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TERRY McCLOUD

v.

Docket No. 17-88-177

HARRISON COUNTY BOARD OF EDUCATION

DECISION

Grievant Terry McCloud is a long-time employee of respondent Harrison County Board of Education and has served as principal at Wallace Elementary School since 1984. On June 27, 1988, grievant alleged that respondent had improperly and illegally evaluated her, that the said evaluation was part of a pattern of continuing harassment. The grievance was advanced to level four on September 20, 1988.¹ A level four hearing was not conducted until November 21, 1988, in Clarksburg, due to continuations of several earlier scheduled hearings for cause

¹The record does not reveal a level one response, but a level two hearing was conducted July 21, 1988, and an undated decision denied the grievance. By letter of September 8, 1988, respondent board waived consideration at level three.

shown. Due to still other considerations, the case was not mature for decision until a much later date.²

The two specific incidents which precipitated this grievance occurred during the final days of the 1987-88 school year. Respondent issued grievant an observation report on June 8, 1988, and her final evaluation for the school year on June 13, 1988, both prepared by the Administrative Assistant of Elementary Education, John Babyak.

Respondent evaluates its principals on eight standards set forth on both the preliminary observation and final evaluation instrument: Provides Instructional Leadership and Support Within the School Building, Creates a Climate Conducive To Teaching and Learning, Implements a System To Monitor Student Progress, Establishes and Implements a School Improvement Process, Establishes Good Public and Employee Relations, Evaluates Personnel Under his/her Supervision, Maintains Professional Work Habits, and Maintains and Upgrades his/her Professional Skills. The two instruments differ in format and use. Each professional employee must be observed on-the-job at least once during the school year. The observation instrument has a blank

²At the conclusion of the level four proceeding, the parties engaged in negotiations on the grievance but no agreement was reached at that time. However, a request was made that matters be held in abeyance pending further efforts to negotiate and settle. In late January 1989, the parties issued notices that efforts to negotiate a settlement had been unsuccessful. The level four transcript was filed February 15, 1989, and the parties filed proposed findings of fact and conclusions of law March 7 and March 10, 1989.

space beneath each listed standard for the evaluator to comment on the evaluatee's performance in relation to the standard. The evaluation instrument is used by the evaluator to summarize information, gleaned by observation and other means, for the final evaluative statement. The evaluator rates the evaluatee on each listed standard by checking one of three categories, Exceeds, Meets, and Does Not Meet.

Mr. Babyak wrote approximately forty negative comments and criticisms among the eight standards on the June 8 observation; there was one sentence of praise about grievant's efforts with the yearbook. On the June 13 evaluation, Mr. Babyak checked "Does Not Meet" for each and every one of the eight standards and denoted that grievant's total professional performance as principal did not meet standards. Some comments contained in the observation report were apparently intended to serve as a "remediation plan" for grievant to follow the ensuing year.

Grievant takes exception with the June observation report and evaluation and proposes the following facts:

- Policy requires that an employee be evaluated by March 1.

- County evaluation policy requires that an evaluator spend a minimum of twenty minutes when conducting an observation. Mr. Babyak spent only ten minutes in observing the grievant in his June 8 report.

- The purpose of evaluation is to be constructive rather than punitive.

- At a meeting held on February 22, 1988, in Superintendent Kittle's office, he had indicated that not only had improvements been made at Wallace School, but that Ms. McCloud's job performance was more than satisfactory. The other central office staff members present concurred with his assessment.

-- All observations and evaluations prior to June 8, 1988, of the grievant's work performance indicate that she exceeded standards established by the county office.

-- Wallace School has a history of being extremely difficult for the assigned principal due to the nature of the community. The school has had eight principals in twenty-two years. The grievant has served the community in the capacity as its chief school administrator longer than any other individual.

-- Mr. Babyak's observation of June 8, 1988, reports grossly exaggerated allegations concerning events at Wallace School.

-- Many of these issues were ancient history and had been addressed and proven to be unfounded to the satisfaction of the respondent.

Respondent proposed its version of facts and those which differ from grievant's, are as follows, with emphasis added:³

[1] At [the] meeting [in] February . . . Superintendent Robert E. Kittle indicated that no problems existed with the administration at Wallace Elementary School, but other persons who were present at said meeting testified that the tone of said meeting was that certain positive aspects existed at Wallace Elementary School, but many problems must be resolved and improvements must be made at Wallace Elementary School.

