DEBORAH MARSH

v. Docket No. 94-55-025

WYOMING COUNTY BOARD OF EDUCATION

DECISION

The grievant, Deborah Marsh, is employed by the Wyoming County Board of Education (Board) as Principal of Baileysville High School (BHS). She initiated the following grievance at Level I August 5, 1993.

> This grievance alleges violation of West Virginia Department of Education Policy 5310. On July 20, 1993 I asked to see my personnel records. Upon examination I found an evaluation of my job performance dated 6-28-93. The document was signed by me, however the typewritten material contained within the document had been added after the document had been signed. This was the first time I had seen this altered document.
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> This action is considered not only a violation of Evaluation Policy 5310, but also an extremely unethical/unprofessional procedure.

Her supervisor denied the grievance as did the evaluator at Level II following a hearing held September 20, 1993. The Board, at Level III, declined to address the matter and appeal was made to Level IV January 24, 1994. The parties subsequently agreed to submit the case for decision on the record developed at the lowerlevels and the deposition of Assistant Superintendent of Schools Ray Woolsey. (See footnote 1) The parties submitted proposed findings of fact and conclusions of law by November 17, 1994.

There is essentially no dispute over the facts of the case. On January 25, 1993 Mr. Woolsey, who was the grievant's immediate supervisor at the time, visited BHS to participate in a "Goal Setting Workshop" being held at the school. The record is somewhat unclear as to how the workshop was conducted, but it appears that the grievant and other BHS employees were attempting to establish broad goals for the school and individual initiatives aimed at achieving those goals. Mr. Woolsey

participated in and observed the grievant during the conference. At the conclusion of the workshop, the grievant signed an "Administrator and Professional Support Personnel Evaluation" form on which she had listed the goals, "Encourage and implement a wider variety of instructional techniques in each classroom and enhance quality of total school organization." The other sections of the form were left blank. Mr. Woolsey placed this form in the grievant's personnel file.

The grievant also signed a blank "Observation Form" on January 25, 1993. Upon Mr. Woolsey's return to the central office on that date, he sent the grievant, via fax, a copy of that form on which he made the remark, "Mrs. Marsh worked on her goals, asked questions and participated in the discussion in a professional manner." He also placed a copy of this document in the grievant's personnel file.

On May 28, 1993, Mr. Woolsey made another visit to BHS to conduct an observation of the grievant's performance. After a brief discussion with Mr. Woolsey, the grievant signed and dated another blank observation form. She also signed an evaluation form on which she had written the goals established on January 25 but which was otherwise blank. Mr. Woolsey later completed the observation form by making the comment "Ms. Marsh was working on getting report cards ready. School Staff was working in classrooms. Absenteeism was high due to the time of year and seniors being gone." He also indicated on the evaluation form that the grievant had met both the goals established. Mr. Woolsey also made the following remarks on the form under the heading "Suggestions."

> Ms. Marsh must spend more time in hallways and among the general population of her students. Evaluation of personnel is a troublesome area that must improve so that needed corrections can take place. As I have told Ms. Marsh previously, she needs to be a better listener at meetings. It is not necessary to be an expert in all areas. Peer acceptance would be greatly improved if she improves in this area.

Sometime in the summer of 1993, Mr. Woolsey announced that he would resign his position with the Board effective June 30, 1993,and accept the position of Superintendent of Schools with the Grant County Board of Education. On or about June 25, 1993, Mr. Woolsey attempted to contact the grievant by telephone to arrange a time at which they could discuss her evaluation. For reasons which are not clear from the record, he was unable to reach her. Pressed for time to complete a number of tasks prior to June 30, Mr. Woolsey signed both the observation form and the evaluation

on June 28, 1993 and placed them in the grievant's file. He did not mail the grievant a copy of either.

On July 20, 1993, the grievant examined her personnel file and discovered the remarks made on the evaluation. (See footnote 2) She also could not locate the January 25, 1993 observation form in the file. Believing that Mr. Woolsey may have purposely withheld notification to her that he had completed the evaluation and placed it in the files, she filed the instant complaint on August 5, 1993.

In effect at all pertinent times was the Board's "Evaluation of Professional Personnel and Administrative Procedures" policy which, in relevant part, provides, (See footnote 3)

All monitoring or observation of the employee shall be conducted openly.

. . .

The administrator's signature on the evaluation form denotes that the supervisor has reviewed the evaluation with the administrator.

. . .

The administrator shall receive a copy of the evaluation. The administrator has the right to include a written statement as an addendum to the evaluation.

The policy also contained a provision, applicable to the grievant, to the effect that administrators with less than three years experience were to be evaluated twice during each school year and that the second was to be completed by April 15. (See footnote 4)

The grievant asserts that Mr. Woolsey acted unprofessionally, unethically and in contravention of the above policy provisions when he completed the evaluation without her knowledge, signed it and placed it in her personnel file. (See footnote 5) She seeks the removal of the evaluation from her file as relief. The grievant also seeks reimbursement for the costs she incurred in obtaining a copy of Mr. Woolsey's September 19, 1994 deposition. See n. 1.

