ANNETTE CANFIELD,

Grievant,

v. **Docket No. 01-19-335**

JEFFERSON COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, employed by the Jefferson County Board of Education (JCBOE) as a teacher, began grievance proceedings January 25, 2001, alleging that she had been called to a meeting with three school administrators and the guidance counselor, at which time she was called "totally unprofessional" and not a "team player." Grievant characterized the meeting as consisting of "30 minutes of verbal threats, accusations, and humiliation." For relief, Grievant requests that the statements be retracted in either written or verbal form.

After the grievance was denied at levels one and two, Grievant elected to bypass level three, as is permitted by W. Va. Code § 18-29-4(c), and advanced her appeal to level four on May 14, 2001. The parties agreed to submit the matter for decision based upon the lower-level record, supplemented by proposed findings of fact and conclusions of law. Harvey Bane, WVEA consultant representing Grievant, filed proposals on June 14, 2001. Respondent, represented at level two by Associate Superintendent Beverly Hughes, elected not to file additional proposals.

The following facts of this matter are derived from the record in its entirety.

Findings of Fact

1. Grievant was first employed by JCBOE in 1994, and has been assigned as a teacher for learning disabled and behaviorally disordered students at Jefferson High School (JHS) at all times pertinent to this decision. 2. In January 2001 a committee was convened at JHS to conduct a manifestation meeting for Student X. (See footnote 1) The purpose of this meeting was to determine whether the student's infraction of school rules, which could result in suspension, was a part of his disability. Grievant left the meeting after approximately forty-five minutes to attend to other school duties, and was not aware of what transpired during her absence.

3. During the meeting it was determined that the behavior exhibited by Student X was a

manifestation of his disability, and that he should be placed in an alternative setting. Because he had recently enrolled at JHS, it was necessary to develop an Individualized Education Plan (IEP) for Student X.

4. At the IEP meeting, Grievant presented comments reflecting her own opinion and those relayed to her by other individuals who were unable to attend the meeting. The outcome of this meeting placed Student X outside the school environment for a period of six weeks, during which time he was to receive counseling, and then returned to JHS.

5. The following day, Assistant Principal Paul Hercules and Guidance Counselor Amy Chrisman expressed their concern to JHS Principal, Dr. Edna Rothwell, that the outcome of the IEP meeting was inconsistent with that of the manifestation meeting.

6. Dr. Rothwell called Grievant to her office to discuss this, and another matter, with Mr. Hercules and Ms. Chrisman, who were later joined by Assistant Principal Susan Wall.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 §4.21 (2000); 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. A preponderance of the evidence is defined as "evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary (6th ed. 1991), Leichliter v. W. Va. Dept. of Health and Human Res., Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, a party has not met its burden of proof. Id.

___The record establishes that Grievant left the manifestation meeting prior to its conclusion, and was unaware that the committee determined Student X should be relocated. As a result of this lapse in communication, she presented recommendations at the IEP meeting which were inconsistent with the prior decision. Dr. Rothwell was justifiably concerned and called a meeting. Grievant felt threatened and berated; however, the remaining individuals present did not interpret Dr. Rothwell's demeanor in such a manner. There is no allegation of a violation of any statute, rule, regulation, or policy, and while it is unfortunate that Grievant felt so unjustly chastised, she has simply failed to

state a claim for which relief can be granted.

Even if Grievant had established a grievable violation, a retraction of comments is not a form of relief which could be granted. A retraction is similar in nature to an apology, which has repeatedly been held not to be a form of relief granted by the Grievance Board,since it is essentially meaningless. See Logar v. Monongalia County Bd. of Educ., Docket No. 00-30-270 (Sept. 25, 2000); Niehaus v. Marshall County Bd. of Educ., Docket No. 99-25-276 (Oct. 4, 1999); Nicol v. Grant County Bd. of Educ., Docket No. 12-88-057-2 (July 25, 1988).

In addition to the foregoing findings of fact and discussion, it is appropriate to make the following formal conclusions of law.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 §4.21 (2000); 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. Grievant failed to state a claim upon which relief can be granted.

3. A retraction of comments is not a viable form of relief to be granted by the Grievance Board. See Logar v. Monongalia County Bd. of Educ., Docket No. 00-30-270 (Sept. 25, 2000); Niehaus v. Marshall County Bd. of Educ., Docket No. 99-25-276 (Oct. 4, 1999); Nicol v. Grant County Bd. of Educ., Docket No. 12-88-057-2 (July 25, 1988).

Accordingly, the grievance is **DENIED.**

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Jefferson County. Any 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 tosuch appeal and should not be so named. W. Va. Code §29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

Date: July 12, 2001 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

This designation of the student used at level two is consistent with the practice of the Grievance Board to not personally identify students.