

H.E. NO. 2010-2

STATE OF NEW JERSEY  
BEFORE A HEARING EXAMINER OF THE  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

GALLOWAY TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and-

Docket No. TO-2009-001

GALLOWAY TOWNSHIP EDUCATION  
ASSOCIATION,

Petitioner.

**SYNOPSIS**

A Hearing Examiner recommends that the Commission dismiss a contested transfer petition filed against the Galloway Township Board of Education by a school psychologist who was transferred from Reeds Road School to Roland Rogers School. The Petitioner alleged the transfer was for disciplinary reasons. The Hearing Examiner finds that the school psychologist was not transferred for predominately disciplinary reasons but rather to meet the Board's bona fide educational and staffing objectives pursuant to West New York Bd. of Ed., P.E.R.C. No. 2001-41, 27 NJPER 96 (¶32037 2001).

A Hearing Examiner's Report and Recommended Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission, which reviews the Report and Recommended Decision, any exceptions thereto filed by the parties, and the record, and issues a decision that may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law. If no exceptions are filed, the recommended decision shall become a final decision unless the Chair or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

H.E. NO. 2010-2

STATE OF NEW JERSEY  
BEFORE A HEARING EXAMINER OF THE  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

GALLOWAY TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and-

Docket No. TO-2009-001

GALLOWAY TOWNSHIP EDUCATION  
ASSOCIATION,

Petitioner.

Appearances:

For the Respondent,  
William Cappuccio, attorney

For the Petitioner,  
Wills, O'Neill and Mellk, attorneys  
(Arnold M. Mellk, of counsel)

**HEARING EXAMINER'S REPORT  
AND RECOMMENDED DECISION**

On July 8, 2008, the Galloway Township Education Association (GTEA or Petitioner) filed a petition for a contested transfer determination. The petition alleges that the Galloway Township Board of Education (Board or District) violated N.J.S.A. 34:13A-25 by transferring school psychologist Beverly Bodenlos (Bodenlos) from Reeds Road School to Roland Rogers School for disciplinary reasons.<sup>1/</sup>

---

<sup>1/</sup> The petition contains allegations that Bodenlos was denied certain summer work in 2008. These allegations are not relevant in this forum where the only issue is whether  
(continued...)

On July 30, 2008, the Board filed an Answer, denying the transfer was for disciplinary reasons. The Board asserts that Bodenlos was transferred to allow it to best utilize her expertise with students who have been identified as having behavioral and emotional problems.

On December 3 and December 5, 2008, a Notice of Hearing and Order Rescheduling Hearing issued, respectively. On April 21, 2009, I conducted a hearing at which the parties examined witnesses and introduced exhibits. At the conclusion of all testimony, the parties presented closing arguments on the record, in lieu of submission of post-hearing briefs.

Based upon the entire record, I make the following:

FINDINGS OF FACT

1. Beverly Bodenlos has been employed by the Galloway Township Board of Education for 29 years. She was hired in 1980 and assigned to the Arthur Rann School (Arthur Rann) as a special education teacher. She held that position for nine years after which she became a school psychologist and moved to the Reeds Road School (Reeds Road). She remained at Reeds Road as a school psychologist for nineteen years, until June 2008 (T13-T14)<sup>2/</sup>.

---

1/ (...continued)  
Bodenlos' transfer to Roland Rogers School for the 2008-2009 school year was for predominantly disciplinary reasons. I have not addressed those allegations here.

2/ "T" refers to the transcript of the hearing followed by the  
(continued...)

2. As a school psychologist Bodenlos is part of one of the District's five child study teams (T52, T70). At Reeds Road Bodenlos was a case manager for behavioral disabilities classes and also dealt with students with other types of special needs. Reeds Road is an elementary school (T54). Her duties included testing and counseling students with academic, social and emotional disabilities and collaborating with teachers, school administrators, parents and other mental health professionals concerning these students (T14-T15, T36). Bodenlos describes her role as an "advocate for the child" (T14-T15).

