BETTY FINAMORE

v. Docket No. 94-24-511

MARION COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, a regularly employed custodian with the Marion County Board of Education (MCBE), was suspended for five working days for alleged willful neglect of duty and unsatisfactory performance. Grievant alleges a violation of *W.Va. Code* §§18A-2-7 and 18A-2-8, and requests reimbursement of lost wages, restoration of all benefits, including seniority, and the removal from her personnel file of all documents pertaining to the suspension. A level four hearing was held on September 6, 1995, at which time the parties supplemented the evidence adduced during an October 17, 1994, administrative hearing before MCBE regarding Grievant's suspension. (See footnote 1) The case becamemature for decision on February 26, 1996, upon receipt of the last of the parties' fact/law proposals.

Background

At all times relevant to this grievance, specifically, the 1993-94 school year, Grievant was among nine custodians assigned to Fairmont Senior High School (FHS), and one of six who worked the afternoon shift (3:00 to 10:00 p.m.). It is noted that most of the background information regarding the suspension was supplied at the October 17, 1994 administrative hearing. MCBE's superintendent at the time, Jane Reynolds, presented the charges against Grievant, and her two witnesses, Supervisor of Maintenance Paul Satterfield and FHS Assistant Principal Frank Moore, as well as Grievant, were duly sworn in for the formal proceeding.

In any event, in 1993-94, MCBE had two central office administrators responsible for

the upkeep and maintenance of the schools, Director of Maintenance Michael Stalnaker and Mr. Satterfield. Mr. Moore directly supervised the custodians at FHS. (See footnote 2)

During the time in question, Grievant's assigned areas at FHS included one girls' restroom, a hallway, two stairways, four classrooms and a computer room, spread out on all three floors of the main building, and four classrooms located in an adjacent building on the campus, known as the Polar Bear building. Grievant contends, and MCBE does not deny, that her assignment was particularly difficult because her areas of responsibility were so widespread. In fact, Mr. Satterfield agreed that Grievant had a "tough" job. T.29.

Grievant's custodial duties included dust mopping, wet mopping, spot cleaning and/or sweeping all of the wooden or tile floors in the rooms, hallways and stairwells in her areas of responsibility; dusting or cleaning furniture, fixtures, window sills, desks, lockers, water fountains and marks on the walls; emptying waste receptacles; and supplying the bathroom with soap and paper products along with cleaning the bathroom fixtures.

Grievant's cleaning tools and supplies were stored in a first-floor closet in the school's main building, thus, she was required to carry these materials to and from each area she had to clean. She had no storage place at all in the Polar Bear building, and had to make several trips back and forth from the main building to collect trash and carry her supplies and equipment. Because there was no water in the Polar Bearbuilding, she had to carry water from the main building for cleaning purposes. Grievant also maintains, without contradiction by MCBE, that she was not always supplied with an adequate number of plastic trash bags or scrapers and putty knives, necessary tools to scrape gum off the floor. Finally, because Grievant did not always have sufficient time each day to perform all of the duties required of her in every area, she engaged in "skip" cleaning. For example, she would fully mop an area every other day or so, and perform spot cleaning on the alternate days.

Following an inspection of Grievant's work areas on or about November 1, 1993, Mr.

Moore met with Grievant and informed her that some areas needed immediate improvement. She agreed that the areas would be corrected before a follow-up observation in ten working days.

During the day on November 18, 1993, Mr. Satterfield and Mr. Moore inspected Grievant's work areas. They decided that improvement was needed in the hallway and staircases. At approximately 8:50 p.m. on November 18, after Grievant had been on duty for nearly seven hours, Mr. Moore observed dirty conditions on the staircase in one of Grievant's assigned work areas. He confronted Grievant and told her if she did not improve the deficient areas by the following Monday, he would place her on a plan of improvement. At that point, Grievant raised her voice and used profanity, claiming that other employees werenot doing their work and accusing Mr. Moore of harassment. Mr. Moore documented this incident by letter of November 22, 1993, sent to FHS Principal William L. Furgason.

