MICHAEL ROGERS,

Grievant,

v. **Docket No. 99-23-196/246**

LOGAN COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Michael Rogers, a probationary substitute employee, filed four grievances against his employer, the Logan County Board of Education ("LBOE"), which he advanced to Level IV in May 1999, where they were assigned one docket number. On June 15, 1999, he filed another grievance directly at Level IV when his probationary substitute contract was not renewed. By agreement of the parties, Grievant was allowed to bypass the lower levels of the grievance procedure. These grievances were all consolidated at Level IV on June 28, 1999, and on June 29, 1999, they were set for hearing August 12, 1999. Thereafter, Grievant filed a grievance over his evaluation, and during a telephonic conference on August 2, 1999, the parties agreed to add this grievance to the other grievances at Level IV, although no grievance form was ever provided and Grievant did not address his evaluation at the Level IV hearing. That grievance is deemed abandoned.

This consolidated matter was placed in abeyance at various times in order to allow Grievant to seek counsel to represent him, and due to the illness of a witness. A Level IV hearing was held on August 16, 2002, at which time Grievant represented himself, and Respondent was represented by Brian Abraham, Esquire. The parties were to submit written argument summarizing their positions. Grievant's written argument was due by September 15, 2002, and Respondent's written response was due two weeks after receipt of Grievant's argument. This matter became mature for decision on October 1, 2002, with neither party submitting written argument.

The four grievances appealed by Grievant to Level IV on May 18, 1999, and their disposition, are as follows:

1.

> I was harassed, discriminated against by the showing of favoritism when my supervisor, Pat Tabor, wrongly gave an extended bus run 8704 that was known to last [at] least several weeks to a substitute drive[r] known as Slade Sowers.
>
> Mrs. Tabor had assigned Slade to a bus run, 9403, prior to the knowledge that 8704 was going to be vacant. Upon the knowledge that an extended run, 8704, was vacant, Pat Tabor reassigned Slade to the extended run 8704 leaving 9403 vacant, and at this time assigned me to 9403. I should have been assigned to 8704. This switching of runs and assigning me to 9403 took place on the morning of April 7, 1999.

As relief Grievant sought:

> To show as an example that I was harassed and discriminated against. I seek pay for the days that I did not work and 8704 had not been bid off as a temporary permanent run or until the regular driver returns. Also, to have the rotation list posted where anybody can see who the next driver to be called is.

This grievance was filed by Grievant on April 21, 1999, and was denied at Level II on May 10, 1999, following a hearing held on May 2, 1999. At Level IV, Respondent agreed to pay Grievant for every day from April 1 through June 9, 1999, as though he had been called out to work every day, thus rendering this grievance moot. It will not be further addressed.

2.

> Because I am entitled to due process, I understood that the letter dated April 12, 1999 and given to me on the 15 was going to be documented ve[r]bal warning. It is not! Violation of Due Process.

The relief sought was, “[t]ake said letter out of file, reword it to state that this is a verbal warning!”

This grievance was filed on April 26, 1999, and was denied at Level II on May 10, 1999, after a hearing on May 2, 1999. Given the outcome of the nonrenewal grievance, this grievance need not be addressed, as Grievant is no longer an employee of LBOE. It will be noted that the evidence presented at the Level II hearing on this grievance failed to establish that Grievant had been told he would receive only a verbal warning. Further, had he been told the warning he received was a verbal warning, nothing precluded Respondent from making the warning a written warning, so long as Grievant was made aware that he was being given a written warning. Grievant did not dispute the

charges which resulted in the written warning, nor did he argue that the punishment was too severe.

3.

> Not given due process, as of April 19, 1999, I have not been called out to drive from the school bus rotation list. I have not received a letter of suspension nor a letter of termination. This is giving punishment without just cause and in violation of Due Process.

As relief Grievant sought to be "[p]aid for days not being called out."

This grievance was filed on April 27, 1999, and was denied at Level II on May 10, 1999, after a hearing on May 2, 1999. At Level IV, Respondent agreed it should have continued to call Grievant out to work after April 19, 1999, and agreed to pay Grievant from April 1 through June 9, 1999, making this grievance moot.

4.

