation of school personnel and became part of the policy by amendment in September 1987, should be invalidated and deleted:

A receiver of service is the person(s) most immediately served by the employee.

As part of the evaluation process, information on the established performance standards may be obtained from receivers of certain employees' service.

Policy GBI, Sections II.G and III.A.7. On their appeal form to Level IV ² Grievants contended that these provisions of

² In the proceedings at lower levels Grievants contended that the policy is also grievable in that it is a "policy...constituting a substantial detriment to or interference with effective classroom instruction [or] job performance." W.Va. Code §18-29-2(a). While at Level IV the grievants no longer rely on that section of the West Virginia Code, they do propose the following finding of fact:

Adoption by Respondent of these amendments to Policy GBI was and is unnecessary and served only to arouse fear and suspicion among Respondent's professional instructional employees.

Grievants presented testimony that teachers are fearful that, should complaints from parents be considered when a teacher is evaluated, the evaluation process could be damaged, and, in order to protect themselves, the teachers are altering their classroom behavior. In that any altering of the teachers' behavior has not been caused by any improper implementation of the policy, that testimony cannot support the grievants' claim. The Level II evaluator properly determined,

(Footnote Continued)

the policy are contrary to West Virginia Board of Education Policy 5300.³

The disputed provisions were promulgated pursuant to the directive of West Virginia Board of Education Policy 5310 that

[t]he following components shall be addressed in each county's staff evaluation policy....

2. DEFINITIONS....

- f. Receivers of Service: the population most immediately served by the employee, e.g., students as receivers of service from teachers, teachers as receivers from principals....

7. EVALUATION PROCESS....

b. Observation....

- 3) As part of the evaluation process, information on the established performance standards may be obtained from receivers of the employee's service.

(Footnote Continued)

The grievant's testimony did not present any evidence that the evaluation policy section of "receivers of service" had been used in any manner to violate any policy or law. In fact, the testimony failed to show that that portion of the policy had been used at all.

³ West Virginia Board of Education Policy 5300 provides in pertinent part:

(6)(a) Every employee is entitled to know how well he is performing his job, and should be offered the opportunity of open and honest evaluation of his performance on a regular basis. Any decision concerning promotion, demotion, transfer or termination of employment should be based upon such evaluation, and not upon factors extraneous thereto....

In adopting the disputed provisions of Policy GBI the respondent board of education strictly followed the directive of Policy 5310, incorporating the language of Policy 5310 into Policy GBI with no material changes.⁴

In their legal memoranda the grievants recognize that the West Virginia Supreme Court of Appeals has accepted that Policy 5300 does not prohibit consideration of complaints from citizens when a school employee is being evaluated and accordingly that complaints from parents may be properly considered in the evaluation process, for in their Proposed Conclusions of Law the grievants quote the following statement from the syllabus of the Court in Mason County Board of Education v. State Superintendent of Schools, 274 S.E.2d 435, 436 (W.Va. 1980):

A county board of education may receive complaints against a school employee from citizens where the complaints involve the professional competency of the employee. The board should not file formal dismissal charges against him until after it has received a professional evaluation of his competency and it has provided him with an improvement period as prescribed by [section] 5300(6)(a) of the Policies, Rules and Regulations of the West Virginia Board of Education.

Furthermore, the grievants recognize that the provisions of Policy 5310, which have been incorporated into county Policy GBI, have not been invalidated and therefore without improper implementation the duplicate provisions of

⁴ The only difference is that the county Policy GBI does not provide examples of "receivers of service," as does Policy 5310.

Policy GBI are not invalid. Again in their Proposed Conclusions of Law the grievants quote Dunleavy v. Kanawha County Board of Education, Docket No. 20-86-240-1 (February 24, 1987), where it was held that under Policy 5310 in the evaluation process, "the immediate supervisor may consider information from secondary sources not personally observed by the supervisor only when the information is verified and shared with the employee."