Thereafter, Messrs. Moore, Satterfield and Stalnaker met with Grievant on December 2, 1993, in Mr. Furgason's office. Mr. Moore testified that, after the meeting the three men developed a MCBE "Plan of Improvement" (Plan), relative to Grievant's performance. T.14. On December 9, 1993, Grievant and Mr. Moore signed the Plan.

Of record is a January 28, 1994, memorandum from Messrs. Stalnaker and Satterfield to Grievant:

After the meeting in Mr. Furgason's Office on December 2, 1993, the decision of [MCBE] is as follows:

1) You will receive a plan of improvement from Mr. Moore.

2) This letter will serve as a written reprimand of neglect of duty.

3) From the starting date of the plan of improvement to its date of completion, you will be observed and evaluated on a weekly basis.

Upon review of the [Plan] and weekly evaluations, if found to be unsatisfactory, you

will be suspended without pay for a period of 0-10 days. This length of suspension will be determined by Mr. Moore . . ., Mr. Stalnaker . . ., and Mr. Satterfield . . . .

You will be notified in writing of our decision within 5 (five) working days upon completion of the [Plan].

If you have any questions, please contact your immediate supervisor, Mr. Moore.

The "Instructions" on the form used to develop MCBE's improvement plans state that the plan's evaluator must specify five components or Parts of the plan: (A) unsatisfactory performance standard(s), (B) ways "in which performance is to improve," (C) suggestions by which to attain the desired improvement, (D) a designated monitoring system to be implemented by the evaluator, and (E) specific timelines for beginning and completing the plan.

Three unsatisfactory performance standards were cited on Grievant's Plan, namely, (1) not meeting "assigned schedules in a reasonable manner," (2) unsatisfactory "work judgements" relative to organization and coordination of assigned duties, and (3) not meeting standards of quality in work. When Mr. Moore was asked by Grievant's counsel to explain exactly what was meant by those statements on the Plan, Mr. Moore responded that Grievant was "not meeting her assigned schedule in a reasonable fashion. In other words, the work is incomplete, her assignment, her duties, okay." T.16. When pressed for details, Mr. Moore attributed Grievant's problem to poor time management, for one thing. Apparently to satisfy the requirements that Grievant's Plan designate ways "in which performance is to improve," and to provide suggestions by which to attain the desired improvement (Part B), the Plan specified the following:

1. The employee shall improve assigned work schedules in a reasonable manner.

2. Employee and supervisor will create a time schedule to accomplish assigned duties.

3. Employee must select specified time to take two ten minute breaks per shift.

4. Employee's quality of work will improve to meet standards (see attached sheet).

5. Employee shall follow the performance standards listed on job description for duties.

The specific suggestions to attain the desired improvement (Part C) were listed on the Plan as follows:

1. Employee will be given a checklist to record performance in assigned areas. Employee must self evaluate performance and return checklist to supervisor on a weekly basis.

2. Maintenance Supervisor will provide an adequate schedule to improve the employee's "time on task" management. The schedule will include designated time frame for each assigned work area. (see attached sheet)

Additionally, the Plan stated that suggestions for improvement would be provided by the building administrator and maintenance supervisor (Messrs. Moore and Satterfield). Finally, the Plan designatedthat Grievant would be observed four times during the duration of the Plan, which was to be in effect from December 13, 1993 until March 31, 1994.

The work schedule Grievant received was a written checklist (a form) of daily cleaning duties and assigned work areas upon which she could check off tasks in each area as she completed them. Grievant was advised to spend about twenty minutes per room to complete her tasks.