> As of this date 5-11-99, I have not recieved [sic] any pay for an all day inservice training session that I attended at the Ralph R. Willis Vocational Center on Jan. 15, 1999. At a meeting on 4-15-1999 with my supervisor Pat Tabor she advised me she would take care of this matter and that the next payroll (4-30-99) would include pay for this day. The check for 4-30-99 did not include pay for 1-15-99.

As relief Grievant sought, "[p]ay for 1-15-99." This grievance was filed on May 11, 1999. Grievant received no written response to his grievance, and appealed to Level IV. During a telephonic conference on June 24, 1999, Grievant stated he had been paid for this in-service training on his May 30, 1999 paycheck, and this grievance was withdrawn.

On June 15, 1999, Grievant filed his grievance challenging the nonrenewal of his probationary substitute contract directly at Level IV. The statement of grievance reads:

> Board of Education at nonretention hearing pursuant to W.Va. Code 18A-2- 8a on 6/10/99 failed to rescind Grievant's non renewal of a probationary substitute bus driver, which non-renewal had occurred for unfair reasons.

As relief Grievant sought, "[r]enewal of Grievant's contract as a probationary substitute bus driver."

During the telephonic conference on June 24, 1999, the parties identified two other grievances which had been initiated at Level I, and agreed to waive the lower levels of the grievance procedure and consolidate those grievances with the other grievances at Level IV. Grievant was to provide the grievance forms to the undersigned. No grievance form was ever provided to the undersigned for

these two grievances, and Grievant did not address any other grievances at the Level IV hearing. Based upon the information provided during the telephonic conference, the undersigned concludes that these two grievances were not separate grievances, but were simply arguments regarding the propriety of the nonrenewal of Grievant's contract. To the extent that these two grievances involved a separate issue, they are deemed abandoned.

The following Findings of Fact are properly made from the evidence introduced at Levels II and IV.

FINDINGS OF FACT

1. Grievant was employed during the 1998-1999 school year by LBOE as a substitute bus operator under a probationary contract, and a substitute custodian. This was the second year Grievant had been employed by LBOE. Grievant resigned as a substitute custodian in April 2000. 2. By letter dated April 19, 1999, Superintendent Ray Woolsey notified Grievant he would be recommending to the board of education that Grievant's probationary substitute bus operator contract not be renewed for the next school year. The letter stated the reason for the recommendation not to renew the contract was:

> 1. You took action outside the scope of your employment responsibilities as a bus operator by releasing confidential information concerning individuals to third parties not involved with Logan County Schools' students;
>
> 2. Poor judgement involving inappropriate topics of conversation with female students.

The letter further stated:

> You are entitled to a hearing before the Logan County Board of Education prior to their final action on this matter. If you desire a hearing, you must contact my office in writing within ten (10) days of this letter. Your failure to properly request a hearing within the designated time may constitute a wavier of your right to a hearing. The next regularly scheduled meeting will be held at the Ralph R. Willis Vocational/Technical Center, on April 22, 1999, at 6:00 p.m.

3. Grievant appeared at the LBOE meeting on April 22, 1999, and requested a hearing. LBOE offered to hold the hearing at that meeting, but Grievant declined the opportunity to have the hearing at that time.

4. Grievant retained Henry Hills as his counsel sometime in May 1999.

5. A hearing was scheduled on the nonrenewal of Grievant's contract for June 10, 1999. Grievant appeared at that time with Mr. Hills. Mr. Hills represented to the undersigned during a telephonic conference on June 24, 1999, in the presence of Grievant and Respondent's counsel, that he had participated in scheduling the hearing date. A hearing was not held on June 10, 1999, before LBOE, as the parties agreed at that time to forego a hearing before LBOE, and take the matter directly to Level IV of the grievance procedure.

6. LBOE did not renew Grievant's probationary contract for the 1999-2000 school year.

DISCUSSION

Grievant bears the burden of proving the elements of his grievance by a preponderance of the evidence. Tibbs v. Mercer County Bd. of Educ., Docket No. 96-27- 074 (Oct. 31, 1996). As this Grievance Board has previously stated, "[i]f LCBE had terminated Grievant's contract as a substitute employee prior to the end of the [1998-99] school year, the county board would have been required to establish proper cause for such action. See Pennington v. Mingo County Bd. of Educ., Docket No. 92-29-061 (June 16, 1992). In this case, LCBE simply exercised its discretion under W. Va. Code § 18A-2-8a not to renew Grievant's probationary contract for the [1999-2000] school year. See Miller v. Bd. of Educ., 190 W. Va. 153, 437 S.E.2d 591 (1993); Underwood v. Marion County Bd. of Educ., Docket No. 94-24-535 (Jan. 30, 1995)." Beheler v. Logan County Bd. of Educ., Docket No. 98-23-276 (Dec. 11, 1998).