The only remaining contention of the grievants is the following:

The Harrison County Education Association (HCEA), represented by Grievants, contends that since Respondent already had the authority to consider input from "recievers [sic] of service," adoption of these amendments to Policy GBI is prima facie evidence that Respondent intends to use that input in a manner contrary to law.

Grievant's Proposed Findings of Fact.

The more persuasive argument is advanced by the Respondent Board of Education and reads:

The Grievants appear to maintain that by adopting the amendment to Policy GBI, the county board has in some manner indicated that it will, in the future, apply the policy in a method contrary to law. Such an argument by the Grievants is meritless and should be dismissed since such allegations do not allege a justiciable controversy subject to determination by this Grievance Board. In essence, the Grievants are anticipating a grievable issue in the future which has not yet occurred. Simply stated, Article 29, Chapter 18, of the West Virginia Code does not authorize a grievance based upon an anticipated misapplication of a local policy but, in fact, permits a grievance only upon the actual event of a violation, misapplication and/or misinterpretation of a statute, regulation, or policy.

Policy GBI of the Harrison County Board of Education, as amended, is clearly within the

parameters [sic] of State Board Policy 5310 and does not violate any state statute, rule, or regulation. In fact, the Grievants have failed to specify any specific violation by the Harrison County Board of Education; therefore, there exists no grievable issue pursuant to §18-29-1, et seq.

Accordingly, insofar as this grievance appears to be nothing more than a frivolous attempt by the Grievants to prohibit the Harrison County Board of Education and or its agents from future misapplication of the policy, the grievance is premature at best, and, therefore, must be denied.

Memorandum of Law of Respondent, pages 3 - 4.

In addition to foregoing discussion, the following conclusions of law are appropriate:

CONCLUSIONS OF LAW

1. Grievants failed to show any improper implementation of Respondent's Policy GBI.
2. It is incumbent upon a grievant to prove all the allegations constituting the grievance by a preponderance of the evidence. Hanshaw v. McDowell County Board of Education, Docket No. 33-88-130 (August 19, 1988); Andrews v. Putnam County Board of Education, Docket No. 40-87-330-1 (June 7, 1988; Bulford v. Preston County Board of Education, Docket No. 39-87-203 (February 26, 1988).
3. West Virginia Board of Education Policy 5300 does not prohibit the consideration of information from secondary


sources in the evaluation of a school employee. See Mason County Board of Education v. State Superintendent of Schools, 274 S.E.2d 435 (W.Va. 1980); Dunleavy v. Kanawha County Board of Education, Docket No. 20-86-240-1 (February 24, 1987).

4. The provisions regarding "receivers of service" of Harrison County Board of Education Policy GBI are valid.

5. The future possible misapplication of a policy or a future possible abuse of discretion of a board of education does not constitute a grievable matter under W.Va. Code § 18-29-2.

Accordingly, this grievance is **DENIED**.

This decision may be appealed to the Circuit Court of Kanawha County or Harrison County, but only within thirty (30) days of its receipt. See W.Va. Code §18-29-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Hearing Examiners is a party to such appeal, and should not be so named. The Grievance Board must be advised of any intent to appeal so that the record of this case can be prepared and transmitted to the Court.


SUNYA ANDERSON
HEARING EXAMINER

Dated: November 10, 1988

(Receivers of Service)

GRIEVANCE FY-88-8

Grievance Signed at the Board Meeting

Dorothy Jean Grant
John Conch
Carl Ritz
Betty S. White
Rebecca I. White
Alfred K. Rogers
Jim Corley
Jackie Romeo
Donald L. Miles

ADAMSTON ELEMENTARY SCHOOL

Linda Sedera Rebecca D'Annunzio
Clara J. Fuscaldo
Toni G. Pulice
Judith Andrews
Mary Pat Lake
Paula Barnes
Judy Boord
Katerini Coffman
Delores Moran
Beth Bode
Sharon Secret
Deborah Dodd
Ina Pennington
Lorraine Lamberndis
Josette Brown
Marie J. Kitzmiller
Jeanne Pote
Shirley McClure

