

**THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD**

**CYNTHIA A. PRICE,
Grievant,**

v.

Docket No. 2021-0319-HamED

**HAMPSHIRE COUNTY BOARD OF EDUCATION,
Respondent.**

DECISION

Grievant, Cynthia Price, a special education teacher at Romney Elementary School, filed this action against her employer, Hampshire County Board of Education, on or about September 11, 2020. Grievant asserts that Respondent's decision to place cameras in its special education classrooms without her consent was unwarranted and constitutes a substantial detriment to her effective job performance. Grievant asserts that her classroom is not one contemplated by the applicable statute and the cameras were not installed in accordance with that statute. Grievant seeks removal of the classroom camera.

This grievance was denied at level one by decision dated October 12, 2020, authored by Respondent's Superintendent, Jeffrey Pancione. A level two mediation was conducted on February 2, 2021. A level three evidentiary hearing was conducted before the undersigned on June 1, 2021, at the Grievance Board's Westover office. Grievant appeared in person and by her representative, Ryan Michael, AFT-West Virginia. Respondent appeared by its counsel, Kimberly Croyle, Bowles Rice LLP. This matter

became mature for consideration upon receipt of the parties' fact/law proposals on July 6, 2021.

Synopsis

Grievant is employed by Respondent as a special education teacher at Romney Elementary School. Grievant is recognized by Respondent as an excellent teacher. Beginning with the 2020-2021 school year, Hampshire County Schools installed video cameras in all of its special education classrooms. Grievant asserts that current law only requires that video cameras be placed in self-contained classrooms as defined in State board policy. Grievant did establish a discrepancy in the Respondent's definition of self-contained classroom as opposed to the West Virginia Department of Education Policy's definition of a self-contained classroom. Cameras are mandated by the relevant statute to be placed in self-contained special education classrooms; however, there is no prohibition on placing cameras in other areas of the schools. In addition, the record established that Respondent only used the cameras to promote the health, wellbeing, and safety of students receiving special education. The grievance is denied.

The following Findings of Fact are based upon the record of this case.

Findings of Fact

1. Grievant is employed by Respondent, Hampshire County Board of Education, as a special education teacher at Romney Elementary School.
2. In 2019, the West Virginia Legislature passed Senate Bill 632, creating WEST VIRGINIA CODE § 18-20-11, which mandated the installation of video cameras in self-contained special education classroom.

3. Self-contained classroom is defined as a “classroom at a public school in which a majority of the students in regular attendance are provided special education instruction and as further defined in state board policy . . .” WEST VIRGINIA CODE § 18-20-11(b)(2).

4. West Virginia Department of Education defines a self-contained special education classroom as “a classroom where students with most significant disabilities with similar needs receive instruction in all academic subjects for at least 60 percent of their time.” West Virginia Department of Education Policy 2510. Respondent’s policy defines a self-contained special education classroom as classrooms that consist of more than 51% of special education students.

5. Beginning with the 2020-2021 school year, Hampshire County Schools installed video cameras in all of its special education classrooms.

6. Respondent notified all individuals that were involved that the “cameras are to promote the health, well-being and safety of students receiving special education and related services in a self-contained classroom.” Respondent Exhibit No. 3.

7. Respondent identified those classrooms in which videos would be placed as those that consist of more than 51% of special education students in them.

8. Grievant teaches English/Language Arts and Mathematics to students who are sent to her classroom from general education classes for resource/pull-out services. Grievant was responsible for fifteen students for the 2020-2021 school year.

9. All of Grievant’s students receive special education and related services. Grievant’s students are first, second or third graders, all of whom attend classrooms pursuant to an Individual Education Program for specialized instruction in either English/

Language Arts, Math, or both. Many of Grievant's students receive other services, such as speech therapy, occupational therapy, and physical therapy.

10. The principal of each school is the custodian of the video camera and all recordings. The principal and special education director are the only personnel in the county who can access the videos.

11. The videos are used for the health, safety and well-being of the students and employees. After three months, the video recordings are erased. The videos are not continuously viewed. The cameras are checked periodically to ensure that they are working.

12. The special education director, the human resources director and the superintendent all indicated that the video was as much for the employee's protection as for the student's protection.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Board 156 C.S.R. 1 § 3 (2018); *Holly v. Logan County Bd. of Educ.*, Docket No. 96-23-174 (Apr. 30, 1997); *Hanshaw v. McDowell County Bd. of Educ.*, Docket No. 33-88-130 (Aug. 19, 1988). "A preponderance of the evidence is evidence of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." *Petry v. Kanawha County Bd. of Educ.*, Docket No. 96-20-380 (Mar. 18, 1997). In other words, "[t]he preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact

is more likely true than not.” *Leichliter v. W. Va. Dep’t of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

Grievant asserts that current law only requires that video cameras be placed in self-contained classrooms as defined in State board policy. The West Virginia Department of Education defines a self-contained special education classroom as “a classroom where students with the most significant disabilities with similar needs receive instruction in all academic subjects for at least 60 percent of their time.” WVDE Policy 2510. Grievant argues that the record established that Grievant only taught English/Language Arts and Mathematics to students who were pulled out of general education for instruction in her class. Every student assigned to Grievant was in general education 68 to 95 percent of the instructional day. Grievant’s students were not in a special education setting for at least 60 percent of the time nor did they receive instruction in all academic subjects in the same classroom. In short, Grievant’s classroom does not fit the definition of a self-contained education classroom.

