PAUL SLACK,

Grievant,

v. **DOCKET NO. 95-32-404**

MORGAN COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Paul Slack, filed the following grievance on August 8, 1995:

> I am being harassed by being placed on one improvement plan after another. The latest plan was given to me after school was out for the 1994-95 school term. To resolve this grievance, I request that this improvement plan be declared null, void and of no effect and that the Board of Education order County Administrators Janet Goodhand and William Heavner cease harassment of grievant.

The grievance was waived at level one, and following an adverse decision at level two on August 31, 1995, Grievant appealed to level four on September 11, 1995. The parties agreed to submit the case on the record developed below, and this case became mature for decision on October 2, 1995, the deadline for filing proposed findings of fact and conclusions of law.

Findings of Fact

1. Grievant has been employed as a classroom teacher by the Morgan County Board of Education ("Board") for 7 years, assigned to Great Cacapon Elementary School.

2. For the 1994-95 school year, and the year prior, Grievant's immediate supervisor was William Heavner, Principal at Great Cacapon Elementary School.

3. During the school year, Principal Heavner often orally asked Grievant to adapt or change his practices or procedures both in the classroom and school-wide in an effort to improve problems he was having with his classroom.

4. Principal Heavner conducted a formal teacher observation of Grievant on January 23, 1995, prepared a teacher observation form pursuant to West Virginia Board of Education Policy 5310 ("Policy 5310"), and shared that information with Grievant. Under the category of "Classroom Climate," Principal Heavner noted that Grievant "assigned everyone 14 sentences to write." G Ex. 1.

5. In early February, 1995, four families requested of the Board that their nine children be allowed to transfer from Great Cacapon Elementary School because of alleged improper and unprofessional conduct on the part of classroom teachers at the school, specifically Grievant.

6. Principal Heavner met with Grievant and presented him a memorandum dated February 17, 1995, outlining the various recent allegations made against him, which included an allegation that Grievant threatened students not to tell "too much" about hisclassroom. Principal Heavner suggested methods by which Grievant could improve his classroom. Board Ex. 1.

7. Principal Heavner conducted a formal teacher observation of Grievant on March 13, 1995, prepared a teacher observation form pursuant to Policy 5310, and shared that information with Grievant. Under the category of "Classroom Climate," no comments were made. G Ex. 2.

8. Principal Heavner prepared Grievant's teacher evaluation pursuant to Policy 5310 on June 2, 1995, in which he gave Grievant an "Unsatisfactory" rating in "Classroom Climate". Grievant received a "Satisfactory" rating in all other areas of evaluation. The evaluation was shared with Grievant. G Ex. 3.

9. Pursuant to Policy 5310, Principal Heavner drafted an improvement plan for Grievant in the area of "Classroom Climate." Principal Heavner asked Grievant to participate in the drafting of the plan, and Grievant refused, objecting to the "Unsatisfactory" rating.

10. Principal Heavner, Director of Elementary Education, Janet Goodhand, and Grievant met at the school on June 6, 1995 to discuss the improvement plan. Grievant would not participate in drafting the plan, told Principal Heavner to prepare it and he would sign it, and left the meeting.

11. Principal Heavner, Janet Goodhand, Grievant and his representative, met on June 8, 1995, again to discuss the plan at the Board office. Again, Grievant objected to the plan and would not participate in drafting the plan. Grievant returned to theBoard office the next day, June 9, 1995, to sign the final version of the improvement plan. (See footnote 1) G Ex. 4.

12. The improvement plan confirms that Grievant's deficiency was an:

> Unsatisfactory classroom climate as evidenced by his failure to:

- create and maintain an environment that supports learning
- accommodate individual learning differences
- demonstrate to students that they are treated in a fair and equitable manner
- establish procedures and rules that enhance learning
- follow the school discipline procedures

13. The deadline for improvement is listed as the end of the first semester of school year 1995-96, with a final assessment to be made by January 18, 1996.

14. The Principal, the Director of Elementary Education, and an improvement team, to be in place by September 15, 1995, were listed as resources available for assistance in implementing the improvement plan.

Discussion

Grievant alleges that the June 9, 1995 plan of improvement is the latest plan of improvement given him in a continual pattern of harassment by the Board. Grievant further alleges that the plan of improvement is flawed. (See footnote 2) Grievant seeks as relief that the planbe declared null and void and the administrators involved be ordered to cease harassing him.

