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**WEST VIRGINIA EDUCATION AND  
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**Members**  
James Paul Geary  
Chairman  
Orton A. Jones  
David L. White

**LORETTA RAINES**

**v.**

**Docket No. 27-88-139**

**MERCER COUNTY BOARD OF EDUCATION**

**D E C I S I O N**

Grievant, Loretta Raines, is employed by the Mercer County Board of Education as a principal assigned to Glenwood Elementary School. She filed a grievance on December 29, 1987 alleging a violation of certain provisions of West Virginia Board of Education Policy 5300 by her supervisor, Mr. Jack Martin. A Level II hearing was held April 12, 1988 and a decision at that level was adverse to the grievant. A Level III hearing was held June 2, 1988 at which time the Board voted to uphold the Level II findings. Upon appeal to Level IV the parties indicated a decision could be made on the record developed at lower levels.<sup>1</sup>

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<sup>1</sup> Transcripts of the Level II and Level III hearings are hereinafter referred to as T1 and T2, respectively.

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On or about December 16, 1987 Mr. Martin went to Glenwood Elementary School for the purpose of resolving some personal differences between grievant and her assistant principal. (Tl.4,5) During the course of a conference with grievant and the assistant principal, Mr. Martin made a remark to the effect that grievant's frequent absences from the school might be part of the problem. (Tl.5,6) Apparently grievant denied any excessive absences and Mr. Martin proceeded to ask her secretary for a log she had been keeping on grievant's arrivals and departures during several school years. Mr. Martin and the grievant then continued their discussion outside the presence of the assistant principal and secretary. (Tl.6)

Grievant characterizes Mr. Martin's remarks during their meeting as a performance evaluation which was not conducted openly and honestly in accordance with the provisions of Policy 5300.<sup>2</sup> She additionally contends Mr. Martin directed her secretary to maintain the log and such a practice is contrary to good personnel

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<sup>2</sup>Policy 5300(6)(a) specifically provides:

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.

management policy. As relief Ms. Raines requests a formal apology, a verbal and written notice of the impropriety of the action to all parties involved and an objective rating of her performances as a principal. The Board takes the position that while the maintenance of the log at the school may have been poor policy, it was not done at Mr. Martin's request and was not used in any formal evaluation of grievant's performance.<sup>3</sup>

Testimony adduced at the lower level hearings support the Board's contention that Mr. Martin did not direct grievant's secretary to keep a log of her daily work schedule. It appears the secretary and the grievant had been experiencing problems which the secretary felt were the result of harassment by the grievant and had kept the log as some means of protection. (Tl.13, 14) It was Mr. Martin's testimony that he had been receiving calls from parents about grievant's frequent absences and he had made an unannounced visit to the school in October 1986, at which time the secretary informed him of her actions. (Tl.35,41)

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<sup>3</sup>Grievant did receive a written evaluation sometime in March 1988 in which an unsatisfactory mark in the "budgets time" category was given and while grievant alluded to this evaluation at the Level II and Level III hearings, there was no formal request that it be made part of the grievance. Upon appeal to Level IV there was no such request and the evaluation was not submitted as part of the record.

Apparently the absences were part of the on-going difficulties between grievant and her assistant principal which necessitated Mr. Martin's visit.

The use of information derived from sources other than work product or personal observation in personnel evaluations has been held permissible only when the source is revealed and the employee is informed of what weight it is to be afforded. See, Dunleavy v. Kanawha County Board of Education, Docket No. 20-86-240-1; Kinder v. Berkeley County Board of Education, Docket No. 02-87-199. In the present case, however, the meeting between grievant and Mr. Martin was not an evaluation which triggered the application of Policy 5300 and the holdings in these decisions. The meeting was primarily a discussion between an employee and her supervisor in which suggestions for the resolution of problems and improvement in the operations of the school were made. Such encounters must be considered part of any normal working relationship. Even if the conference could be construed as part of an evaluation process, grievant's claim that it was not conducted openly or fairly would have little validity since she was informed of the source of the log and was given an opportunity to dispute the validity of the entries contained therein.

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

### FINDINGS OF FACT

1. Grievant, Loretta Raines, is employed by the Mercer County Board of Education as a principal assigned to Glenwood Elementary School.

2. On or about December 16, 1987 grievant's supervisor, Mr. Jack Martin, visited Glenwood Elementary School for the purpose of resolving certain problems between grievant and her assistant principal.

3. During the course of their conference on that date, Mr. Martin requested the school secretary to produce a log of grievant's arrivals and departures at the school and Mr. Martin and grievant then proceeded to discuss certain entries in said log.

4. Mr. Martin did not direct the secretary to initiate the log but was aware of its existence as early as October 1987.

### CONCLUSIONS OF LAW

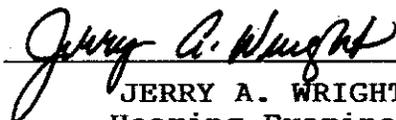
1. It is incumbent upon a grievant seeking relief pursuant to W.Va. Code, 18-29-1, et seq. to prove all of the allegations

constituting the grievance by a preponderance of the evidence. Bulford v. Preston County Board of Education, Docket No. 39-87-203; Andrew v. Putnam County Board of Education, Docket No. 40-87-330-1; Randolph v. Harrison County Board of Education, Docket No. 17-88-001-2.

2. The grievant, Loretta Raines, failed to prove by a preponderance of the evidence that the conference held on December 16, 1987 with her supervisor, Mr. Jack Martin, was part of an evaluation process requiring application of and adherence to the provisions of West Virginia Department of Education Personnel Policy 5300, et seq.

Accordingly, the grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Mercer County or the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of said decision. (W.Va. Code, 18-29-7) Please inform this office of your intent to do so in order that the record can be prepared and transmitted to the Court.

  
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JERRY A. WRIGHT  
Hearing Examiner

Dated: September 19, 1988