DEBORAH SUPER,

Grievant,

v. **DOCKET NO. 99-42-043**

RANDOLPH COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Grievant, Deborah Super, challenges the decision of the Randolph County Board of Education to change the name of the Elkins High School yearbook. This grievance was initiated on September 22, 1998, and it was denied at level one on October 6, 1998. Grievant appealed to level two, where a hearing was conducted on December 18, 1998. It was denied in a written level two decision dated January 21, 1999. Level three consideration was waived, and Grievant appealed to level four on January 27, 1999. The parties subsequently agreed to submit this matter for decision based upon the record developed below. The grievance became mature for consideration on February 25, 1999, upon receipt of the parties' written proposals. Grievant was represented by Mary Linn of the West Virginia Education Association, and Respondent was represented by counsel, Basil Legg.

The following facts are essentially undisputed by the parties.

Findings of Fact

1. Grievant is employed as a classroom teacher at Elkins High School, and she is the yearbook advisor.

2. In 1993, Elkins High School and Coalton High School were consolidated, andthe new school was named Forest Hills High School.

3. Prior to 1993, the name of the Elkins High School yearbook was “The Tiger.” Once the high schools were consolidated, the previous mascots of the two schools, the bobcat and the tiger, were used as the basis for naming the new school's yearbook “The Predator.”

4. In the spring of 1994, the Randolph County Board of Education (RCBOE) voted to change the name of the consolidated high school to Elkins High School.

5. When the name of the high school was changed back to Elkins High School, the name of the yearbook was not changed, and it remained “The Predator.”

6. In early 1997, it became apparent in the community that many citizens were unhappy with the name of the high school yearbook, and RCBOE officials were asked to change the name back to “The Tiger.”

7. The superintendent, Grievant, and other RCBOE officials decided in July of 1997 that the students of Elkins High School should be allowed to hold an election to decide the name of the yearbook.

8. On the first day of the 1997-1998 school year, the students voted to retain the name “The Predator.”

9. During the remainder of the 1997-1998 school year, members of the community continued to complain to RCBOE about the name of the yearbook. The Board members spent a significant amount of time discussing and debating this subject.

10. In order to end the controversy and focus upon more important educational matters, RCBOE decided settle this issue at the Board level. On July 20, 1998, the Board voted to change the name of the Elkins High School yearbook to “The Tiger.”

Discussion

In a non-disciplinary matter, a grievant must prove the allegations of her complaint by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.19 (1996); 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). See W. Va. Code § 18-29-6.

Grievant alleges that, in undertaking the task of renaming the yearbook, RCBOE violated Board Policy GHCC, which states:

> [School] [p]ublication sponsors have the responsibility to see that material printed is handled in good taste. Being a student or teacher does not relieve anyone from being libel for court action because of slander, libel, or defamation of character. Likewise, there is no place for lewd, suggestive or obscene material in school publications. The teacher-sponsor of the publication is responsible for editing the publication, and the principal is finally responsible for all things published.

Grievant contends that the final phrase in the policy, regarding the principal's final responsibility “for all things published” places the power of naming a yearbook in the hands of the principal, and that, consequently, the Board has no authority in this regard. She also argues that the Board was without authority to take this decision out of the hands of the students, who had voted upon the issue. Grievant summarized her position in her level two testimony:

> The real issue is the violation of the Board policy, GHCC, that states that the principal is finally responsible, finally responsible, for all things published, and the principal's decision was to abide by the student body vote, and then the Superintendent and the Board of Education violated that policy by changing the name of the yearbook.

Level II Tr. at 10.

Clearly, Grievant's contentions are based solely upon her belief that the principal'sauthority has been usurped by the Board. Accordingly, Grievant has failed to show that she has standing to contest the Board's decision or its alleged interference with the principal's powers. "Standing, defined simply, is a legal requirement that a party must have a personal stake in the outcome of the controversy." Wagner v. Hardy County Bd. of Educ., Docket No. 95-16-504 (Feb. 23, 1996). In order to have a personal stake in the outcome, a grievant must have been harmed or suffered damages. The grievant "must allege an injury in fact, either economic or otherwise, which is the result of the challenged action and shows that the interest he seeks to protect by way of the institution of legal proceedings is arguably within the zone of interests protected by the statute, regulation or constitutional guarantee which is the basis for the lawsuit." Shobe v. Latimer, 162 W. Va. 779, 253 S.E.2d 54 (1979). Without some allegation of personal injury, Grievant is without standing to pursue this grievance. Lyons v. Wood County Bd. of Educ., Docket No. 89-54-601 (Feb. 28, 1990).

Grievant has not alleged that she has personally been injured by the Board's decision. She has only contended that the rights of the students and the authority of the principal have been circumvented by the action. This Grievance Board has held that one person cannot grieve on behalf of another party. Hall v. Mercer County Bd. of Educ., Docket No. 94-27-1099 (Mar. 20, 1995). Based upon the allegations raised by Grievant, only the principal of Elkins High School would arguably have a personal stake in the outcome of this grievance, if it were determined that the Board had no authority to disturb his decision regarding the yearbook. Grievant cannot pursue this claim on his

behalf. Similar reasoning would apply to Grievant's argument that the students have been subjected to censorship. The grievance procedure is available only to “employees,” andstudents are not entitled to its benefits. Nevertheless, Grievant also cannot pursue a claim on behalf of the students, who would be the “parties” who have been personally injured by any alleged censorship.

In accordance with the foregoing findings and discussion, the following conclusions of law are appropriate. (See footnote 1)

Conclusions of Law

1. In a non-disciplinary matter, a grievant must prove the allegations of her complaint by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.19 (1996); 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). See W. Va. Code § 18-29-6.

2. To have standing, a party must have a personal stake in the outcome of the controversy and must demonstrate that she has been harmed or suffered damages. Wagner v. Hardy County Bd. of Educ., Docket No. 95-16-504 (Feb. 23, 1996); See Shobe v. Latimer, 162 W. Va. 779, 253 S.E.2d 54 (1979).

3. A grievant cannot grieve on behalf of another party. Hall v. Mercer County Bd. of Educ., Docket No. 94-27-1099 (Mar. 20, 1995).

___4. Grievant failed to establish that she has any personal stake in the outcome of this grievance, or that she has suffered any harm, so she has no standing to pursue it.

___Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or the Circuit Court of Randolph 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.

Date: March 5, 1999 _____

DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

Respondent had asserted a timeliness defense, which need not be addressed, due to the outcome of this grievance.