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**WEST VIRGINIA EDUCATION AND
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MARY MARLING

v.

Docket No. 89-25-211

MARSHALL COUNTY BOARD OF EDUCATION

D E C I S I O N

Mary Marling is employed by respondent Marshall County Board of Education (MCBE) and served as Secretary/Aide at Cameron Elementary School from 1986 through the 1988-89 school year. In March 1989, she filed a grievance in which she alleged she had been "unfairly and improperly evaluated" and subjected to harassment and reprisal from her principal at Cameron, Wayne Simms. The grievant did not prevail at the lower grievance levels and advanced her complaint to level four. Hearing was conducted July 10, 1989,¹ and submissions of fact-law proposals were completed by August 14, 1989.

¹The transcript of the April 1989 level two hearing had been previously submitted, and the parties merely supplemented the record developed at that level.

Grievant's level four filing specifically requested that the protested 1988-89 evaluation be expunged from her personnel records. By letter filed August 23, 1989, MCBE advised the undersigned that grievant had applied for and was transferred to a central office position. It was MCBE's stated position that the grievance issues were moot, not only because she was no longer employed at Cameron but also because the protested evaluation had not hindered her employment opportunities. Grievant did not respond to the letter's final statement: "Of course it is up to [grievant] whether or not to pursue this matter further."

Mr. Simms rendered an evaluation of grievant for the 1988-89 school term which was contrary to past evaluations. The evaluation reflected a problem in their working relationship which he attributed to her. MCBE's evaluation form for a secretary contains fifteen indicators for Work Habits, sixteen for Performance and three for Professional Development which are rated Does Not Meet (standards), Meets or Exceeds. On grievant's 1988-89 evaluation, Mr. Simms rated her with four Exceeds, twenty-five Meets and five Does Not Meet standards. He appended an "Improvement Program" form on which he had handwritten some mildly stated directives that she be more cooperative about suggestions, directives and procedures from him.

Problems between grievant and her principal dated back to her initial efforts to be awarded the Cameron position when she had to resort to filing a grievance to exercise her seniority right for the assignment. The record is replete with grievant's

uncontroverted accounts of very unprofessional treatment of her by some of Cameron's teaching staff, who apparently resented having someone not of their choosing, or Mr. Simms', fill the position. Mr. Simms' failure to exercise his authority and control on the matter set the stage for a relationship among him, grievant and a number of the staff that went from bad to worse.

In light of the fact that grievant has voluntarily departed the Cameron position, and the harassment and reprisal issues are moot, no purpose would be served by detailing the incidents between the parties at Cameron which further deteriorated working relationships. Suffice it to say that, while the record is replete with examples of times when Mr. Simms should have exercised the authority of his office to manage his staff and to act more reasonably toward grievant, the record also contains instances of unprofessional interpersonal behavior on her part, namely, sarcastic remarks and comments about some of her assigned duties and the people with whom she worked.

The matter remains whether the 1988-89 evaluation should remain in grievant's records. That issue certainly is not moot. Whether or not the evaluation hindered grievant's employment opportunity for her present position is immaterial because an unfavorable evaluation always has the potential to affect future considerations.

State Board of Education Policy No. 5300 requires that an employee be given an open and honest evaluation of her performance with suggestions for improvement and an opportunity to

remediate prior to any adverse personnel action. The record indicates that Mr. Simms had lost control and objectivity in his work relationship with grievant and his ability to openly and honestly evaluate her or to offer remediation was in question. Under those circumstances, no proper analysis can be made with respect to the negative portions of the evaluation. However, to allow the evaluation to remain in grievant's records when she was not wholly to blame for the deteriorated work relationships at Cameron School would be unfair and arbitrary under the circumstances.

FINDINGS OF FACT

1. Grievant's employment as Secretary/Aide at Cameron Elementary School in 1986 was not well received by some of the staff. Cameron's principal failed to exercise his authority and control to contain and correct the situation.

2. As time went by, the personal feelings and working relationship between grievant and the principal deteriorated beyond remedy and neither was totally without fault.

3. For the 1988-89 school year, grievant's principal rendered an evaluation which contained unfavorable ratings of her performance.

CONCLUSIONS OF LAW

1. State Board of Education Policy No. 5300 requires that an open and honest assessment be made of an employee's work performance. Nicodemus v. Ohio Co. Bd. of Educ., Docket No. 35-88-148 (March 31, 1989).

2. By the 1988-89 school year, the ability of grievant's principal to objectively evaluate the areas of her performance which focused on their working relationship was flawed.

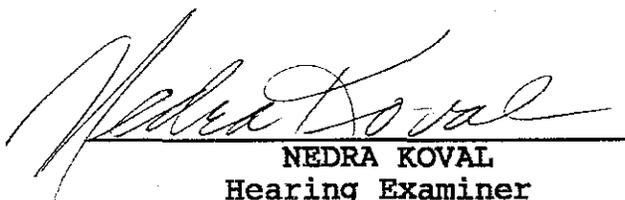
3. Failure to follow the requirements of SBE Policy 5300 in the performance assessment of an employee invalidates the evaluation. McCloud v. Harrison Co. Bd. of Educ., Docket No. 17-88-177 (Aug. 31, 1989).

Accordingly, the grievance is GRANTED and the Marshall County Board of Education is ORDERED to expunge grievant's 1988-89 evaluation from her personnel records.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Marshall 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.

DATED:

November 30, 1989


NEDRA KOVAL
Hearing Examiner