NICOLE SCOTT,	BEFORE THE
Appellant	MARYLAND
v.	STATE BOARD
WICOMICO COUNTY BOARD OF EDUCATION,	OF EDUCATION
Appellee	Opinion No. 03-40

OPINION

This is an appeal of the denial of an employee grievance concerning alleged workplace mistreatment and harassment in the Wicomico County Public Schools ("WCPS"). The denial was appealed and by unanimous decision the Wicomico County Board of Education affirmed the denial of the grievance. The local board submitted a Motion to Dismiss and a Motion for Summary Affirmance maintaining that the local board's dismissal was not arbitrary, unreasonable, or illegal. Appellant filed an Opposition to the Motion.

FACTUAL BACKGROUND

Nicole Scott is a noncertificated employee who has worked as a sign language interpreter with the WCPS for 13 years. On February 4, 2002, Appellant filed a Level One grievance in which she alleged "ongoing harassment and discrimination" against her in the work place. Specifically, she alleged that her supervisors and co-workers were discriminating against her by requiring that: (1) she receive tutoring in American Sign Language ("ASL"), (2) her interpreting skills be assessed, (3) she perform certain tasks, and (4) she adjust to frequent changes in work schedules. (Grievance Filing Form). As relief, she requested that: (1) she not submit to an assessment of her skills, (2) she not receive tutoring, (3) she not have to perform certain tasks, (4) she be given flexibility in her work schedule, and (5) she and her co-workers/interpreters receive training in conflict resolution (Grievance Filing Form).[1]

Not satisfied with the decision at Level One, Ms. Scott appealed the same issues to Level Two. Ms. Stephanie R. Moses, Coordinator of Human Resources, reviewed Ms. Scott's allegations and held a conference with Ms. Scott on February 11, 2002. At that conference, for the first time Appellant indicated that she considered the particular harassment by Dr. Carney, Supervisor of Special Education, to be sexual harassment.

Ms. Moses, responding to each of the individual allegations in Ms. Scott's grievance by letter dated February 12, 2002, did not find any evidence of harassment or discrimination against Appellant in the workplace. She noted one single comment made by Dr. Carney that "maybe you

[1]To date, there has been no adverse employment action taken against Appellant; she remains employed at the same grade and with the same pay and benefits.

[Appellant] should change your haircolor [sic] back to blonde", may have been insensitive and inappropriate, but that it did not amount to sexual harassment.

As to the requirement that Appellant be assessed on her interpreting skills, Ms. Moses explained that the school had received complaints from students, parents, and teachers regarding her interpreting skills. *See* Letters from the Elliotts and the Wilsons; Memorandum from Tom Field, November 13, 2001. Citing WCPS' obligation to provide a free, appropriate public education ("FAPE") to these students under Individuals with Disabilities Education Act ("IDEA"), the WCPS determined that an assessment of Appellant's skills was necessary. The assessment was to be objectively performed by someone not affiliated with WCPS who would be unaware of any personnel issues that Appellant had with the school. Ms. Moses noted that the assessment should be viewed as a positive measure and an opportunity for Appellant to demonstrate her signing and interpreting skills. She also noted the WCPS would give Appellant additional resources and time to bring her skills up to an acceptable level should the assessment show that her skills needed improvement. Thus, Ms. Moses found that this measure was not discriminatory but rather a prudent and helpful measure.

As to the requirement that Appellant receive tutoring in ASL, Ms. Moses noted that this requirement was also the result of complaints from parents and students. The students required "total communication" which included ASL and the complaints justified additional training for Appellant. Ms. Moses again noted that this training was offered as a positive measure to assist Appellant in her skills.

As relief, Ms. Moses recommended that all the interpreters receive conflict resolution training, if money were available. She noted that Dr. Carney had retired, but recommended that administrators and supervisors be reminded of county policy and State and federal regulations as they pertain to harassment and other employment issues. She also recommended that the skills assessment take place with an independent third party assessor, not as a punitive measure but as an analytical tool in the best interests of the students.

Ms. Moses further recommended that the WCPS provide additional resources in the form of ASL training to better enhance Appellant's skills. She noted that this training should be offered and accepted in a harmonious fashion with mutual goals and objectives. Finally, she recommended that Appellant only take instruction from her principal or his/her designee as to schedules and tasks to be performed. (Letter of February 12, 2002).