Grievant argued he was not provided a nonrenewal hearing within 30 days of his request for a hearing, as is required by statute. Grievant did not cite to a particular statute. LBOE was only required to follow the procedures set forth in W. Va. Code § 18A-2-8a applicable to the nonrenewal of a probationary contract. Baker v. Hancock County Bd. of Educ., Docket No. 97-15-447 (May 5, 1998), aff'd 207 W. Va. 513, 534 S.E.2d 378 (2000). (See footnote 1) That Code Section requires that the Board of Education act on the nonrenewal of probationary contracts on or before the first Monday in May. As a probationary employee, Grievant was not entitled to the advance notice he received that

his contract would not be recommended for renewal, or a hearing before the Board of Education prior to its action. By statute, he only had to be notified that the board of education had not renewed his contract, and it is then that he could request a hearing.

The Supreme Court of Appeals of West Virginia addressed this statutory provision, and the rights of probationary employees in Miller, supra.

> However, the statute plainly states, in pertinent part, that "the superintendent at a meeting of the board on or before the first Monday in May . . . shall provide in writing to the board a list of all probationary teachers that he recommends to be **rehired** for the next ensuing school year." **W. Va. Code**, 18A-2-8a [1977] (emphasis added). There is no mention of a hearing being held before the first Monday in May nor is there any mention of the superintendent having to provide a list of those probationary employees who are not being rehired. There is also no mention of the board of education having to take some action to not rehire probationary employees. The only mention of probationary employees who are not being rehired is that they are to be provided notice of the nonrenewal of their contract, and if requested, a statement of the reasons for the nonrenewal of the contract and a hearing.
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> . . .
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> Not only is **W. Va. Code**, 18A-2-8a [1977] clear that no affirmative action is required when not rehiring a probationary employee, but that is the only interpretation which makes sense because a probationary employee's contract is for one year and the contract automatically expires if it is not renewed without any affirmative action by the board of education.

The Court stated in Syllabus Point 6, " **W. Va. Code,** 18A-2-8a [1977] does not require the board of education or superintendent to take some affirmative action before the firstMonday in May when not rehiring probationary employees other than notifying the employees that they will not be rehired, and if requested, providing a reason for the nonrenewal and a hearing." "In Miller the grievants received notice prior to the board meeting that their probationary contracts would not be renewed. Since the grievants were not harmed by this early notice the Court stated this harmless error 'does not require reversal of the final judgment.' Id. at Syl. Pt. 5." Underwood v. Marion County Bd. of Educ., Docket No. 94-24-535 (Jan. 30, 1995).

The Supreme Court of Appeals of West Virginia has further held that the concept of "due process" does not apply to nontenured personnel, because they do not have a "property interest" in their jobs. Miller, supra (citing Bd. of Regents v. Roth, 408 U.S. 564 (1972)). This Grievance Board

has held that W. Va. Code § 18A-2-8a does not require a pre-termination hearing when a board of education is not renewing a probationary contract of employment.

> When a probationary contract is not renewed per the procedure set forth in Code § 18A-2-8a, the board is "not required to convene a pre-termination hearing because Grievant, in effect, was not terminated; rather, [her] contract, which is probationary and thus affords [her] no property interest in [her] employment, was not renewed." Cordray [v. Wood County Bd. of Educ., Docket No. 90-54-267 (Jan. 31, 1991)], [citing Belota v. Boone Co. Bd. of Educ., Docket No. 90-03-252 (Nov. 30, 1990); Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532 (1985) and Roth, supra]. Even if the reasons for non-renewal are disciplinary in nature, a probationary employee is not entitled to any protections beyond those provided for in Code § 18A-2-8a. See Burrows v. Wood County Bd. of Educ., Docket No. 96-54-281 (Oct. 24, 1996). Accordingly, Grievant was not entitled to any advance notice of the Board's decision, nor was [the Board of Education] required to follow the provisions of Code § 18A-4-8.
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> Therefore, it must only be determined whether the provisions of the applicable statute, Code § 18A-2-8a, were followed. In order to comply with that provision, a board of education need only notify the employee of its decision by certified mail within ten days, which was undisputedly done by the Board in this case. Then, if the employee so requests, the Board must provide the reasons for the decision in writing and a hearing. Miller, supra.