The Board responds that Mr. Woolsey made reasonable efforts to contact the grievant before finalizing the evaluation and that given his impending resignation, he had no choice but to complete the form and include it in her file. The Board concedes that Mr. Woolsey did not meet the timelines of the above policy but asserts that the grievant has not been injured by that error. For the reasons

hereinafter discussed, the undersigned concludes that the grievant is entitled to relief.

Despite that both Mr. Woolsey and the grievant testified, it was never adequately explained why the grievant signed blank observation and evaluation forms or why Mr. Woolsey allowed her to do so. It was also never made clear why Mr. Woolsey could not reach the grievant by telephone in June 1993. Accordingly, few if any conclusions can be reached as to whether either was to blame for the problem. What is clear is that the process by which the June 28, 1993 evaluation was completed and placed in the grievant's file did not conform to Board policy.

That the evaluation was not completed by April 15, 1993, appears to be a technical violation of the policy and the grievant does not seriously argue that it should be removed from her file on that basis alone. Further, while the grievant at times appeared to be making statements questioning the validity of the remarks made on the evaluation by Mr. Woolsey, she did not establish that they were inaccurate. Indeed, it was Mr. Woolsey's unrefuted testimony that he had discussed the "suggestions" on the form with the grievant on numerous occasions prior to June 28 and that she hadnever disputed his assessment. The crux of the grievant's argument is that she was never given an opportunity to review Mr. Woolsey's comments and provide a response prior to the placement of the evaluation in her file. Since the policy mandated that she be allowed to do so, the grievant is entitled to relief.

The removal of the evaluation from the grievant's personnel file, however, would not be appropriate relief. As previously noted, the evaluation overall was a favorable one and the grievant would benefit by its retention. Further, it is apparent that were the evaluation to be removed from the grievant's file, Mr. Woolsey, the only administrator in a position to complete another assessment, would not be able to do so. Finally, the policy mandates that some assessment be completed and performance rankings have significance when positions are filled per W.Va. Code §18A-4-7a. (See footnote 6) Consistent with W.Va. Code §18-29-5(b), whereby Level IV hearing examiners are authorized "to provide such relief as is deemed fair and equitable," the undersigned concludes that the more appropriate redress would be to permit the grievant to include in her personnel file a response to Mr. Woolsey's "suggestions" on the evaluation.

The undersigned further concludes that the grievant is entitled to her costs for a copy of Mr. Woolsey's deposition. As previously noted, the deposition was taken in lieu of a hearing which the Board requested. Further, the request to take thedeposition was a late one and one which delayed

the resolution of the case. While the grievant benefited by Mr. Woolsey's testimony, she did not request the hearing, its postponement or the deposition. The grievant is entitled to reimbursement pursuant to W.Va. Code §§18-29-5(b) and 18-29-6, ¶4.

Accordingly, the grievance is **GRANTED** to the extent that the Mercer County Board of Education is hereby **ORDERED** to permit the grievant to attach an addendum to the June 28, 1993 evaluation consistent with its policy providing for such addenda. The Board is further **ORDERED** to reimburse the grievant for her costs in obtaining a copy of witness Ray Woolsey's deposition. No other relief is granted.

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JERRY A. WRIGHT

CHIEF ADMINISTRATIVE LAW JUDGE

Date: November 17, 1994

Footnote: 1The grievant originally requested that the decision be rendered on the record developed at the Level II hearing. A Level IV hearing was scheduled for July 26, 1994 upon the Board's request to present Mr. Woolsey's testimony. On July 25, 1994, Board counsel, citing Mr. Woolsey's unavailability, requested permission to take his deposition in lieu of a hearing. After discussions with the grievant, in which she also expressed a desire to question Mr. Woolsey, the undersigned granted the request. Upon the completion of the deposition, the Board paid the court reporter's fee and the cost of its copy of the transcript. The grievant paid $65.54 for her copy of the transcript. As discussed herein, she seeks reimbursement for this expenditure.

Footnote: 2The grievant's inquiry was prompted by her rejection for the position vacated by Mr. Woolsey. It appears that Superintendent of Schools Frank Blackwell advised her that the evaluation in question was one of the factors in the rejection. The grievant was unsuccessful in her grievance concerning her nonselection for that position. See Marsh v. Wyoming County Bd. of Educ., Docket No. 94-55-022 (Sept. 1, 1994).

Footnote: 3While the grievant referenced policies of the West Virginia Department of Education in her original grievance, she did not rely on those policies at hearing. She did, however, testify that the Board policy outlined herein was consistent with DOE policies addressing the evaluation of professional personnel and there was no evidence presented to the contrary.

Footnote: 4It is unclear whether the grievant received an evaluation during the first half of the 1992-93 school year. There is some evidence of record which suggests that did not. Since the grievant does not raise this issue, it is not addressed herein.

Footnote: 5At one point during the Level II hearing the grievant alleged that Mr. Woolsey had purposely not placed the January 25, 1993 observation form in her personnel file and asked as relief that a copy be so placed. Mr. Woolsey, however, testified during his September 19, 1994 deposition that he had recently examined the file and found the document there. The grievant did not rebut this evidence and it is, therefore, accepted as true. Accordingly, it is concluded that the document was either misplaced on the grievant's July 20, 1993 inspection of the file or she merely overlooked it.

Footnote: 6That Code section mandates that in filling professional positions, a county board must give consideration to the applicants' evaluations over the preceding two years.