[2] The evaluation of the grievant, dated June 13, 1988, and the testimony of witnesses, described numerous problems in the operation of Wallace Elementary School, including many complaints from teachers that the grievant was out of the school building on a frequent basis; complaints from teachers and parents that the teachers and parents had no input in the operation of the school; that the level of cooperation between the grievant and the teachers and parents was inadequate; that the grievant failed to attend a PTA talent show; that the county discipline policy had not been implemented; that the grievant did not follow recommendations concerning her banking practices; that more complaints had been received from parents than at any other school; that the grievant had not exercised proper administrative skills in the manner in which she handled an accusation of forgery by a parent; that the grievant did not have a plan in place to

³The underlined portions of the quoted material will be discussed in this decision, infra.

address low student test scores; and that moral [sic] of teachers at Wallace Elementary School is low.

[3] The evaluation conducted by John Babyak is cumulative in nature and represents the performance of the grievant, as principal, for the entire 1987-88 school year.

Grievant argues that respondent's evaluation of her was flawed in all respects; that it was untimely, not properly conducted, and not in conformance with state and county regulations and policy. She requests that all negative materials be removed from her files and that the "harassment" cease and desist.

Respondent contends that grievant did not make a showing of harassment as contemplated by W.Va. Code §18-29-2(n).⁴ It argues that its formal observation and evaluation of grievant complied with the mandates of State Board Policy 5300(6) and its "GBI" evaluation policy, except for the failure to observe timelines, and grievant "suffered no prejudice or harm as a result thereof."

With respect to respondent's first enumerated proposed finding, see underlined quoted text, supra, Mr. Babyak and Assistant Superintendent William Ashcraft were respondent's only witnesses who testified about the February 22, 1988, meeting. Mr. Babyak testified that he personally did not agree with Mr. Kittle's assessment that grievant's performance at Wallace was

⁴Code §18-29-2(n) defines harassment as "repeated or continual disturbance, irritation or annoyance of an employee which would be contrary to the demeanor expected by law, policy and profession."

satisfactory but he did not air his feelings and never does at "those kind of meetings." Mr. Ashcraft did not definitively agree about problems existing at Wallace for he merely expressed his belief that Mr. Babyak was in a better position to assess the situation than was he, Ashcraft, and he supported Babyak's conclusions on that basis and not from personal knowledge on the matter. The record does not indicate a "tone" of the meeting other than that mentioned by grievant.⁵

As for the second proposal, there was no testimony other than Mr. Babyak's to justify his July 8 and 13 evaluative renderings. Throughout the level four proceeding, Mr. Babyak was unable to adequately describe, or place in time, those incidents for which he based many of the numerous criticisms of grievant's performance. The record shows that Mr. Babyak could not "be specific" about teacher complaints and low morale with regard to the 1987-88 school year (T4.90-91); could not recall whether an incident with the PTA he described to justify another negative rating occurred in the 1986-87 year (T4.94); did not know the full details about some disciplinary measures in grievant's school to which he nevertheless objected (T4.95, 116,

⁵The record suggests that a "tone" for future encounters between grievant and Mr. Babyak could have been set, due to his negative perception and admitted affront about grievant's "demand," as he put it, for the February 1988 meeting.

It must be noted that, if anyone had a basis to infer anything about the meeting, it was grievant. Grievant could have justifiably concluded from the "tone" of the meeting that all was well with her professional performance since the Superintendent was pleased and Mr. Babyak did not voice criticism.

117); and misstated the situation when he wrote on the evaluation that grievant "often" sent staff in her place to meetings (T4.102).

Further, Babyak agreed that Wallace School could have a level of PTA activities which would necessitate more frequent banking chores, that he did not know how other past Wallace principals had banked, and that he never ordered grievant to bank at times other than the school day. Mr. Babyak's lack of specificity and recall of parental telephone calls, allegedly critical of grievant, is best understood in light of his testimony and admission that no meaningful record-keeping was employed to log the calls (T4.122). In most respects, Mr. Babyak's testimony fell short of justifying the assessments he made of grievant's performance. On the other hand, grievant offered reasonable explanations or rebuttals to most of the "charges" against her.