Baker, supra. (Emphasis in original.) LBOE did not follow the procedure set forth in the statute. Instead, LBOE notified Grievant that his contract would not be recommended for renewal, and gave him the opportunity to request a hearing at that time. LBOE argued it did not receive Grievant's written request for a hearing, and questioned the authenticity of the written request produced by Grievant. It is clear, however, that Grievant did request a hearing at the April 22, 1999 LBOE meeting, either orally or in writing, but declined to have his hearing on April 22, 1999. The hearing was set for June 10, 1999. Although no testimony was offered on this point, Grievant's attorney, Mr. Hills, stated during a telephonic conference on June 24, 1999, that he was involved in the selection of the hearing date, and this was not disputed. Mr. Hills advised Grievant at that time that he would not recommend pursuing his argument that the hearing was not scheduled in a timely manner. Grievant and Mr. Hills parted company shortly thereafter.

Given this state of affairs, it is questionable whether the statutory provision which states "[s]uch hearing shall be held at the next regularly scheduled board of education meeting or a special meeting of the board called within thirty days of the request for hearing," was applicable here, as the application of this provision assumes that the employee has been given notice that the board of

education has not renewed his contract, rather than notice that the superintendent will recommend that the contract not be renewed. Assuming that this statutory provision was applicable, the undersigned concludes that Grievant, through his attorney, waived his right to a hearing within 30 days. Further, Mr. Hills and Respondent, by its attorney, stipulated during the June 24, 1999 telephonic conference that the parties agreed on June 10, 1999, not to have a hearing, andto take the matter directly to Level IV of the grievance procedure. (See footnote 2) Grievant has demonstrated no harm in the delay.

The remaining issue is whether Grievant's contract should have been renewed. “Ordinarily, county boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel so long as that discretion is exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious. Syl. Pt. 3, Dillon v. Bd. of Educ., 177 W. Va. 145, 351 S.E.2d 58 (1986). Because W. Va. Code § 18A-2-8a gives broad discretion to the county board when determining whether or not to rehire a probationary employee, Grievant must establish that LCBE's decision in this instance was arbitrary and capricious. See Pockl v. Ohio County Bd. of Educ., 185 W. Va. 256, 406 S.E.2d 687 (1991). Grievant may also claim that the action was taken in violation of some substantial public policy. . .. See, e.g., Harless v. First Nat'l Bank, 169 W. Va. 673, 246 S.E.2d 270 (1978).” Beheler, supra.

The evaluation of a personnel decision under the arbitrary and capricious standard entails close examination of the process used to make the decision. Considerable deference must be afforded the professional judgment of those who made the decision. Cowen v. Harrison County Bd. of Educ., 195 W. Va. 377, 465 S.E.2d 648 (1995). Baird v. Kanawha County Bd. of Educ., Docket No. 95-20-445 (Sept. 16, 1996). "In applying the 'arbitrary and capricious' standard, a reviewing body applies a narrow scope of review,limited to determining whether relevant factors were considered in reaching that decision and whether there has been a clear error of judgment. Bowman Transp. v. Arkansas-Best Freight System, 419 U.S. 281, 285 (1974); Harrison v. Ginsberg, 169 W. Va. 162, 286 S.E.2d 276 (1982). Moreover, a decision of less than ideal clarity may be upheld if the agency's path in reaching that conclusion may reasonably be discerned. Bowman, supra, at 286." Hill and Cyrus v. Kanawha County Bd. of Educ., Docket No. 96-20-362 (Jan. 30, 1997). "Generally, an action is considered arbitrary and capricious if the agency did not rely on criteria intended to be considered, explained or reached the decision in a manner contrary to the evidence before it, or reached a

decision that was so implausible that it cannot be ascribed to a difference of opinion. See Bedford County Memorial Hosp. v. Health and Human Serv., 769 F.2d 1017 (4th Cir. 1985); Yokum v. W. Va. Schools for the Deaf and the Blind, Docket No. 96-DOE-081 (Oct. 16, 1996)." Trimboli v. Dep't of Health and Human Resources, Docket No. 93-HHR-322 (June 27, 1997). Arbitrary and capricious actions have been found to be closely related to ones that are unreasonable. State ex rel. Eads v. Duncil, 196 W. Va. 604, 474 S.E.2d 534 (1996).