3. Thomas Hand is the Director of Special Education and supervises the District child study teams. As the director, Hand is Bodenlos' immediate supervisor. He has been with the District for approximately one and one half years (T15, T51-T52). Each child study team includes a psychologist, a social worker and a learning disability specialist (LDTC) (T69).

4. William Zipparo is the principal of Reeds Road and has been with the District for sixteen years. He was the principal when Bodenlos was at Reeds Road as a case manager for the behavioral disability classes (T71-T73).

5. Douglas Groff is the District Superintendent and has been in that position since December 1999.

6. During her nineteen years as school psychologist Bodenlos attended various training workshops and presentations conducted by providers outside the District, some of which were paid for by the District and some of which Bodenlos paid for on her own initiative (T36-T37). The training Bodenlos attended dealt with how to deal with emotional and psychological conditions of children; with psychiatric emergencies, and with case management of behavioral and regular resource classes (T36-T37, T53, T73 T46-T47). Bodenlos received training for students with psychiatric and emotional problems (T36-T37). She described the classes she took in the area of children's behavioral and psychiatric issues as an "investment" in herself for performance in those areas (T47).

7. During 2000 or 2001, while Bodenlos was the school psychologist for Reeds Road she also covered Roland Rogers School (Roland Rogers) in that same capacity. Roland Rogers houses elementary school students. She was responsible for case management and crisis response for students with behavioral disabilities at both schools (T46). Bodenlos considers case management of students in behavioral disabilities classes differently from case management in regular resource room programs, and she believes she is qualified as a school psychologist in both types of case management (T46-T47). Based upon Bodenlos' testimony describing her experience and

qualifications in dealing with students with behavioral disabilities, in addition to the training she received at workshops addressing the needs of those students, I find that Bodenlos worked to establish an expertise as a school psychologist involved with students with behavioral disabilities.

8. Sometime in October 2007, Hand directed the child study team on which Bodenlos served to "evaluate" a specific child to determine if the child required placement for special needs. The child study team decided not to conduct the evaluation (C-1 para. 2).<sup>3/</sup> Hand strongly disagreed with the team's decision and issued a memo to the team on October 29, 2007, stating his displeasure with their decision (C-1 para. 2; C-2 Groff affidavit para's 2, 3). Hand's memorandum to the team was later retracted (C-1 para. 3; C-2 Groff affidavit para. 2, 3).

9. As a result of the dispute between Hand and the child study team concerning evaluation of the student at issue, Bodenlos was alleged to have accessed the student's computer file

---

<sup>3/</sup> "C" refers to Commission exhibits; "P" refers to Petitioner exhibits, "R" refers to Respondent's exhibits. There are numerous documents referred to it in the Petition and attached thereto. Several of those documents were received into evidence, others were identified but not offered. However, the Petitioner's witness referred to and discussed the contents of several of those documents in her testimony. Likewise, several of Respondent's witnesses refer to the content of documents identified in Respondent's case but not offered into evidence. I have considered the identified documents referred to in witness testimony only to the extent those documents corroborate that testimony.

and printed a report from that file without authorization. She also allegedly denied doing so when later questioned by Hand (T15-T16).

10. On January 17, 2008, Bodenlos and her NJEA UniServe representative met with Hand and Zipparo to discuss the Board's allegations against her (P1; R C; T17-T18). Subsequent to the January 17 meeting, Hand and Zipparo issued Bodenlos a "Letter of Reprimand" dated January 25, 2008 (P1; RC). The letter stated that on numerous occasions Bodenlos had accessed a student's file without authorization and on at least one occasion had printed, without authorization, a psychological evaluation of the child. The letter also noted that Bodenlos had prematurely left the January 17 meeting with Hand, Zipparo and her UniServe representative. Hand and Zipparo found her leaving to be "inappropriate and unprofessional". The letter was placed in Bodenlos' personnel file and she was "in-serviced" with regard to policies concerning electronic accessing of student files. The letter was to be forwarded to Superintendent Groff to determine whether further disciplinary action was warranted (P-1).