Of record is one written observation report, dated February 2, 1994, of an on-site inspection of Grievant's work areas conducted by Messrs. Moore, Satterfield, and Stalnaker during the term of the Plan. The completed observation report states that Improvement was recognized on the top floor hallway and staircases. However, the following areas need to improve on a consistent basis:

Room 20 - Floor needs mopped; remove markings from floor; dust furniture; clean window sills; remove markings from wall[;] fire alarm plug-clean
Room 21 - Dust furniture, markings on floor, window sills, cob webs door jams
Room 22 - Corners cobwebs; Dust window sills, markings on wall; mop floor
Room 23 - Cobwebs in window sills, fire alarm dust, markings on floor
Room 106 - Dust furniture, VCR, radio/top, waste receptacle/wash out, window sill cob websRoom 105 - Markings on floor, floor needs mopped, clean baseboards, gum on floor
Room 104 - OK Improved, dust furniture
Girl's Restroom - Window sills dust & dirt, mop floor, dust above sink
Top Hallway - Improved - must remove fingerprint markings from lockers
Staircases: Improved - Remove paper from ledges
Room 305 - Mop floor, dust furniture, window sills, book rack
Computer Room: OK

Interestingly, the improved areas, halls and staircases, were the areas which generated the initial concern by administrators back in November 1993.

In any event, there is no further documentation or even any specific testimony as to Grievant's further progress under the Plan. It is also noted that there is no additional documentation regarding the duration of the Plan or the day the plan was to end. However, Mr. Moore testified that, due to nineteen snow days in January 1994, and because Grievant had taken leave time for illness (dates, times and duration of these leave days were never made part of the record), the cut-off day for the Plan had been extended to the end of May 1994. See T.14-15. Ms. Reynolds notified Grievant by letter dated May 31, 1994 that she was suspended for five working days beginning June 2, through June 8, 1994. The letter continued, in pertinent part:

This suspension is warranted due to the fact that you have willfully neglected your duties

as shown by the fact that you have failed to show improvement in the areas of your job performance found unsatisfactory on your current plan of improvement.

A hearing on the matter is scheduled before [MCBE] at 7:00 p.m. on June 21, 1994 . . . .

You have the right to be present, the right to call witnesses on your behalf, to confront and cross-examine witnesses, and you have the right to be represented by counsel. If you fail to appear, [MCBE] will decide the matter based upon the information presented by the superintendent.

Should you have any questions regarding this matter, please contact my office at your earliest convenience.

Following the evidentiary hearing on the matter, (See footnote 3) MCBE voted to uphold the superintendent's suspension of Grievant for five days without pay. Grievant appealed directly to level four pursuant to *W.Va. Code* §18A-2- 8.

Position of the Parties

MCBE argues that its superintendent, subject to its approval, has the authority under *W.Va. Code* §18A-2-7 to suspend school personnel,and that under *Code* §18A-2-8, it may suspend or dismiss an employee for cause. (See footnote 4) MCBE's major arguments in support of the suspension action are set forth in its written level four proposals as follows:

-- Grievant admitted that she utilized inappropriate and profane language in a conversation with her supervisor, Frank Moore.

-- Grievant's work area was consistently below standards in the areas of cleanliness and she did not improve sufficiently during her plan of improvement in her deficient areas.

-- Grievant received full and fair notice and an opportunity for a pre-suspension hearing before the superintendent and full notice and hearing in a timely fashion before [MCBE] for a post suspension hearing.

-- MCBE has established by a preponderance of the evidence that Grievant did not perform her work duties, that she failed to improve and that she was insubordinate to her supervisor, Mr. Moore.-- [MCBE] did not act in an arbitrary or capricious fashion in suspending Grievant for incompetency, willful neglect of duty and insubordination.

