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**WEST VIRGINIA EDUCATION AND
STATE EMPLOYEES GRIEVANCE BOARD**

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WILLIAM WADE, JR.

v.

Docket No. 89-20-250

**KANAWHA COUNTY
BOARD OF EDUCATION**

DECISION

Grievant William Wade, Jr., was employed by Respondent Kanawha County Board of Education as a Teacher's Aide IV at Horace Mann Junior High School until he was dismissed on the grounds of immorality and willful neglect of duty. On May 11, 1989, Grievant was notified by Respondent's Superintendent of Schools of disciplinary charges against him of giving a female student sexually explicit materials and making crude sexual comments to female students orally and in writing.¹ A disciplinary hearing was held and on June 7,

¹The letter of May 11, 1989, was not entered into evidence in the proceedings before this Grievance Board, but Grievant, in his submissions, states the charges made in the May letter were as follows:

1. That on or about April 18 and 19, 1989, you directed inappropriate sexual gestures and remarks toward student [A.H.] and touched her breast.

2. That on or about April 19, 1989, you directed inappropriate sexual gestures and remarks toward
(Footnote Continued)

1989, Respondent dismissed him. Grievant initiated grievance proceedings at Level IV the next day. A hearing was held July 25, 1989.² With receipt of proposed findings of fact and conclusions of law on and before August 25, this matter may be decided.

Grievant alleges that his termination contravened W.Va. Code §18A-2-8, which provides in pertinent part, "Notwithstanding any other provision of law, a board may suspend or dismiss any person in its employment at any time for: Immorality, . . . or wilful neglect of duty. . . ." At the hearing Grievant conceded that there were no procedural

(Footnote Continued)

student [D.P.].

3. During the time period of December 1988 and January 1989 you distributed inappropriate sexually oriented materials to student [C.M.] and other students. Copies attached as "Exhibit #1".

4. On numerous occasions during the course of the current school year you directed inappropriate sexual remarks to student [C.M.].

5. During the month of January or February you directed a letter to student [S.S.] which contained inappropriate sexual comments.

6. On numerous occasions during the course of the current school year you directed inappropriate sexual comments.

7. During the course of the current school year you engaged in inappropriate physical contact with students [M.H.] and [S.S.].

Since there is no good reason for providing the full names of the students, throughout this decision only their initials are provided.

²A hearing scheduled for July 14, 1989, was continued at the request of the parties.

errors in the disciplinary action.³ He furthermore conceded that, if the incidents as charged were true, they would support termination. Grievant's defense was that the charges were unfounded.

C.M., like all the students who testified during the hearing, was a ninth grader at Horace Mann during the 1988-89 school year. At hearing she was shown five documents (Res. Ex. 1), which included a joke on the relative lengths of penises, a joke involving sodomy, a cartoon with an obscenity, and a cartoon involving bestiality.⁴ C.M. testified that Mr. Wade had shown her the documents and she had requested copies. He supplied them later in the day. She testified she showed them to a few of her girlfriends and gave them to her mother.

C.M.'s mother, Mrs. M., corroborated her daughter's story, testifying that at the time she was shown the documents her daughter told her that she had received them from Mr. Wade.⁵ Finally, Mr. Thomas Watkins, a special education

³In his proposals Grievant, relying on Grubb v. Mingo Co. Bd. of Educ., C.A. No. 85-C-3863 (Mingo Co., W.Va., Cir. Ct., March 12, 1986), argues that a lack of specificity, particularly with regard to the exact dates of the incidents, denied him due process. The contention is rejected.

⁴Due to the obscene and sexually-explicit language of the documents, they are not quoted here.

⁵Mrs. M. testified that she did not report the incident to the school administration because, having known Mr. Wade all his life, she wished to talk to him herself, although she never found an opportunity to do so.

teacher at Horace Mann whom Mr. Wade assisted, testified⁶ that he had seen the documents in the possession of Mr. Wade. Asked when he had seen them, he answered, "There was [sic] different times that he picked these up and I guess he distributed them to different teachers or whatever throughout the school for various reasons." He also responded "yes" to the question whether he had seen them in the possession of Mr. Wade "during the course of the school year."

C.M. further testified that Mr. Wade repeatedly asked her questions such as "When you goin' to let me get some?" Finally, she also testified of an incident in February wherein Mr. Wade asked her to take a note to another student, S.S. She agreed and he gave her a note, which she described as folded and stapled, written on notebook paper, with "to S _____" written on the outside. She took it to S.S., who was studying in the gym with another girl, M.H., and helped S.S. open it. She testified that the writing covered about a third of the page. She also testified that she read some of it, and its primary import was a request that S.S. go out with the writer. She could not remember what else the note said.

⁶Mr. Watkins did not testify at the Level IV hearing. However, by agreement of the parties his testimony at the disciplinary hearing, held June 1, 1989, was accepted as evidentiary testimony in this matter.