11. On February 9, 2008, Bodenlos wrote a rebuttal to the letter of reprimand (C1 para.7; T19)<sup>4/</sup>. The rebuttal was sent to

---

<sup>4/</sup> Petitioner did not offer the rebuttal as an exhibit. The rebuttal is referred to in the Petition at (C-1) and attached to it as "attachment 7". Respondents' answer to the petition refers to the rebuttal (C-2 para 7, Groff  
(continued...)

Hand and Groff (T19; C2 para.7 Groff affidavit). Groff admitted that he found Bodenlos' rebuttal to be a "ranting, verbose story" which he characterized as more harmful than helpful to her explanation for accessing the student's file (C2 para. 7).

12. Subsequent to Bodenlos' rebuttal and after speaking with the NJEA UniServe representative, Groff notified Bodenlos by memorandum dated February 27, 2008, that the letter of reprimand issued by Hand and Zipparo would be "expunged" from her personnel file upon her written request and that in the future Hand would make every effort to personally meet with child study team members who may be affected by procedural changes or modifications (C-1 para. 10; C-2 Groff affidavit para. 10). Based upon the foregoing I find that Bodenlos received no further discipline as a result of her accessing or printing of a student's file.

13. On March 7, 2008, Bodenlos mailed a complaint dated March 1, 2008, to the New Jersey Department of Education, Office of Special Education Programs (DOE) and hand-delivered the same form to Groff. The Complaint was signed by Bodenlos and Robbyn Scott, another member of the District's child study team (T19-T20; P-2). Bodenlos' and Scott's complaint concerned the October 29, 2007 meeting with Hand to discuss the evaluation of the



student at issue. In it they allege that Hand and Zipparo subsequently held a second meeting without the presence of the child study team and overrode the team's decision with regard to the evaluation of the student (P-2 para. 3). According to the DOE filing, the second meeting was a violation of procedures dealing with evaluation of special needs students.

14. On March 10, 2008, Superintendent Groff responded by electronic mail to both Bodenlos and Scott with regard to their complaint to DOE. In his response Groff stated that he initially intended to meet with both Bodenlos and Scott to discuss their concerns but since a complaint had been filed he was unable to do so because of possible litigation resulting from the DOE investigation. He also stated that he was "disappointed that the matter had been taken outside the school District" and that he firmly believes "dirty laundry" should stay within the District and efforts to resolve disputes should be made internally. Groff said that he hoped any recommendations offered as a result of the investigation would be implemented and that the "District could move forward and leave the matter behind - once and for all." He raised a concern that the confidentiality of the student was compromised and there could be an affect on the child and parents as DOE investigated the complaint. Finally, Groff confirmed that he had reviewed the contents of Bodenlos' and Scott's complaint

and was aware of their position. Groff requested that Bodenlos and Scott not respond to his March 10 e-mail (P-3).

15. Based upon the March 10 e-mail, I find that Groff reasonably believed that due to of the pendency of the DOE complaint he was unable to meet with Bodenlos and Scott to discuss the dispute. I further find that Groff was very disappointed and dismayed that Bodenlos and Scott had taken the District's problems outside, but that he was also just as concerned that the student at issue had been identified to a third party and that the student and parents could be negatively affected by the investigation.

16. Bodenlos responded to Groff via e-mail on March 11, 2008. In her response she stated that after 4 months of "retaliation" without a resolution in sight, she believed she had to go outside the District (P-3). The record is unclear as to what "retaliation" she was referring.

17. Prior to April 30, 2008, Hand began to meet with principals and child study teams regarding staffing and classes for the 2008-2009 school year (P-1; R-C).

18. Until on or about the 2006-2007 school year, there were behavioral disability classes housed at Reeds Road School. During the 2006-2007 school year one class of behavioral disability students was moved to Arthur Rann School and one to Roland Rogers (T24, T77). In the 2007-2008 school year the

District decided to consolidate and move all of the then existing elementary behavioral disability classes to Roland Rogers for the 2008-2009 school year (T54, T63-T64, T74-75, T81).<sup>5/</sup>

19. On April 23, 2008, during a meeting between Hand and members of Bodenlos's child study team, Bodenlos referred to her experience and expertise working with students with behavioral problems (R-C). Hand interpreted her statements at the meeting as Bodenlos identifying herself as an expert in that area.