Ms. Scott appealed Ms. Moses decision to Level Three, which is heard by the County Superintendent of Schools. (Letter of February 22, 2002). Appellant's concerns remained the same as those in the Level One and Level Two proceedings. Between October 2002 and January 2003, then-superintendent William Middleton and Thomas Field, Assistant Superintendent for Instruction and Curriculum, made efforts to resolve the issues with Appellant through mediation.

These attempts were unsuccessful and the grievance moved on to Level Three in January, 2003.[2] The superintendent's designee, Mr. William Centofane, met with Appellant and made recommendations concerning the grievance to the Superintendent.

By letter dated January 27, 2003, Dr. Charlene Cooper-Boston, the new superintendent, denied the grievance and upheld the recommendations made in the Level Two decision. While Appellant believed it unfair that she was the sole interpreter to be assessed, Dr. Boston noted that Appellant was the only interpreter about whom complaints had been made by parents and students. Dr. Boston agreed with Ms. Moses' assertion that the opportunity for assessment should be viewed only as an analytical tool and not a punitive measure. (Letter of January 27, 2003.) Dr. Boston also agreed with the recommendation that Appellant receive additional training in ASL at Board expense and within the work day. She noted that the recommendation for additional training was made "...in a harmonious fashion with mutual goals and objectives".

Unsatisfied with the decision of the superintendent, Appellant appealed to the local board. Pursuant to WCPS policy:

> The local board will consider the grievance as it deems necessary provided that at least ten (10) days notice is given prior to any appearance required by the grievant at a board of education meeting or hearing. The findings and decision of the Wicomico County Board of Education will be considered the final local disposition of the matter.

(Classified Employees Handbook; Grievance Polices and Procedures, p. 2-15).

The local board notified Appellant that they would hear the appeal on March 11. 2003. Appellant appeared and requested a postponement until April 8, 2003 so that she could retain counsel. Counsel in turn requested a postponement until May 13, 2003. The board directed each party to submit documents in support of its respective position and provide these documents to the opposing party. The local board heard oral argument from the parties on May 13, 2003, and issued its decision on May 27, 2003, unanimously upholding the Level Three decision. This appeal followed.

ANALYSIS

The standard of review that the State Board applies in reviewing the decision of a local board concerning a local policy is that the local board decision shall be considered *prima facie* correct and the State Board will not substitute its judgment for that of the local board unless the decision is shown to be arbitrary, unreasonable, or illegal. *See, e.g., Breads v. Board of Education of Montgomery County*, 7 Op. MSBE 507 (1997). A decision may be arbitrary or

[2]Appellant went on approved medical leave from March to October 2002.

unreasonable if it is contrary to sound educational policy or a reasoning mind could not have reasonably reached the conclusion the county board reached. COMAR 13A.01.01.03E(1)(b).

Appellant has raised three concerns on appeal: (1) denial of due process, (2) sexual harassment, and (3) improper working conditions. (Letter of Appeal pp. 3-4). We address each in turn.

1. Due Process

Appellant alleges that the grievance procedures of WCPS do not provide adequate due process because the process does not provide for cross-examination of witnesses and because a stenographic recording was not made of the Level Three proceeding. (Letter of Appeal, p. 3). In this regard we note that this matter does not involve a disciplinary proceeding or a termination. The requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property. *Board of Regents v. Roth*, 408 U.S. 564, 569 (1972). There has been no adverse employment action such as reprimand, demotion, suspension, or termination, and thus no deprivation of a liberty or property interest. Accordingly, a full constitutional due process hearing is not required.

Moreover, not every matter is entitled to a full evidentiary hearing before the local board. *See, e.g., Stewart v. New Board of School Commissioners for Baltimore City*, Op. No. 02-08 (February 6, 2002)(lack of opportunity to address the full board in termination proceeding not a denial of due process); *Gelber v. Board of Education of Montgomery County*, 7 Op. MSBE 616 (1997)(no right to an oral evidentiary hearing on a school transfer request). Nonetheless, we believe that the extensive procedures adopted by WCPS provided substantial due process to Appellant who was permitted to explain her position orally and present evidence on these matters on four separate occasions to four separate decision makers. The local board even postponed its hearing of Appellant's case so that Appellant could obtain counsel for the review hearing. Accordingly, we do not find that Appellant was denied due process.