MCBE's Brief at 2-4. It is noted that Ms. Reynolds' charging letter of May 31, 1994, stated the suspension was warranted because Grievant "willfully neglected" her duties, as demonstrated by her failure "to show improvement in the areas of [her] job performance found unsatisfactory" on a plan of improvement. (See footnote 5)

Grievant essentially argues that, in disciplinary cases, the employer must prove the charges by a preponderance of the evidence. She further argues that, given the circumstances of her wide-spread assigned areas of responsibility and other factors, it was impossible for her to maintain any high level of cleanliness; that MCBE did not properly implement the improvement plan; and that she was improperly deprived of her right to continued employment when directed by the superintendent to serve a suspension “prior to being given the opportunity to respond to the charges against her and prior to the approval of the [MCBE].” Grievant's Brief at 4. With respect to the Plan, Grievant contends that MCBE did not live up to its responsibilities under the plan of improvement, because she had been told to be more efficient but had not been told how or assisted in any manner to that end. She claims MCBE failed to offer any assistance in organizing her schedule for greater efficiency, to suggest improvements in the sequence of performing her assignments, to consolidate her assigned areas so they would not be as spread out as they were, or to provide storage space for her tools and

supplies in all of her assigned areas.

Discussion

For reasons more fully set forth below, the undersigned concludes that MCBE impermissibly suspended Grievant for five days, and that the grievance must be granted in Grievant's favor. The primary reasons for this outcome are because MCBE failed to follow the terms of Grievant's improvement Plan, thus negating any suspension based on that Plan, and furthermore, failed to offer any specific evidence of Grievant's inadequacy at the end of the Plan. *See Hensley v. Mingo County Bd. of Educ.*, Docket No. 90-29-458 (Mar. 28, 1991). Due to that outcome, it is not necessary to address the issue of Grievant's due process rights. However, some discussion of the issue is warranted, especially sinceMCBE argued that "Grievant received full and fair notice and an opportunity for a pre-suspension hearing before the superintendent" in its level four brief.

Grievant obtained a property interest in continued employment when she received a continuing service contract after three years of acceptable work, pursuant to *W.Va. Code* §18A-2-6. *See Duruttya v. Bd. of Educ. of County of Mingo*, 382 S.E.2d 40 (W.Va. 1989). Certain procedural due process safeguards against the infringement of the property interest should, in most cases, be invoked prior to the deprivation of the interest. *Clarke v. W.Va. Bd. of Regents*, 279 S.E.2d 169 (W.Va. 1981). A prompt post-deprivation hearing is sufficient only when a compelling public policy dictates an expedient separation of the employee from her employment. *Id.* at 180. In *Board of Educ. v. Wirt*, 453 S.E.2d 402, 409 (W.Va. 1994), a dismissal case, the West Virginia Supreme Court of Appeals held that, under *W.Va Code* §18A-2-8, "due process requires a pre-termination hearing of a tenured [service] employee[.]" The Court continued, "[i]f an employee presents a danger to students or others at work and there is no reasonable

way to abate the danger, a pre-termination hearing is not required."

In this case, there is no evidence in the record to support MCBE's assertion that "Grievant received full and fair notice and an opportunityfor a pre-suspension hearing before the superintendent." Rather, it appears from the record that Grievant was informed by the superintendent's letter of Tuesday, May 31, 1994, that a five-day suspension would begin in two days, and that a (post-deprivation) hearing on the matter before MCBE's members would convene nearly three weeks later.

Clearly, although the issue in this case is a brief suspension and not a dismissal, there was no compelling public policy reasons for MCBE's superintendent to invoke a five-day suspension for Grievant's purported failure to improve her work performance prior to some kind of face-to-face meeting to discuss the charges with her. *May v. Cabell County Bd. of Educ.*, Docket No. 92-06-438 (Apr. 20, 1993); *Knauff v. Kanawha County Bd. of Educ.*, Docket No. 20-88-095 (Jan. 10, 1989). Here, Grievant was not suspected or accused of theft, immorality, intemperance or any other action or behavior which might compromise the safety or well-being of FHS' students and staff.