20. Also in April 2008, Hand met with Bodenlos to discuss whether she was willing to move to Roland Rogers to continue working with students with behavioral problems (T22-23, T54-55). Bodenlos testified that Hand was aware at the April meeting that she had filed a complaint with DOE (T22).

21. In a letter dated April 30, 2008, Hand formally requested Bodenlos to consider becoming the school psychologist responsible for the behavioral disabilities classes. Hand explained in his letter that he agreed that Bodenlos possessed "the experience and expertise in working with students who have behavioral problems and concerns" (R-C). Hand also referred to Bodenlos' training concerning students with these particular problems and noted that on numerous occasions Bodenlos had "enlightened" staff with her knowledge in this area. He stated

---

<sup>5/</sup> The record is unclear as to whether any behavioral disabilities students remained at Reeds Road after 2006-2007 (T24, T54, T71-T72, T77).

that in his opinion having her as case manager for behavioral disabilities classes would be the best way for the District and Bodenlos to utilize her skills and expertise. Hand's letter also informed Bodenlos that filling this position would require a transfer to Roland Rogers, the only location where behavioral classes are located. Finally, Hand stated that he had not made a final decision on transfers at that point but reserved the right to do so to "meet the needs of the District" (R-C).

22. Hand testified that before recommending to Groff that Bodenlos be given the new assignment he also sought Zipparo's opinion as to whether her transfer to Roland Rogers for the students there outweighed keeping her at Reeds Road. According to Hand, Zipparo agreed that transferring Bodenlos to Roland Rogers would be a better use of her expertise (T63). Zipparo's testimony corroborates Hand's testimony that Hand had explained the transfer proposal to him and asked for his opinion. Zipparo testified that although he was sorry to lose her, he believed transferring Bodenlos to Roland Rogers was in the best interest of the students (T-74).

23. Hand further testified that he did not consider transferring another school psychologist who worked at Smithville School to the position at Roland Rogers because the Smithville School psychologist had been trained and had accumulated her experience in working with pre-school children with disabilities,

not with children in the elementary grades who have behavioral disabilities. He also noted that while the Smithville psychologist had worked in the District longer than Bodenlos, Bodenlos had the most overall training and experience with behavioral disabilities students at the elementary school level.

24. Groff testified that Hand had told him he was planning to move all students in behavioral disabilities classes to Roland Rogers and that he believed Bodenlos had the greatest experience with and knowledge of those students. Groff asked whether there was anyone else Hand felt could best meet the needs of the students and Hand said no (T81).

25. Groff also testified that there were often transfers of tenured individuals in the District and those were done on the basis of need (T81). A chart prepared by Hand at Groffs' request shows a number of transfers within the District among the child study teams both in the past and during the 2008-2009 school year (R-F; T94-T95). The chart reveals that within the previous three years including the 2008-2009 school year, approximately 50 percent of the child study team members were transferred between schools (R-F; T59). Hand testified that as he recalled one member of a child study team, Jay Saslav was the only person on the list who did not want to be transferred. Subsequently, Saslav, who has been employed in the District for 38 years, agreed to transfer (R-F; T67-T68). I find that the chart is

helpful to confirm that numerous transfers have regularly been made among child study teams. However, neither the exhibits nor Hand's testimony explain the reasons for the transfers or whether they were essentially voluntary or involuntary.

26. In a May 2, 2008 response to Hand's April 30 letter proposing her transfer, Bodenlos disputed having referred to herself in the April 23 child study team meeting as the expert school psychologist. Bodenlos noted that she was "not even the most senior school psychologist." Nonetheless, in that same letter Bodenlos noted that she appreciated being referred to as an "expert in my field", that she had developed a rapport with Reeds Road staff over almost 20 years there, and that the teachers there came to her for guidance on a daily basis. She was concerned that it might take a while to build rapport and be as effective at Roland Rogers as she was at Reeds Road. She emphasized her expertise as a case manager for a blind student at Reeds Road and noted that the District had sent her to workshops on working with the blind.