Grievant presented no evidence or argument on the issue of whether the nonrenewal decision was made in an arbitrary and capricious manner. Accordingly, the record on this issue is sparse. At the Level II hearing held on May 2, 1999, on the grievance over Grievant not being called out from the school bus rotation list, Superintendent Ray Woolsey testified he recommended that Grievant's contract not be renewed because he felt “it was not a safe situation for him to be in control of a school bus with students on it.” The two incidents which led to this conclusion were Grievant's discussion of inappropriate topics with a female student, for which he received a written warning, and Grievant's response to a student passing Grievant's bus in a car. The record does not reflect what Grievant discussed with the female student, but Grievant did not dispute the charge in his grievance over the written warning, as is noted above. The more serious matter began when a student illegally passed Grievant's bus. LBOE policy requires bus operators to report such an act to the police. While it appears from the record that Grievant did report the incident to the police, he also improperly took the matter into his own hands, speaking with other students to identify the individual who had passed his bus. Grievant tracked down this student, and confronted him after work hours about the incident. Grievant did not deny this. It was also alleged that Grievant had contacted a Marine Corps recruiter, and asked him whether the charges against the student would jeopardize his chances of entering the Marine Corps. Although Grievant admitted to his supervisor that he had contacted the Marine Corps recruiter and discussed the student with him, he denied this allegation at the aforementioned Level II hearing.

Grievant has not demonstrated that LBOE's decision not to renew his contract was unreasonable given Grievant's actions.

The following Conclusions of Law support the Decision reached.

CONCLUSIONS OF LAW

1. The nonrenewal of a probationary substitute contract of employment is not disciplinary in nature, and the burden of proof is upon the grievant to prove the elements of his grievance by a preponderance of the evidence. Baker v. Hancock County Bd. of Educ., Docket No. 97-15-447 (May 5, 1998), aff'd 207 W. Va. 513, 534 S.E.2d 378 (2000); Beheler v. Logan County Bd. of Educ., Docket No. 98-23-276 (Dec. 11, 1998).

2. W. Va. Code § 18A-2-8a requires a county board of education to provide “after-the-fact” notice to a probationary employee that it has decided not to renew his contract. If the employee so requests, the board must provide the employee a list of reasons for the decision and a hearing on those reasons. Miller v. Bd. of Educ., 190 W. Va. 153, 437 S.E.2d 591 (1993).

4. A probationary employee whose contract is not renewed has no property interest in his employment, is not entitled to due process of law, and does not have a rightto a pre-termination hearing or notice. Miller, supra; Baker, supra; Cordray v. Wood County Bd. of Educ., Docket No. 90-54-267 (Jan. 31, 1991).

5. As a probationary employee, Grievant had limited statutory rights. He was not entitled to advance notice that his contract would not be recommended for renewal. The fact that LBOE gave him notice of the superintendent's recommendation, does not change the statutory procedure. Miller, supra.

6. To the extent Grievant had a statutory right to a hearing on the renewal of his contract within 30 days of his request for one, he waived this right.

7. “Because W. Va. Code § 18A-2-8a gives broad discretion to the county board when determining whether or not to rehire a probationary employee, Grievant must establish that LCBE's decision in this instance was arbitrary and capricious. See Pockl v. Ohio County Bd. of Educ., 185 W. Va. 256, 406 S.E.2d 687 (1991). Grievant may also claim that the action was taken in violation of some substantial public policy. . .. See, e.g., Harless v. First Nat'l Bank, 169 W. Va. 673, 246 S.E.2d 270 (1978).” Beheler, supra.