It is true that, unlike the situation in *Knauff*, MCBE heard Grievant's side of the story before it ratified the superintendent's recommendation to suspend. However, Grievant's argument that she had to carry an "unfair burden of persuasion" at the post-deprivation hearing because MCBE had already paid the salary of a substitute worker to service herwork areas for five days is not without merit. As Grievant points out, the "deprivation occurred prior to the opportunity to respond." Grievant's Brief at 5. Because MCBE heard the case only after Grievant had already served the suspension, it would have incurred a financial loss of five days' salary had it ruled in Grievant's favor. Had that hearing occurred prior to Grievant's serving the suspension, MCBE may have been less disposed to rule favorably on the superintendent's recommendation to suspend than if it had not already incurred the costs of a substitute worker.

A due process concern is also evident with regard to the charges stated in the

superintendent's May 31, 1994, letter and the arguments posed by MCBE, through counsel, in its level four brief. As noted above, MCBE claims in its brief that it did not "act in an arbitrary or capricious fashion in suspending Grievant for incompetency, willful neglect of duty and insubordination." MCBE's Brief at 4. Grievant was not accused of either incompetency or insubordination in the May 31, 1994, charging letter. Therefore, only the two charges contained in the charging document, willful neglect of duty and unsatisfactory (work) performance, are at issue.

With regard to the charge of willful neglect of duty, MCBE must establish that Grievant's alleged work deficiencies were more seriousthan incompetency, rather that she knowingly and intentionally neglected her custodial duties while at work and under the improvement Plan. *See Board of Educ. v. Chaddock*, 398 S.E.2d 120 (W.Va. 1990). The undersigned concludes that MCBE failed to present evidence to support the charge that Grievant willfully neglected her custodial duties at FHS while she was under the Plan. For example, there was no testimony or documentation that Grievant ever left her work site or otherwise engaged in personal business or similar non-productive activities during scheduled work hours, decidedly acts of willful neglect of duty. *Jones v. Mingo County Bd. of Educ.*, Docket No. 95-29-151 (Aug. 24, 1995); *Edwards v. McDowell County Bd. of Educ.*, Docket No. 93-33-138 (July 13, 1994) More importantly, there is absolutely no evidence in the record that Grievant had not been performing her custodial duties during all of her working hours while on the Plan. *See Godfrey v. W.Va. Inst. of Technology*, Docket No. 94-BOD-079 (July 15, 1994); *Hensley v. Mingo, supra*.

In fact, Mr. Satterfield testified that, at some unspecified time, he accompanied Grievant during a work shift as she performed her duties in each of her assigned areas. According to Mr. Satterfield, he observed Grievant spend from ten to fifteen minutes (instead of the twenty minutes recommended in the Plan) in each work area doing the "basic" things. T.34. He stated that he thereafter counseled Grievant that, when she had five minutes or more left over after she finished an area, she could tackle some

additional tasks, such as dusting the window sills so she would not always be "playing catch-up." However, Mr. Satterfield agreed with Grievant's counsel that, at the time he observed Grievant, she had worked the entire evening, and had used the time she saved in her work areas to mop the upstairs hallway. T.35.

The only remaining charge, that of unsatisfactory (work) performance, or more specifically, that Grievant failed to show improve ment in areas found unsatisfactory on a improvement plan, has also not been established. It is most difficult to comprehend why MCBE even upheld the suspension following the administrative hearing. Neither Mr. Moore nor Mr. Satterfield, the only witnesses appearing on Ms. Reynolds' behalf to give testimony at the post-suspension hearing of October 17, 1994, were asked about the condition of Grievant's work areas after the formal evaluation was conducted on February 2, 1994. Neither was there any testimony or documentation about the conditionof Grievant's work areas on May 31, 1994. (See footnote 6) It appears from the record that a final evaluation was not even made at that time.