Bodenlos went on to dispute that she had received "formal" training by the District to be a case manager for behavioral disabilities classes. In her letter and during her testimony she attempted to distinguish "outside" workshops which she attended from "formal training by the District". She stated that those workshops did not deal with training for behavioral disabilities.

However, Bodenlos acknowledged to Hand that her experience at Reeds Road had helped her in developing an expertise in working with students and teachers in the behavioral disabilities classes. Finally, Bodenlos mentioned her involvement in other programs at Reeds Road not specifically related to behavioral disabilities classes. She was concerned that those programs might need her presence to continue to function (R-D).

I find that Bodenlos' May 2, 2008 response to Hand's April 30 letter was for the mostpart an attempt to downplay her skills and expertise in dealing with students with behavioral disabilities because she did not want to be transferred from the school where she had spent nearly twenty years and was well known and highly regarded. This is particularly evident in light of her earlier testimony that she received specific training regarding emotional and psychological problems of children; her frequent references to her experience as a behavioral disabilities case manager; and her reference to being sought after for her guidance by teachers who work at Reeds Road.

27. By memorandum dated May 14, 2008, to Bodenlos and copied to Groff and Zipparo, Hand thanked Bodenlos for her response to his request that she consider the voluntary transfer. He concluded that the needs of the entire District would be best met by transferring her as of September 1, 2008, and he intended to recommend her transfer to Groff. Hand reminded Bodenlos of

her attendance at several workshops outside the District related to management of behavioral disabilities students, a workshop he and Bodenlos attended on psychiatric interventions and "other workshops" attended by Bodenlos and paid for by the District. As to Bodenlos' concerns that other programs at Reeds Road might be in jeopardy if she were transferred, Hand assured Bodenlos that Zipparo concurred with his recommendation that Bodenlos' skills and expertise in working with behavioral disabilities students would be more appropriately used at Roland Rogers (P-4; R-E). In his memorandum Hand also told Bodenlos that he was transferring a tenured LDTC/child study team member from Roland Rogers to Arthur Rann. Therefore, if Bodenlos were not transferred, there would be no tenured child study team member at Roland Rogers, a situation which Hand did not find acceptable.

Based upon Hand's record testimony regarding Bodenlos' experience, training and expertise; Bodenlos' own testimony regarding her training and experience and the discussion and correspondence between Hand and Bodenlos during April and May 2008, I find that Hand had a substantial and reasonable belief that Bodenlos had developed an expertise in behavioral disability case management and that Bodenlos was the most appropriate school psychologist to take the responsibility for the behavioral disability classes at Roland Rogers. I further find that until the time of the proposed transfer to Roland Rogers, Bodenlos did



not appear to have an aversion to being acknowledged as an expert in her field including her work with students with behavioral and emotional disabilities.

28. On May 9, 2008, Roberta Wahle, Director of New Jersey Department of Education, Office of Special Education Programs issued a "Complaint Investigation Report" in response to Bodenlos' and Scott's March 1, 2008 complaint. The report reveals that on March 20, 2008, the DOE investigator interviewed Bodenlos. On March 26, 2008, Hand, Zipparo, and an assistant principal were interviewed, and on April 3, 2008, Scott was interviewed (P2).

29. The report addressed 3 areas of non-compliance by the District and set forth a corrective action plan. Along with a cover letter dated May 13, 2008, the report was mailed to Bodenlos and copied to Groff (P-2). Groff testified that he did not know if he received the DOE complaint investigation report on May 13, 2008. The record shows that as of March 10, when Groff sent his e-mail to Bodenlos and Scott he knew that the DOE complaint had been filed (P-3).

30. The District implemented the remedial action recommended in the DOE report by conducting an in-service for employees on accessing student files and it reviewed its procedures on access of student records (T84-T85).

31. On May 30, 2008, after the DOE report had issued, Groff met with Bodenlos and GTEA President Rich Bremer to discuss Bodenlos' proposed transfer. Bodenlos testified that during their meeting she told Groff that she "felt" her transfer was related to her filing the DOE complaint (T25). Bodenlos further testified that Groff responded that "he wouldn't be bullied by anyone," and that her transfer "didn't have anything to do with [her complaint to DOE] and that the District had not done anything wrong" with regard to the issues in the complaint (T25).

