REBECCA MECKLEY,

Grievant,

v. **Docket No. 96-52-294**

WETZEL COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

The grievant, Rebecca Meckley has been employed by the Wetzel County Board of Education as a special education instructor for seventeen years. Her grievance is based upon events which occurred at a parent-teacher conference held April 4, 1996. She felt that she was placed in danger by the actions, both physical and verbal of an irate mother at the conference. The grievant blames the anger of the mother partially on her supervisor, Deborah Novotny and the school principal, Warren Grace. After a failure to informally resolve her complaints, she filed this grievance on or about May 21, 1996, alleging as follows:

1. Grievant was placed in an unsafe situation.
2. The principal failed to properly supervise his school.
3. Violation of due process rights.

The grievance was denied at Level I on June 4, 1996. She appealed to Level II where a full hearing was held June 24, 1996. Again, the grievance was denied and appealed to Level IV, July 9, 1996. After awaiting preparation of the Level II transcript, the grievance was submitted for decision based upon the lower level record, including supplemental briefs which were filed October 15, 1996. (See footnote 1) Due to administrative reasons, the grievance was transferred to the undersigned on January 30, 1997. The pertinent facts of this matter are as follows. The grievant, a special education instructor, teaches students with learning disabilities who are in need of a more individualized direction. A plan with an individualized approach for the student and his unique problem is devised by a committee. It is called an individual education plan or “IEP” and placed into

effect after conferences and input from the parents.

A certain student, whose name was not revealed due to privacy considerations, had an IEP which provided for him to have access to the teacher's outline of classroom subject matter. He was unable to take legible notes during class himself, part of his learning impairment. He was an “auditory learner”, meaning that he could understand verbal material but could not put it into writing. Thus, there was a requirement to provide the teacher's notes to him, customarily a photocopy. This had been established by November 2, 1996, after two conferences with the parents. L-2 exhibits 1 and 5.

Sometime shortly before April 4, 1996, the grievant prepared a note to thestudent to advise him that in the future, he would have to copy the science outline himself, presumably by hand, and return the originals to her. The grievant retained the note undelivered in her desk, perhaps having second thoughts, apparently not intending to place the change into effect at that point. However, another teacher, Brent J. Croasmun, while allowing the student to remove some papers from the grievant's desk, inadvertently made the note available to the student, who took it home to his parents. The parents, upon seeing the note, regarded this request as a violation of the agreed-upon IEP. They became alarmed and scheduled a parent- teacher conference to discuss the matter.

The conference was set for April 4, 1996, to begin around 8:15 a.m. Attending was the grievant, the student's parents, special education teacher Richard Bertozzi, who also worked with the student, teacher Brent J. Croasmun, and the grievant's supervisor Deborah Novotny (See footnote 2). The parents had contacted Mrs. Novotny to set up the conference. The school principal, Mr. Grace, had a conflict and could not fully participate. However, he did attend for a few brief periods.

A few minutes prior to the start of the meeting, the grievant, Richard Bertozzi, and Mrs. Novotny discussed the note in question and the upcoming conference. (See footnote 3) Mrs. Novotny verbally expressed her displeasure with the grievant. The parents were known, through other incidents, as very outspoken when upset about their child. Therehad been unpleasant parent-teacher conferences in the past involving these parents and other teachers. The grievant believed that Mrs. Novotny held her responsible for the parents' alarm. Mrs. Novotny angrily and with alleged profanity, questioned the grievant about the note, suggesting that she violated the IEP and was, therefore, in the wrong. The grievant further believes her conversation with Mrs. Novotny was overheard by the parents, reinforcing their anger.

The parent-teacher meeting started about 8:15 a.m. A confrontation between the student's angry

mother and the grievant erupted. The mother allegedly yelled profanities at the grievant. The grievant then said “I'm not going to sit here and have profanities yelled at me . . . I'm leaving, or the meeting is ended, I am leaving.”, L-2 at 23. She, along with Mr. Bertozzi, got up to leave the room. The mother grabbed the grievant by the back of her sweatshirt and pulled her back into her chair. Mr. Bertozzi also returned to his seat. This incident set the tone for a conference where there was much shouting and foul language from the mother of the student. The father did not conduct himself in this way and was, at times, a calming influence.