Without question MCBE was bound to follow the terms of the Plan of Improvement that it instituted to improve Grievant's performance. *Powell v. Brown*, 238 S.E.2d 220 (W.Va. 1977); *McCollam Kanawha County Bd. of Educ.*, 90-20-278 (Oct. 30, 1990). Moreover, the memorandum dated January 28, 1994, stated additional terms which were not actually contained in the Plan executed on December 9, 1993. In particular, the memo stated that Grievant would have "weekly evalua tions" of her work during the term of the Plan. The only testimony regarding weekly evaluations was that Grievant was to complete weekly checklists and return them to Mr. Moore. One such checklist, dated "1-20-94" was placed into evidence. However, Mr. Moore was not asked the significance of the completed list nor whether Grievant completed more weekly checklists throughout the duration of the Plan. No others were introduced into the record, thus, there is no evidence that such weekly evaluations took place. Again, at the minimum, the Plan called for four formal evaluations. At the administrative hearing, Mr. Moore was asked

by Ms. Reynolds whether the four observations called for in the Plan had been conducted. T.14. Mr. Moore never answered directly, rather he responded that the school had nineteen snow days in January 1994 (apparently, there were only two days in January 1994 when school was open, because there were only twenty-one week days that month starting with Monday, January 3, 1994, and ending with Monday, January 31, 1994) and Grievant had taken leave time for illness, so the cut-off day for the Plan was extended until the end of May 1994. See T.14-15. He did state that he never evaluated Grievant alone again, presumably following the unpleasant confrontation with her in November 1993. Under direct examination, Mr. Moore was not asked, and he provided absolutely no evidence about the condition of Grievant's work area in May 1994.

The cross-examination of Mr. Moore focused on Grievant's improvement Plan. He was asked to explain what he meant by the three deficiencies listed in Part A of the evaluation. He responded by stating that her work was incomplete. He also stated that the only suggestions he gave Grievant about her work during the duration of the Plan was the list of deficient areas he gave her in December 1993. During Mr. Satterfield's direct testimony at the administrative hearing, he agreed that he had been called in by Mr. Moore "to assist in the plans to help" Grievant. Again, he was not asked, and he offered no testimony about the condition of Grievant's work areas in May 1994. However, Mr. Satterfield did discuss the February 2, 1994 observation that had been conducted by him, Mr. Stalnaker and Mr. Moore. He stated that Grievant's work areas had not been cleaned properly.

It must be remembered that the Plan was only initiated on December 13, 1993. Further, school was in session in January 1994 for only two days. Finally, on Wednesday February 2, 1994, the day the sole documented observation was made, there had been only two school days in February 1994. When asked by Grievant's counsel whether the rooms that were marked as needing mopping could have been rooms that Grievant had skipped prior to the day he observed them, Mr. Satterfield

conceded it might have been a possibility. Mr. Satterfield also agreed with Grievant's counsel that "skip" cleaning had to be employed by custodians throughout the school system because there was not enough time built into the work schedules to mop a classroom every day. (See footnote 7) T.30. When asked whether he discussed the written report of February 2, 1994 with Grievant, Mr. Satterfield stated he could not recall whether he conferred with Grievant about the results of that observation. T.32. In addition, there is no evidence in the record that indicates Mr. Satterfield or any other administrator ever furnished Grievant with the report. Even more importantly, the February 2, 1994 evaluation indicated that some areas had improved, contrary to the suggestion in the charging letter that there had been no improvement. Mr. Satterfield offered no testimony about Grievant's work performance or the condition of Grievant's work areas after February 2, 1994, and he offered absolutely no testimony about how her work areas appeared on May 31, 1994, the final day of her improvement plan.