8. The evaluation of a personnel decision under the arbitrary and capricious standard entails close examination of the process used to make the decision. Considerable deference must be afforded the professional judgment of those who made the decision. Cowen v. Harrison County Bd. of Educ., 195 W. Va. 377, 465 S.E.2d 648 (1995). Baird v. Kanawha County Bd. of Educ., Docket No. 95-20-445 (Sept. 16, 1996). "In applying the 'arbitrary and capricious' standard, a reviewing body

applies a narrow scope of review, limited to determining whether relevant factors were considered in reaching that decision and whether there has been a clear error of judgment. Bowman Transp. v. Arkansas-Best Freight System, 419 U.S. 281, 285 (1974); Harrison v. Ginsberg, 169 W. Va. 162, 286 S.E.2d 276 (1982). Moreover, a decision of less than ideal clarity may be upheld if the agency's path in reaching that conclusion may reasonably be discerned. Bowman, supra, at 286." Hill and Cyrus v. Kanawha County Bd. of Educ.,Docket No. 96-20-362 (Jan. 30, 1997). "Generally, an action is considered arbitrary and capricious if the agency did not rely on criteria intended to be considered, explained or reached the decision in a manner contrary to the evidence before it, or reached a decision that was so implausible that it cannot be ascribed to a difference of opinion. See Bedford County Memorial Hosp. v. Health and Human Serv., 769 F.2d 1017 (4th Cir. 1985); Yokum v. W. Va. Schools for the Deaf and the Blind, Docket No. 96-DOE-081 (Oct. 16, 1996)." Trimboli v. Dep't of Health and Human Resources, Docket No. 93-HHR-322 (June 27, 1997). Arbitrary and capricious actions have been found to be closely related to ones that are unreasonable. State ex rel. Eads v. Duncil, 196 W. Va. 604, 474 S.E.2d 534 (1996). 9. LBOE's decision not to renew Grievant's substitute probationary contract of employment was not arbitrary and capricious.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or to the Circuit Court of Logan 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 to such appeal, and should not be so named. However, the appealing party is required by 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 Grievance Board with the civil action number so that the record can be prepared and transmitted to the circuit court.

BRENDA L. GOULD

Administrative Law Judge

Dated: November 6, 2002

Footnote: 1

W. Va. Code § 18A-2-8a, entitled "Notice to probationary personnel of rehiring or nonrehiring; hearing," provides as follows:

> *The superintendent at a meeting of the board on or before the first Monday in May of each year shall provide in writing to the board a list of all probationary teachers that he recommends to be rehired for the next ensuing school year. The board shall act upon the superintendent's recommendations at that meeting in accordance with section one [§ 18A-2-1] of this article. The board at this same meeting shall also act upon the retention of other probationary employees as provided in sections four and five [§§ 18A-2-4, repealed and 18A-2-5] of this article. Any such probationary teacher or other probationary employee who is not rehired by the board at that meeting shall be notified in writing, by certified mail, return receipt requested, to such persons' last known addresses within ten days following said board meeting, of their not having been rehired or not having been recommended for rehiring.*
>
> *Any probationary teacher who receives notice that he has not been recommended for rehiring or other probationary employee who has not been reemployed may within ten days after receiving the written notice request a statement of the reasons for not having been rehired and may request a hearing before the board. Such hearing shall be held at the next regularly scheduled board of education meeting or a special meeting of the board called within thirty days of the request for hearing. At the hearing, the reasons for the nonrehiring must be shown.*

Footnote: 2

Grievant also argued a statutory violation occurred when he was not provided a transcript of the "hearing" held on June 10, 1999. Grievant did not state what statutory provision he was relying upon for the proposition that he was entitled to a transcript of such a proceeding, and the undersigned is not aware of such a provision. The grievance procedure requires a transcript in certain circumstances, but this meeting of LBOE was not a grievance hearing. Further, Mr. Hills stated during the June 24, 1999 telephonic conference that there was no need for a transcript because there was no hearing. Nonetheless, Respondent agreed to provide Grievant with a copy of the tape of the meeting, which it did. When that tape proved to be inaudible, Respondent allowed Grievant to listen to the original on LBOE's premises, and when Grievant continued to complain, LBOE allowed him to take the original off site to have an acquaintance make him an audible copy. LBOE was not required to transcribe the tape.