S.S. also testified regarding the note incident. She said C.M. gave her the note. She generally corroborated C.M. on the appearance of the note (on notebook paper, folded, stapled) but stated that there was no writing on the outside and the note itself covered two-thirds of the page. She said that C.M. opened it up, read it, and gave it to her. Like C.M., S.S. testified that the note asked her for a date. She could not remember what else it said, for it was messy and therefore hard to read, but she remembered that it included the question, "When can I lick your pink p___y lips?" She knew the note was from Mr. Wade because C.M. said he had given it to her and also the note itself was signed, "Wade," which is the name Mr. Wade is known by. Having shown the note to a few friends, including M.H., she stuck the note in one of her books, where she found it on a later day, and threw it away.⁷ She testified on cross-examination that she remembered the letter when a "petition" was started on Mr. Wade and she told the woman "helping us." Although it was unclear from her testimony who was the woman, who was "us," and what was the "help," she denied that the woman was "helping" get Mr. Wade "in trouble."

⁷Grievant argues in his proposals that S.S.'s not having the note at hearing indicated that it had not existed. The undersigned finds no reason why the witness should have kept the note and accepts S.S.'s testimony that she had thrown it away.

M.H.'s testimony on the appearance of the note was consistent with the other two witnesses'. However, she corroborated the testimony of neither on whether there was writing on the outside, for she could not remember, and she was not asked how long was the note. She also stated the note asked S.S. for a date. She remembered the note as offensive and "nasty." Although she could not remember specifics, she did recollect a reference to breasts. She also testified to personal contact with Mr. Wade, i.e., that he asked her to "sit on his face" and made other comments of that nature at least three times.

The final student to testify was A.H., who, as a mentally impaired but educable student, was in Mr. Watkins' classroom with Mr. Wade throughout much of the day. She testified as follows when asked about what occurred between her and Mr. Wade in April: She asked him for a piece of candy⁸ and, in response, he said he only had one kind and shook his privates. He added that he would give her the "candy" if she would "give him some milk first," touching her breast.⁹ She also said Mr. Wade would regularly ask her when they were going to go out.

Mr. Wade individually denied all the incidents alleged, testifying that he did not pass out any documents sexual or

⁸Candy was used as a reward for the students.

⁹A.H. later that day told her English teacher and the principal.

in bad taste, never had a note passed to S.S., never asked M.H., A.H., or any other female student to go out, and never made any comments about any student's body to her. He testified he learned of the alleged incidents when he found out students were signing a petition to get him fired and that he saw the documents C.M. testified regarding for the first time when given copies by some students who told him he was accused of passing them out. He testified that the copies of the documents Mr. Watkins saw in his possession were those sent him by Respondent when the matter was being investigated.

Mr. Watkins' testimony that he saw them in Mr. Wade's possession "during the course of the school year"¹⁰ at "different times" does not clearly support a determination that he saw the documents in Mr. Wade's possession prior to the investigation, when Mr. Wade was supplied them by Respondent, and therefore his testimony indeed does not support that Mr. Wade gave C.M. the documents. However, the evidence otherwise does support the charges.

Mr. Wade was questioned closely on whether any of the students had cause to testify falsely against him. Asked if there was any reason to believe that any of the students

¹⁰ Respondent interprets this testimony as meaning "throughout" the school year. The witness could just as well have been agreeing that he saw the documents at some time within the school year and that time could have been during the investigation before the school year ended.

would be "out to do something to" him, he said "no," with the possible exception of the students whose papers he graded since they tended to think their grades were too low. The only one of the witnesses whose papers he graded was A.H.; he stated that she did complain "all the time" of her grades. He stated that while he had not disciplined any of them he had written up C.M. for "foul language." Accordingly, while Mr. Wade's testimony does supply a possible motivation for A.H.'s unfairly testifying against him, her demeanor indicated no antagonism to him. Similarly, there was no indication in C.M.'s demeanor that she was antagonistic to Mr. Wade, either because of his reporting her for discipline or for any other cause. In any case, Mr. Wade's testimony establishes that even he himself knew of no reason why the remaining complaining witnesses, S.S. and M.H., would falsely swear against him.

Nor does the testimony of the complaining witnesses show any inconsistencies that indicate the stories were untrue. The only incident that more than one complaining witness testified regarding was that of the note. The only inconsistencies thereon, relating to whether S.S.'s name was written on the outside of the note and whether the writing covered 1/3 or 2/3 of the paper, are so minimal that they do not tend to discredit the critical and consistent testimony of the witnesses that Mr. Wade gave C.M. a note to hand to S.S. and that note asked S.S. for a date and included sexually explicit and suggestive language.

Grievant contends as follows in his proposals:

All of the Board's [Respondent's] witnesses are members of a gang. This fact introduces the strong possibility of collusion or concentrated action to achieve a devious goal, the termination of the grievant. Is it not peculiar that the only students to accuse grievant of misconduct are the members of the gang? The statement made by [S.S.] that the social worker was "helping us" is revealing. Although [S.S.] became extremely resentful when questioned relating to the meaning of these words, it is not difficult to discern the meaning. The "us" is the T.D.S. posse. The "helping" is helping the T.D.S. posse[] to bring about the grievant's dismissal.