The Board denies any pattern or specific incident of harassment of Grievant, and supports the Principal's decision to place Grievant on an improvement plan for his deficiency in classroom climate.

In order to prevail, Grievant must establish the truth of his allegations by a preponderance of the evidence. Black v. Cabell County Bd. of Educ., Docket No. 06-88-238 (Jan. 31, 1989). "Harassment" is defined by W. Va. Code § 18-29-3(n) as the "repeated or continual disturbance, irritation or annoyance of an employee which would be contrary to the demeanor expected by law, policy and profession."

Grievant refers to at least three prior plans of improvement he has been put on by three different principals, prior disciplinary action taken against him (See footnote 3), and the subject plan of improvement, as evidence of harassment by the Board. Specifically, Grievant objects to the Director of Elementary Education, JanetGoodhand's, alleged involvement in the latest plan of improvement, as being in direct violation of a prior improvement plan. It is obvious from Grievant's testimony that he believes Ms. Goodhand is out to get him, and her involvement in the current plan of improvement is merely an attempt to set him up for failure in the future.

Principal Heavner testified that he was not presented with any of Grievant's prior plans of improvement, nor was Ms. Goodhand involved in the preparation of the current plan of improvement. Principal Heavner called Ms. Goodhand in to attend the meetings with Grievant on June 6 and 8, merely to offer her as a resource and to use her knowledge and expertise in devising possible ways of correcting the deficiencies noted in the plan.

Ms. Goodhand testified that she did not observe Grievant during the prior year for the purposes of evaluation, and only once was present in his classroom for about 10 minutes when students were preparing for CTBS testing. She also visited every other teacher's classroom that day for the same purpose. Ms. Goodhand was not involved in Grievant's evaluation, and only attended the meetings on June 6 and 8 at the request of Principal Heavner.

Both Principal Heavner and Ms. Goodhand testified they were only interested in helping Grievant improve his teaching and did not perceive the evaluation or the plan of improvement as an act of harassment on their part.

Upon consideration of all of the evidence, the undersigned must agree with the level two grievance evaluator that Grievant hasfailed to meet his burden of proof in establishing the administration's actions in placing him on a plan of improvement were harassment, or that the actions were for the purpose of harassing the Grievant. The plan itself sets forth specific areas that need improvement, with specific suggestions on how Grievant can effectuate positive changes in those

areas. These items were discussed previously with Grievant both orally and in writing. There is nothing in the plan that would suggest Grievant was being set up for failure, as the suggestions for improvement are reasonable and capable of implementation. That Grievant personally finds the plan of improvement an annoyance, irritation or disturbing, is not of itself evidence that the plan was developed for the purpose of harassing Grievant.

Conclusions of Law

1. In order to prevail, Grievant must establish the truth of his allegations by a preponderance of the evidence. Black v. Cabell County Bd .of Educ., Docket No. 06-88-238 (Jan. 31, 1989).

2. "Harassment" is defined, by W. Va. Code § 18-29-3(n) as the "repeated or continual disturbance, irritation or annoyance of an employee which would be contrary to the demeanor expected by law, policy and profession."

3. Grievant has failed to prove by a preponderance of the evidence that actions of the administration in placing Grievant on a plan of improvement was in any way harassment, or were for the purpose of harassing the Grievant.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Morgan 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 Administrative Law Judges is a party to such appeal, and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

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MARY JO SWARTZ

Administrative Law Judge

Dated: October 18, 1995

Footnote: 1 *Timeliness was not raised as a defense by the Board.*

Footnote: 2 *The Board objected at level two to the introduction of the issue of a flawed plan of improvement, as that issue was not part of the original grievance. W. Va. Code § 18-29-3(j) provides that it is within the discretion of the grievance evaluator at the level wherein new evidence is presented to determine whether theevidence substantially alters the original grievance, and whether the grievance evaluator will hear the new evidence, or rule that the grievant must file a new grievance. The level two grievance evaluator took the matter under advisement during the level two hearing. The level two decision does not address the issue of a flawed improvement plan, and is limited to the original allegation of harassment. Therefore, the undersigned interprets that decision to mean that the grievance evaluator did not consider the new evidence and it was not incorporated into the original grievance. Therefore, that issue will also not be addressed in this decision.*

Footnote: 3 *Grievant's employment was terminated by the Board on November 2, 1992, which action was overturned by this Grievance Board in Slack v. Morgan County Bd. of Educ., Docket No. 92-32-420.*