2. Sexual Harassment

With respect to Appellant's allegations of sexual harassment, a reasoning mind could reasonably agree that Dr. Carney's comment did not rise to the level of sexual harassment. The local board policy on sexual harassment provides:

> Sexual harassment is defined, for this policy, as (1) unwelcome, inappropriate sexual advances or request for sexual favors as a condition of initial or continuing employment or any other employment benefits, (2) conduct/behavior of a sexual nature that interferes unreasonably with an individual's work performance, (3) conduct/behavior of a sexual nature that is a form of intimidation, hostile or offensive to the work environment, and (4) adverse

> actions against an employee as a result of the employee's rejection of, reaction to or filing of a complaint against an act specified in 1, 2 or 3 above.

A reasoning mind could easily determine that a single comment about one's hair color, in essence a "dumb blonde" joke, while inappropriate does not rise to the level of sexual harassment. Moreover, Appellant did not originally consider this comment as sexual harassment. In a memorandum dated December 17, 2001, Appellant characterized the comment as "highly improper, retaliatory and intended to ridicule".

Furthermore, the comment was made on November 19, 2001. The local board's policy provides that:

> if an employee believes that he/she has a Title VII or Title IX sexual harassment complaint, that employee shall schedule an appointment with his/her immediate supervisor or the Title VII or Title IX coordinator within 21 days of the event to discuss the matter orally.

(Discrimination and Sexual Harassment - Regulations - Title VII and Title IX - complaint procedures, p. 3) Appellant did not schedule an appointment with her supervisor or Title VII coordinator within 21 days of November 19, 2001. In fact, Appellant did not even raise sexual harassment as an issue in her written grievance dated January 31, 2002. This issue was first raised in a conference with Ms. Moses on February 11, 2002. We find for these reasons that there was no sexual harassment of Appellant.

3. Working Conditions

As stated above, a decision by the local board may be arbitrary or unreasonable if it is contrary to sound educational policy or a reasoning mind could not have reasonably reached the conclusion the county board reached. This case does not involve educational policy; rather it is a grievance concerning working conditions. The standard of review is therefore whether a reasoning mind could have reasonably reached the same conclusion as the local board.

Appellant's grievance included several issues. Each of these issues was specifically addressed at Level Two by Ms. Moses, affirmed at Level Three by Dr. Boston, and unanimously affirmed by the local board. A review of the record discloses that in response to her complaints about her colleagues, the local board approved funding for conflict resolution. We find this a reasonable action. Based upon the parents' complaints, a reasoning mind could find that an

assessment of Appellant's skills was prudent and necessary.[3] A reasoning mind could also determine that tutoring in ASL was required based upon the same complaints and by in-school observations.

In summary, the grievance was heard through all four stages of the local board's grievance procedures. At each stage, Appellant was given the opportunity to present her side of the matter. It is clear that Appellant does not agree with the findings at each level of the grievance. But that does not mean that a reasoning mind could not have reached the same conclusion. It is evident, based on the local board's decision to deny the grievance, that the local board found the testimony of school officials more credible than the testimony presented on behalf of Appellant *See, e.g., Board of Trustees v. Novik*, 87 Md. App. 308, 312 (1991), *aff'd*, 326 Md. 450 (1992) ("It is within the Examiner's province to resolve conflicting evidence. Where conflicting inferences can be drawn from the same evidence, it is for the Examiner to draw the inferences."). The State Board may not substitute its judgment for that of the local board unless there is independent evidence in the record to support the reversal of a credibility decision. *See Dept. of Health & Mental Hygiene v. Anderson*, 100 Md. App. 283, 302-303 (1994).

Based upon our review of the record in this matter, we find that Appellant has provided no basis for reversing the credibility determinations made by the local board. Further, the documentation of complaints from students and parents as well as the results of the independent assessment of Appellant's skills support the actions taken by the school system.

CONCLUSION

For all of these reasons, we affirm the decision of the Board of Education of Wicomico County denying Appellant's grievance.

Edward L. Root
President

JoAnn T. Bell
Vice President

Philip S. Benzil

[3]An assessment of Appellant's skills, including assessment by an independent third party, did eventually take place on June 16, 2003. Appellant received unsatisfactory ratings in the following categories: appropriate interpreting/signing skills, shares interpreting/signing skills, reports to work on a regular and timely basis, and accepts constructive criticism.

Dunbar Brooks

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December 3, 2003