Membership in a "gang" reflects on their character and disposition toward honesty. Certainly, commission of criminal acts and continued association with individuals who had committed criminal acts is a major obstacle in establishing the credibility of any witness.

The "gang" Grievant refers to was a club the students had dubbed the "Too Damn Sexy" club, which they referred to by its initials. All witnesses readily conceded that they had such a club. There is nothing in this record to indicate that TDS was anything but an innocuous, albeit juvenile, informal club, and the record does not indicate that the members would have had any reason to conspire to ruin Grievant. Rather, it is more likely that Grievant felt freer to be sexually explicit with the club members than he would have been with nonmembers. While Grievant is correct that S.S. did not clearly explain her reference to the "help" provided by the social worker, the lack of such an explanation does not support a conclusion that a conspiracy existed.

The criminal records established also do not serve to destroy the credibility of the complaining witnesses. Upon

questioning C.M. admitted that she had been found guilty of larceny for stealing a necklace and anklets and had been suspended from school for alcohol or drug problems. Similarly, S.S. admitted that she had been suspended once for drinking alcohol, and M.H. admitted she had gotten in trouble with the law for shoplifting. It was ruled at hearing that only those malfeasances involving some type of dishonesty would be considered relevant to a credibility determination, and that ruling is confirmed here. Accordingly, while the credibility of C.M. and M.H. is lessened somewhat by their history of larceny, that history does not serve to totally discredit their stories, since their and S.S.'s stories are consistent and, regarding M.H., the record indicates no motivation for failing to tell the truth regarding Mr. Wade.¹¹ In any case, that S.S. consumed alcohol does not lower her credibility in the least.

Accordingly, the testimony of the four complaining witnesses and Mrs. M was consistent on all critical facts and, as Grievant conceded, there was no reason why all five witnesses would fabricate the charged incidents. Moreover, Mr. Wade's wanting to keep his position provided strong motivation for him to testify falsely. For the foregoing reasons, it is therefore determined that the credible

¹¹In fact, M.H. testified that she had nothing against Mr. Wade and attested, "I'm not the type of person who would get somebody fired."

testimony establishes that Mr. Wade was properly dismissed on the grounds of immorality.¹²

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

Findings of Fact

1. There are no grounds for finding S.S. not a credible witnesses, and she is accordingly found to be absolutely credible.

2. While the juvenile records of C.M. and M.H., involving larceny, establish some dishonesty of the witnesses, in that their testimony was consistent with S.S.'s in all critical particulars, they also are found credible.

3. That A.H. complained to Mr. Wade of his grading does not establish any antagonism of her toward him. From her demeanor and that the record supports no further basis for finding her not credible, A.H. is found to be credible.

4. That the complaining witnesses are members of a club "Too Damn Sexy" does not support that they are dishonest or acted in collusion to get Mr. Wade fired.

¹²While there was no evidence on the averment of neglect of duty other than that discussed, which more clearly relates to immorality, since Grievant conceded that the incidents relating to the charge of immorality, if proved, justified termination and the evidence supports that concession, no further discussion of whether Grievant neglected his duty is required.

5. It is unlikely that all four complaining witnesses plus C.M.'s mother would lie.

6. Mr. Wade's testimony that none of the incidents described in Findings of Fact 7 through 10 occurred is not credible.

7. Via C.M. Mr. Wade sent S.S. a sexually-explicit note requesting a date with her.

8. Mr. Wade gave C.M. sexually explicit and obscene documents.

9. Mr. Wade made sexually explicit comments to A.H. and touched her breast.

10. Mr. Wade also made sexually explicit comments to C.M. and M.H.

Conclusions of Law

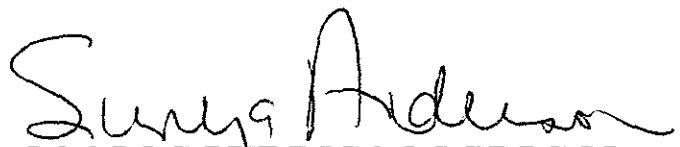
1. A board of education may "dismiss any person in its employment at any time for: Immorality... ." W.Va. Code §18A-2-8. "Immorality" may be defined as "conduct 'not in conformity with accepted principles of right and wrong behavior; contrary to the moral code of the community; wicked; especially, not in conformity with the acceptable standards of proper sexual behavior.'" Golden v. Bd. of Educ. of the Co. of Harrison, 285 S.E.2d 665, 668 (W.Va. 1981), quoting from Webster's New 20th Century Dictionary, Unabridged (2d Ed. 1979), at 910.

2. In that Respondent established the facts provided at Findings of Fact 7, 8, 9, and 10, Respondent established

by a preponderance of evidence that Mr. Wade was guilty of immorality. Respondent properly dismissed Mr. Wade for immorality pursuant to W.Va. Code §18A-2-8.

Accordingly, the grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of this decision. 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. Please advise this office of any intent to appeal so that the record can be prepared and transmitted to the appropriate court.



**SUNYA ANDERSON
HEARING EXAMINER**

Dated: August 31, 1989