32. During direct examination Groff admitted that he had made the statement that he would not be bullied because of the DOE complaint (T83-T84). Groff knew at the May 30 meeting that Bodenlos was not happy about the proposed transfer. He also testified that Bodenlos had raised the issue of the transfer being in retaliation for filing the complaint. He denied that this had motivated the transfer (T82-T83).

33. On cross examination Bodenlos testified that at her May 30 meeting Groff also told her he had reviewed Hand's recommendation on her transfer; said that she was an employee of the District, not only Reeds Road, and explained to her that over fifty percent of the child study team members have been moved in the past few years. She also testified that Groff told her she had not been singled out and that the Board of Education had the

right to place District staff according to the needs of the students (T40-T41).<sup>6/</sup>

34. By letter dated June 10, 2008, Groff thanked Bodenlos for meeting with him. He told her that he had concluded that her expertise in the area of special education would serve her well as the elementary child study team/school psychologist at Roland Rogers for the 2008-2009 school year.<sup>2/</sup>

#### ANALYSIS

N.J.S.A. 34:13A-25 prohibits transfers of school employees between work sites for disciplinary reasons. The statute defines discipline to include "all forms of discipline except tenure charges . . . or the withholding of increments pursuant to N.J.S.A. 18:29-14" N.J.S.A. 34:13A-22. The petitioner has the burden of proving its allegations by a preponderance of the evidence. Irvington Bd. of Ed., P.E.R.C. No. 98-94, 24 NJPER 113 (¶9056 1998).

In West New York Bd. of Ed., P.E.R.C. No. 2001-41, 27 NJPER 96 (¶32037 2001), the Commission reviewed our case law assessing

---

<sup>6/</sup> The notes taken by the GTEA President at the May 30 meeting and identified in the Petition as attachment 23 were not offered into the record. I have considered them only to the extent they corroborate both Bodenlos' and Groff's testimony.

<sup>2/</sup> I have reviewed all of the documents and testimony presented in making my determination herein. Any documents or testimony reviewed but not discussed here were not probative and/or essential to my decision.

whether disciplinary transfers could be submitted to binding arbitration, if the parties so agreed. That review provided a framework for deciding whether a transfer is disciplinary under N.J.S.A. 34:13A-25. The Commission wrote:

a transfer is predominately disciplinary when it is punitive and/or is not made for educational or staffing reasons. Accordingly, in exercising our jurisdiction under N.J.S.A. 34:13A-27, we will consider such factors as whether the transfer was intended to accomplish educational, staffing or operational objectives; whether the Board has explained how the transfer was so linked; and whether the employee was reprimanded for any conduct or incident which prompted the transfer. 27 NJPER 96

In the case at hand, the Petitioner contends that the impetus for the Board's transfer of Bodenlos to Roland Rogers for the 2008-2009 school was Bodenlos' filing of a complaint with the New Jersey DOE on March 7, 2008. The Petitioner argues that in response to Bodenlos' filing with DOE, Superintendent Groff became angry with Bodenlos and thus decided to transfer her in order to retaliate.

The evidence of an intention to punish Bodenlos corresponds to the type of evidence necessary to prove that a public employer has retaliated against a public employee for engaging in protected conduct. N.J.S.A. 34:13A-5.3; 5.4a(3); In Re Bridgewater Tp., 95 N.J. 235 (1984). In such unfair practice cases, no violation will be found unless the charging party has proved, by a preponderance of evidence on the entire record, that

protected conduct was a substantial or motivating factor in the adverse employment action. A charging party must show, by direct or circumstantial evidence, that the employee engaged in protected activity, the employer knew of this activity and the employer was hostile to the exercise of protected rights. Id. at 246.

In October 2007, Bodenlos and other child study team members were engaged in a dispute with Hand over the evaluation of a special needs student. Subsequently, Bodenlos accessed the student's file. On January 25, 2008, after a January 17 meeting between Hand, Zipparo, Bodenlos and her NJEA UniServe representative, Bodenlos was issued a letter of reprimand for her actions. The letter was forwarded to Groff. Bodenlos wrote a rebuttal to the letter which Groff found to be ranting, verbose and more harmful than helpful to Bodenlos' position.