BRIDGEPORT JUNIOR HIGH SCHOOL

JoAnne Brown	Russell Conrad
Linda Serian	Alice R. Brake
Suezann Zimniski	Letitia R. Spadafore
Eniko Pfunder	Al Lanzy
Delwin DeLong	Lewis Laska
L.E. Tichenor	Richard E. Westfall
Arthur Petitto, Jr.	Jackie Ball
Alice Zahradnik	Mary Melko
Paula Johnson	Joe Leonette
Susan Sutton	Julie Hill
Don Gain	Evelyn Miller
Larry Virtue	Danny Fawcett
Georgia Jaffurs	Phil Nicewarner
Barbara Owens	Doug Harbert
Barbara Mayo	Lila Anderson
Vicki Osborn	Virginia Frank
Mary A. Singleton	William Fahey
Susan Dieringer	Mary Matheny

BRIDGEPORT HIGH SCHOOL

Paige C. Moccia
Jane Riley
Pamela Jo Hotsinpillar
Julie Tomes
Sandra Garrett Lutz
Charlotte Cathell
David S. Nuzum
Bill Kerns
Charles Compton
Elaine Teter
Richard J. Iaquina
Sue C. Hankins
Dorothy J. Underwood
Alice Rowe
Kay Booth
John F. Christian
Gene Randolph
Mickey Gerba
Barbara Wood
Lenore Hinkle

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Jennifer H. Bartlett
Ceferina A. Haught
Kay Rogers
Candy Belcastro
Karen W. Smell
Anita Lopez
James Joseph Koreski
Juliann Burkett
Ann M. Davis
Carol J. Rogers
Kay E. Burnett
Charlene K. Jacobs
Barbara Buffington
Deanna R. Bell
Barbara Nutter
Jane Stonko
Grace Coughenour
Mary Cromwell
Kim Sabo
Sue Poole
Barbara L. Urso
Bettie J. Hood
Minetta F. Barrick
Jackie L. Rexroad
Barbara C. Bean
Linda Pomeroy
Mary Sue Witt

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Cynthia M. Trotta
Sandra L. Griffiths
Cheryl L. Stewart
Donna J. Young
Nancy P. Atkinson
Sam Annie, Jr.
William Caloccia
Ike Maxwell
Larry Skiviat
Richard D. Johnson
Lucy Wise-Gladwell
Thomas Hilton
James E. Carr
Pete Amodio
Sarah Amsler
Wilson Currey
Gary W. Fain
Donna J. Hayes
Thomas Lee Harvey
Laura M. Williams
Sylvia Giese
Tracy Keister
Edwin Sweeney
Susie Murphy
Sharon Snyder
Angelo Capozzi, Jr.
Michael Perri
Ed Propst
Andrea Alfred
Willie McClain
Fern L. Nutter
Lynn L. Cutlip
Joseph Gonzalez
James A. Mearns
Mary Jo Richards
John M. Hudkins
Dwain O. Blagg
Karen Davis
Cathy Hickman
Victoria Honaker
Maria Alex
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Kevin E. Brown
Janet Sprout
Kim Lopez
Norene Westfall
Patricia Smith
Gregory Wriston
Jean Oliverio
Rebecca Cox

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Vyolet Murphy
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Carol Anderson
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Anita Ballard
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Diantha Hilton
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Marsha Greenhill
Gladys Williams
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Anita K. Byrd

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Marsha Shepherd
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Sue Wilcox
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Joann Oliveto
Cathy Beckley
Carolina Tate
Thelma Nutter
Jessie Ann Jones
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Rosemary Martino
Linda Burns
Lynette Graeber
C. Jane Lister
Victoria B. Shahady

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Pauline Windon
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Joseph Post
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Lois Pratt
Sheri Hutson
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Patricia Saltis
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Margaret K. Holmes
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Frank W. Gregis
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Joseph Delaney
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Sharon Todd
Brenda Gaston
Jean Quinones