The undersigned acknowledges that Grievant has demonstrated that Respondent’s application of the legislature’s mandatory video camera requirement may not be in strict compliance with West Virginia Department of Education policy as far as percentages. In any event, the undersigned also acknowledges that, in 2019, the legislature emphasized the need for the safety in the State’s schools when it passed Senate Bill 632. Drafted in the wake of allegations of abuse in a special education classroom, the legislature, including the addition of WEST VIRGINIA CODE § 18-20-11, makes clear the need to protect those who are most vulnerable in the school system, as well as the school employees who work with them. A county board of education has the

authority to determine how best to protect its students and staff.¹ The West Virginia legislature has delegated to county boards of education the authority to “[c]ontrol and manage all of the school and school interests for all school services and upon all school property owned or leased by the county . . . “ W. VA. CODE § 18-5-13(A).

It is undisputed in this case that the Hampshire County Board of Education installed video cameras in all of its special education classrooms. The record established that principals of each school were consulted to determine which classrooms had a majority of students in regular attendance who were provided special education instruction. Seven classrooms were identified where Grievant teaches at Romney Elementary School. Grievant’s classroom was identified because 100% of her students were special education students, served by an Individual Education Program. Cameras were installed in the Grievant’s classroom, three other special education classrooms, the speech classroom and two other classrooms. Cameras were also installed in every other special education classroom in the county.

Grievant is correct in pointing out that the West Virginia Department of Education defines a self-contained special education classroom as “a classroom where students with most significant disabilities with similar needs receive instruction in all academic subjects for at least 60 percent of their time.” To the contrary, Respondent’s policy defines a self-contained special education classroom as classrooms that consist of more than 51% of special education students. However, Respondent aptly argues that while

¹The West Virginia Supreme Court of Appeals has long recognized that boards of education are required to protect the health and safety of its students under the West Virginia Constitution. Implicit with that constitutional guarantee “is the need for a safe and secure school environment, without a safe and secure environment, a school is unable to fulfill its basic purpose of providing an education.” *Phillip Leon M. v. Greenbrier County Bd. of Educ.*, 199 W.Va. 400, 484 S.E.2d 909 (W. Va. 1996).

cameras are mandated by statute to be placed in these classrooms, there is no prohibition on placing cameras in other areas of the schools, including a classroom, as in this case, where all of the students receive special education and related services.

There is nothing in the record that indicates that the cameras were installed in a discriminatory fashion or the actions of Respondent were arbitrary and capricious. The videos are not continuously monitored, they are not saved for anymore than a short period of time, they are not used to monitor Grievant's performance, and they are not used to evaluate the Grievant. It is undisputed that cameras are present in other areas of the school in which Grievant is assigned. Although not required by statute to do so, the record supports a finding that Respondent did not act arbitrarily, or beyond its discretion to ensure student safety, when it installed cameras in all of its special education classrooms in every school in the county.

The following Conclusions of Law support the decision reached.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Board 156 C.S.R. 1 § 3 (2018); *Holly v. Logan County Bd. of Educ.*, Docket No. 96-23-174 (Apr. 30, 1997); *Hanshaw v. McDowell County Bd. of Educ.*, Docket No. 33-88-130 (Aug. 19, 1988).

2. In 2019, the West Virginia Legislature passed Senate Bill 632, creating WEST VIRGINIA CODE § 18-20-11, which mandated the installation of video cameras in self-contained special education classroom.

3. The West Virginia Supreme Court of Appeals has long recognized that boards of education are required to protect the health and safety of its students under the West Virginia Constitution. Implicit with that constitutional guarantee "is the need for a safe and secure school environment, without a safe and secure environment, a school is unable to fulfill its basic purpose of providing an education." *Phillip Leon M. v. Greenbrier County Bd. of Educ.*, 199 W.Va. 400, 484 S.E.2d 909 (W. Va. 1996).

4. Although not required by statute to do so, Respondent did not act arbitrarily, or beyond its discretion to ensure student safety, when it installed cameras in all of its special education classrooms in every school in the county.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. See W. VA. CODE § 6C-2-5. Neither the West Virginia Public Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. However, the appealing party is required by W. VA. CODE § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The Civil Action number should be included so that the certified record can be properly filed with the circuit court. See *also* 156 C.S.R. 1 § 6.20 (2018).

Date: August 13, 2021



Ronald L. Reece
Administrative Law Judge