W.Va. Code §18A-2-8 states that "[a] charge of unsatisfactory performance shall not be made except as the result of an employee performance evaluation . . . ." In this case, MCBE apparently conducted no formal assessment of Grievant's progress under the Plan beyond the February 2, 1994 evaluation. Nor was there any other documentation or testimony indicating the condition of her assigned areas from February 2, 1994 until May 31, 1994. Absent any ongoing assessment ofGrievant's progress under the Plan, MCBE should have at least evaluated Grievant's performance at the conclusion of the Plan to document any existing or remaining deficiencies. *See Hensley, supra.* A disciplinary action based upon a charge that an employee has failed to improve unsatisfactory work performance under the terms of an improvement plan cannot be upheld without some kind of final evaluation or other evidence or documentation regarding the alleged deficiencies or wrongdoing. *See Jones v. Mingo, supra.*

MCBE presented no new evidence at the level four hearing. In summary, MCBE simply failed to provide any just cause for a suspension of Grievant based upon either

willful neglect of duty or unsatisfactory performance. Had MCBE wished to punish Grievant for her unprofessional conduct with Mr. Moore in November 1993, which appears to be the case since that incident was specifically cited in MCBE's level four proposed findings of fact, it should have done so at the time.

In addition to the foregoing, the following conclusions of law are made.

Conclusions of Law

1. Each disciplinary case must be determined upon the facts and circumstances which are peculiar to that case. *See Blake v. Civil Service Comm.*, 310 S.E.2d 472 (W.Va. 1983).

2. Under *W.Va. Code* §18A-2-7, the authority of the superintendent to suspend an employee is subject to the approval of the board of education.

3. Respondent failed to demonstrate by a preponderance of the evidence that Grievant willfully neglected her duties or otherwise failed to improve her job performance while under an improvement plan as alleged in a notice of suspension dated May 31, 1994.

Accordingly, the grievance is **GRANTED**, and the Marion County Board of Education is Ordered to reimburse Grievant for any lost wages and benefits resulting from the suspension, and to remove the May 31, 1994 charging letter from Grievant's personnel file. Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Marion 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 appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate Court.

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NEDRA KOVAL

Administrative Law Judge

Date: April 24, 1996

Footnote: 1

MCBE employed a professional court reporter to record and transcribe the proceedings at the administrative hearing. That transcript shall be cited T._.

Footnote: 2

According to Mr. Moore, MCBE's administration had in place a "cleanliness" committee to monitor the schools, and building principals were held responsible for their school's cleanliness.

Footnote: 3

Due to scheduling conflicts on the part of Grievant's counsel, the hearing scheduled for June 21, 1994, was not conducted until October 17, 1994.

Footnote: 4

W.Va. Code §18A-2-7 provides that the "superintendent, subject only to approval of the board, shall have the authority to assign, transfer, promote, demote or suspend school personnel and to recommend their dismissal pursuant to the provisions of this chapter." The statute continues that the "superintendent's authority to suspend school personnel shall be temporary only pending a hearing upon the charges filed by the superintendent with the board of education . . . ." Code §18A-2-8 provides, in pertinent part:

Notwithstanding any other provisions of law, a board my suspend or dismiss any person in its employment at any time for: Incompetency, cruelty, insubordination, intemperance, willful neglect of duty, unsatisfactory performance, the conviction of a felony or a guilty plea or plea of nolo contendere to a felony charge. A charge of unsatisfactory performance shall not be made except as the result of an employee performance evaluation pursuant to section twelve of this article.

Footnote: 5

It is also noted that Grievant was never cited on her evaluation for her unprofessional exchange with Mr. Moore in November 1993, and that the improvement plan contained nothing about that incident or Grievant's language. Moreover, there is no evidence that Grievant ever repeated that inappropriate behavior. Finally, the May 31, 1994 charging letter does not even bring up the incident.

Footnote: 6

In her closing statements at the administrative hearing, Ms. Reynolds stated that, in regard to Grievant's work areas, "[c]omplaints from teachers were consistently registered." T.66. However, Ms. Reynolds was not sworn in to offer any testimony, and her remarks were mere hearsay testimony at best. Additionally, there was no documentation proffered as to any purported teacher complaints.

Footnote: 7

Again, Mr. Satterfield admitted that Grievant's work assignment during the time in question was particularly difficult. This was also corroborated by Tim Lane at the levelfour hearing. Mr. Lane, a substitute custodian at the time, performed Grievant's assignment during her suspension in June 1994.