For example, on March 15, 1988, Mr. Babyak requested a meeting with grievant about three school matters which were "of great concern" to him. He memorialized the encounter in letter of March 18, 1988, with notation that he expected two of the matters straightened out by the end of the month, complete with reports submitted to him on the subject. The record does not even hint that two matters of Babyak's concern were not resolved to his satisfaction. However, on the third matter, Mr. Babyak was displeased that grievant did not attend a Wallace PTA-talent show he ordered her to schedule for evening hours at the request of two parents in charge of the event for the elementary

students. Grievant had been reluctant to schedule at night because of some previous night-time vandalism and security problems at the school. Her inability to attend the event, as scheduled, was due to a previous commitment to attend a wellness clinic to resolve some serious ongoing health problems; her non-attendance was not unreasonable under the circumstances.

Other matters displeased Mr. Babyak. By letter dated April 5, 1988, grievant reported to Superintendent Kittle her findings about charges against one of her staff at Wallace which was contained in an anonymous letter of complaint. It was not unreasonable for grievant to also copy the then-State Superintendent of Schools because he had also been copied by the writer of the anonymous letter. Finally, grievant conducted banking matters at Wallace in the same manner as past principals. Her explanation of her banking activities was reasonable and she had never been ordered by Mr. Babyak or anyone else to adopt other ways or means for the activity.

Respondent's third proposal contradicts Mr. Babyak's direct testimony for he was asked to state the periods in time for which he based the June 8 and 13 evaluations and he replied, "the total summation of job performance over a two-year period of time" (T4.105,106). One intent of evaluation is to provide timely notice to staff of deficiencies. Mr. Babyak's very admission lends credence to grievant's charges that he dragged up old matters which she had reason to believe were resolved. Notably, respondent did not address still other of grievant's contentions, contained in her proposals and throughout the

record, that Wallace had a twenty-plus year history of problems with school/community relations and that respondent's allegations about events and incidents at Wallace were exaggerated.

Clara Wade, former Wallace secretary for twenty-two years until her retirement at the end of the 1987-88 school term, corroborated grievant's account of the difficult nature of the Wallace school community. Ms. Wade, a resident of the area, testified that Wallace was situated in an isolated, rural area with bad roads and transportation was one source of difficulty for its principals. She said Wallace had a high turnover of administrators and eight principals had served during her tenure. Ms. Wade claimed that she long ago gave up PTA involvement because members were always "fussing" about matters. She agreed that Wallace parents were difficult to work with and felt that grievant had no more problems with the school community than had had past principals. Ms. Wade's testimony was credible and convincing due to her long involvement with the school and community, and respondent at no time denied the troublesome history of Wallace Elementary School.

The evidence herein favors grievant's position about the impropriety of the June 1988 observation and evaluation, and she is entitled to the requested relief. Grievant, however, has not shown harassment on respondent's part in the matter. It is not clear to the undersigned whether grievant abandoned the harassment issue, but can be presumed inasmuch as no specifics of harassment were proposed or otherwise made clear in the level two or four proceedings. While it can be found that the adverse

evaluative data was without doubt arbitrarily and improperly rendered by the evaluator, the evaluation in and of itself cannot sustain a finding of harassment.

The remainder of this Decision will be presented as formal findings of fact and conclusions of law. Proposed findings and conclusions of the parties have been analyzed and considered and are incorporated herein to the extent that they are consistent with the probative evidence and the determinations of the undersigned hearing examiner.

FINDINGS OF FACT

1. Prior to the 1987-88 school year, evaluations of grievant's performance during her twenty-plus year tenure with respondent denoted that she met or exceeded professional standards.

2. Grievant had been principal of Wallace Elementary School four years when she filed this grievance. Historically, the administration of Wallace has been a difficult assignment.

3. Respondent's elementary school administrator, John Babyak, conducted a formal observation of grievant on November 23, 1987. According to respondent, the written observation "contained findings of a generally positive or neutral nature, and were discussed with the Grievant." See Resp. Proposals.

4. On February 22, 1988, grievant met with school officials to discuss matters about her administrative duties at

Wallace, although Mr. Babyak was not pleased that the meeting occurred at grievant's behest. Robert Kittle, Superintendent; William Ashcraft, Assistant Superintendent; Robert Skidmore, Administrative Liaison; Mr. Babyak; and grievant's representative attended.