Later, the grievant went to Mr. Grace, attempting to discuss her complaints about the conference. She also wanted to discuss the actions and verbal abuse by Mrs. Novotny. He advised her to think about things before she proceeded in filing a grievance. He attempted to arrange meetings with Mrs. Novotny to discuss the matter with her, but was unsuccessful. The grievant felt that the failure to resolve matters at this point, delayed the filing of the grievance and was a denial of due process.

DISCUSSION

To be dealt with first is the allegation of an unsafe work environment.

W.Va. Code §18-29-21(a), in defining “grievance”, includes “any action, policy or practice by an employer . . . constituting a substantial detriment to or interference with effective classroom instruction, job performance or the health and safety of students or employees”. Examples of actions or practices that would detrimentally affect the health and safety of the students or employees are provided in York v. Mingo County Board of Education, Docket No. 95-29-519 (April 23, 1996); and Miser v. W.Va. Dept. of Health and Human Resources/Office of Epidemiology & Health Promotion, Docket No. 92-HHR-417 (July 14, 1993).

In York, a custodian at Tug Valley High School alleged that the school had not taken effective action to prevent student vandalism in the bathrooms which were the grievant's responsibility to clean. The students chewed and spit tobacco products all over the floor, defecated on the floor, broke sinks and commodes, and placed graffiti on various surfaces. Merit was found in her contention by the Administrative Law Judge. The conditions alleged by the grievant were found to be health and safety problems that directly impeded her ability to perform her duties. The Mingo County Board of Education was ordered to vigorously enforce the State Board's regulation regarding the use of tobacco products.

In Miser, the grievant was a Public Health Investigator with the Office of Epidemiology and Health Promotion's Sexually Transmitted Disease Program. He was required to take blood and tissue samples from people to be used in tests for sexually transmitted diseases, including the AIDS virus. The grievant claimed that therespondent did not use a safe procedure for the disposal of the needles used to take blood and tissue samples, nor did it adequately train its field investigators in blood drawing and HIV counseling. In fact, it was determined that the grievant attended nine training courses offered by the respondent. There were two others offered, which the grievant did not attend. The respondent issued educational memoranda and supplied disposable needle containers. The ALJ was convinced that the measures taken by the respondent were such that there was no showing that it had engaged in any activity constituting a substantial detriment to the health and safety of its employees. The potential dangers of the employment duties were acknowledged, but the employer was doing what it could to reduce the risks through training and issuing proper equipment.

In the case before us now, was there an unsafe condition or health hazard? The grievant's evidence did not show a continuing safety problem at the school. All evidence, including Level II testimony, pertained strictly to the conference of April 4, 1996. There was some evidence that the parents in question were angry at prior conferences including those with the grievant. Therefore, it was anticipated that the conference was going to be unpleasant, and that there would be anger and frustration displayed by the parents. However, there was no reason to believe that anyone would be in danger. A highly charged verbal confrontation would not be considered dangerous, unless there is further evidence that the meeting could become violent. There was no evidence of the presence of weapons or even physical contact except the one occasion when the student's mother pulled the grievant into her chair as she was trying to exit the room. It went no further, not expanding into more aggressionor physical confrontation. There was no reason for the principal to take any steps to protect the students or employees because they were not exposed to any unsafe condition, which could be anticipated.

The second allegation, that the principal failed to properly supervise his school, is related to the first allegation. In fact, it seems to be a mere restatement of it. As before, the facts as developed at Level II speak only to the one incident, the parent- teacher conference of April 4, 1996. There is no evidence from which to judge any other aspect of the principal's supervisory abilities. It is also questionable whether, even assuming that the principal did not properly supervise his school, this

amounts to a grievable event.

W.Va. Code §18-29-2(a) in further defining “grievance”, states that there must be a violation amounting to a misapplication or misinterpretation of a statute, policy, rule, regulation or written agreement under which the employees work. The grievant has not made such an allegation. It is difficult to fit the alleged failure to supervise the school properly within the above definition. There has not been alleged any act which would constitute such a rule or law misapplication or misinterpretation. There is also no policy or practice that is alleged to be a detriment to job performance.