5. Superintendent Kittle expressed satisfaction with grievant's performance and Mr. Babyak made no comment.

6. The deadline for submission of staff evaluations for school year 1987-88 was March 1, 1988, and grievant did not receive one. For this reason and the findings in Nos. 3 and 5, supra, grievant had no reason to believe that she was not adequately performing the professional responsibilities of principal at Wallace.

7. Without prior notice, on June 8, 1988, Mr. Babyak observed grievant on-the-job for ten minutes, rather than the requisite twenty. Babyak later presented grievant an observation form on which he had handwritten over forty barely legible criticisms under eight performance standards. Addressed were many matters that he had not witnessed, thoroughly investigated and/or previously documented, as well as some matters previously resolved or not otherwise germane to the observation period commencing from November 27, 1987, when the last observation was rendered. Some identical criticisms were repeated in up to four of the eight separate standards.

8. Mr. Babyak presented grievant an evaluation on June 13, 1988; all standards were mechanically rated "Does Not Meet,"

and in sum total, an overall performance as principal which did not meet standards.

9. The record evidence does not support a finding that grievant's performance warranted the assessments contained on the evaluation instruments of June 8 and 13, 1988.

10. Comments on the observation form which purported to be a "remediation plan" were rendered without grievant's input and otherwise fell short of information necessary for professional improvement.

11. Respondent's untimely evaluation of grievant was prejudicial and harmful in two ways. For one, she could not improve on any alleged deficiencies prior to year's end, especially when she had no reason to believe that she was not adequately performing the professional responsibilities of principal at Wallace. Further, a totally unexpected adverse evaluation at year's end with no opportunity to challenge or correct could affect her opportunities for future promotion or other career advancement.

CONCLUSIONS OF LAW

1. West Virginia State Board of Education Policy (SBE Policy) 5300(6) mandates that every employee be offered the opportunity of open and honest evaluation of his performance. Nicodemus v. Ohio Co. Bd. of Educ., Docket No. 35-88-148 (March

31, 1989); Smoot v. Kanawha Co. Bd. of Educ., Docket Nos. 20-86-177/209-1 (March 2, 1987).

2. SBE Policy 5310 defines the purpose of employee evaluation, i.e., to improve the quality of education, provide information for employee improvement, identify employees for future incentive systems and provide bases for sound personnel decisions. Nicodemus.

3. Respondent's Policy GBI requires that an evaluator spend a minimum of twenty minutes in a formal observation of an evaluatee and that evaluations be rendered by March 1 of the current school year.

4. The spirit and intent of evaluation was violated by respondent when it untimely and hastily conducted an observation of grievant in June, and the observation form reported incidents beyond the scope of the evaluative time period.

5. An evaluation of an employee, not based on personal observation but on information derived from undisclosed sources and other improper criteria, is not an open and honest assessment of said employee's performance and is violative of SBE 5300. Kinder v. Berkeley Co. Bd. of Educ., Docket No. 02-87-199 (June 22, 1988).

6. An adverse final evaluation rendered over three months beyond the required submission date and immediately prior to the end of the school year, prejudices the evaluatee in that deficiencies cannot be addressed prior to the end of the current

school year and negative evaluations threaten career aspirations. See Nicodemus.


7. Failure to follow the requirements of SBE Policy 5300 in the performance assessment of an employee invalidates the evaluation. Dunleavy v. Kanawha Co. Bd. of Educ., Docket No. 20-86-240-1 (Feb. 24, 1987).

8. SBE Policy 5310, section D, 7(c)(6) requires that an improvement plan be written by the evaluator using input from the employee and the failure to follow the requirements thereof invalidates the improvement plan. Dunleavy; Cohenour v. Greenbrier Co. Bd. of Educ., Docket No. 13-87-058-4 (July 22, 1987); Brown v. Wood Co. Bd. of Educ., Docket No. 54-86-262-1 (May 5, 1987).

Accordingly, this grievance is GRANTED on the issue of evaluation, and respondent is Ordered to expunge the June 8 and 13, 1988, observation, evaluation and "remediation plan" from grievant's personnel files.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Harrison 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: August 31, 1989


Nedra Koval
Hearing Examiner