Violation of due process rights, the third of the allegations constituting the grievance, is again, a rather nebulous contention. Due process of law is a basic constitutional right on both the state and federal levels protecting against the loss of property or loss of liberty without legal recourse or judicial process, W.Va. Const. Art. III, §10. Had the respondent, through any of it's agents, deprived the grievant ofproperty rights or of liberty? Mercer County Bd. of Educ. v. Wirt, 453 S.E.2d 402, 192 W.Va. 568 (1994), discuss's due process. The grievant, Wirt, a head custodian and tenured employee, was dismissed for immorality. He alleged denial of due process because he was not provided with sufficient notice and a hearing on the charges. He was not given an opportunity to address the respondent prior to his suspension. The W. Va. Supreme Court agreed with the ALJ that the grievant must be provided a pre- termination hearing. Due process must be provided before the deprivation of a property interest. In Wirt, the property interest was the grievant's tenure. What was Grievant Meckley's property interest? She complains that Mr. Grace, the principal, did not respond to her grievance in a way which would have allowed her to settle her grievance informally. This may be true, but it did not prevent her from presenting her grievance at all levels. Her job was not jeopardized. Indeed, there was no loss of any benefits of any type, nor was their loss ever at issue.

In addition to the findings of fact and conclusions of law made in the made in the foregoing narrative, the following are appropriate:

FINDINGS OF FACT

1. The grievant, Rebecca Meckley is employed by the respondent as a special education teacher at Paden City High School.

2. An individual plan called an “IEP” is designed and put into effect for each special education

student.

3. One of the grievant's science student's had an IEP which required that he be provided copies of the instructor's class outline, this being necessary becauseof his inability to put verbal information into a written form.

4. The student's IEP was placed into effect after conferences with his parents and had their approval.

5. For a period of about five months, beginning in November of 1995, the IEP was followed with the student being provided photocopies of the notes to keep.

6. In early April, 1996, the grievant decided that it would be proper under the IEP to require the student to hand copy the notes and not keep the photocopies.

7. The grievant wrote a note to the student advising him of this change, but did not deliver it, withholding it so that she could consider the matter further.

8. The note was inadvertently made available to the student by another teacher and was taken home to his parents.

9. The note alarmed the parents who felt that having to hand write the notes was a violation of their son's IEP.

10. They requested and were granted a parent-teacher conference.

11. The parents had a reputation for being outspoken at such conferences.

12. The conference was held April 4, 1996, and started off with a confrontation between the parents and the grievant wherein the student's mother grabbed the grievant by the back of her sweatshirt, preventing her from leaving the room.

13. There was no more physical contact during the course of the conference although there was some shouting and cursing on the part of the mother.

14. The father did not use profanity nor did he exhibit violence at any timeduring the conference and in fact at times was a calming influence upon the mother.

15. The filing of the grievance was delayed temporarily by Mr. Grace's attempt to mollify the grievant, however once filed, the delay was inconsequential.

16. The grievant's complaints are based strictly upon the parent-teacher conference of April 4, 1996, and related events and do touch upon any other aspect of the school.

CONCLUSIONS OF LAW

1. In order to prevail in a claim of this nature, a grievant must prove her case by a preponderance of the evidence. Edison v. Univ. of W.Va. Bd. of Trustees, Docket No. 91-BOT-404 (Dec. 31, 1991).

2. The grievant has failed to prove by a preponderance of the evidence that the respondent by or through its agents placed the grievant in an unsafe position on April 4, 1996 by failing to properly supervise Paden City High School.

3. The grievant has failed to show that the respondent by or through its agents denied the grievant her rights to due process of law. Mercer County Bd. of Educ. v. Wirt, 453 S.E.2d 402, 192 W.Va. 568 (1994).

Accordingly, this Grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Wetzel 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 VirginiaEducation 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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JAMES D. TERRY

Administrative Law Judge

DATE: March 31, 1997

Footnote: 1 *References to the Level II transcript will be referred to as "L-2, at __".*

Footnote: 2 *Mrs. Novotny is also the Director of Special Education for Wetzel County.*

Footnote: 3 *The parents of the student were waiting in the next room during this conference, with only an open door between them.*