The Petitioner relies in part on Groff's characterization of Bodenlos' rebuttal to show his initial animus toward her for her actions in late Fall 2007. However, Groff spoke to Bodenlos' NJEA UniServe representative after his receipt of her rebuttal. On February 27 Groff offered to expunge the letter from her file and he intended to instruct Hand to meet personally with child study team members should similar situations occur in the future. Groff contemplated no further discipline with regard to the

October dispute and letter of reprimand. He believed that the dispute was settled.

I disagree that Groff's characterization of Bodenlos' rebuttal as verbose and ranting is evidence of initial or ongoing animus toward Bodenlos by Groff or the Board. I find this to be true particularly in light of Groff's willingness to speak with the UniServe representative, his offer to withdraw the reprimand letter and his intent to speak with Hand.

On March 3, 2008 Bodenlos and her colleague Scott filed a complaint with DOE. On March 10 Groff responded to that filing by e-mail. The Petitioner asserts that Groff's e-mail provides further evidence of animus toward Bodenlos. In that e-mail Groff said he believed that because of potential litigation related to the DOE complaint he could not speak with Bodenlos or Scott about the issues raised there. With that concern in mind Groff also said he was concerned with confidentiality issues in so far as the student had been identified to a third party. He then requested that neither Bodenlos or Scott respond to his e-mail. I do not find these specific statements to be evidence of animus but rather an attempt to protect the interests of the student and the District should litigation occur.

Groff also stated in his e-mail that he was disappointed that Bodenlos and Scott had aired the District's dirty laundry and that he believed that all efforts to resolve disputes should

be made internally. While this evidence reveals that he was clearly dismayed that Bodenlos had drawn a third party into District matters, when read in the context of the entire e-mail I do not agree that Groff's reaction to Bodenlos' filing of the complaint provides sufficient evidence of animus necessary to prove that Groff or the Board intended to punish Bodenlos (or Scott for that matter) for filing the complaint. Rather, I view Groff's response as predominately seeking to prevent possible future disputes from being taken outside the District before exhaustion of internal attempts to settle matters.

The DOE complaint investigation report was mailed on May 13 to Bodenlos with a copy to Groff. By letter dated May 14 Hand told Bodenlos that he had decided to definitely recommend her transfer to Roland Rogers as the school psychologist for all behavioral disability classes. There is no evidence that Hand or Groff had seen the report prior to Hand's decision and May 14 letter.

On May 30 Bodenlos, her GTEA representative and Groff met to further discuss her transfer. The Petitioner relies on Bodenlos' testimony concerning statements made by Groff during that meeting as significant evidence that Groff harbored animus toward Bodenlos for filing the DOE complaint, which in turn led him to his final decision to transfer her. Bodenlos testified that she told Groff at the May 30 meeting that she felt her transfer was

related to the fact that she had filed the DOE complaint and that in response Groff said that he "would not be bullied by anyone" and that the transfer did not have anything to do with the DOE complaint. When asked on cross examination about that same meeting Bodenlos admitted that Groff had also told her he had reviewed Hand's earlier recommendation on her transfer; that over fifty percent of the child study teams had been transferred in the last several years and that she had not been singled out; that she was an employee of the District not only Reeds Road and finally, that the Board had the right to place District staff according to the needs of the students.

Based upon Bodenlos' and Groff's testimony describing what occurred at the May 30 meeting as corroborated by the GTEA president's notes, I conclude that the overall conversation had a broader focus than the Petitioner portrays. I find that Groff was attempting to explain how and why he had arrived at the final decision to transfer Bodenlos and that Bodenlos tried to talk Groff out of his decision by indicating that she felt she had a good professional relationship with Reeds Road staff and administrators, was clearly upset with the idea of transfer and did not want to move to Roland Rogers. Even if part of the exchange became heated when Groff responded to Bodenlos' contention that she was being transferred because she had filed the DOE complaint, I find that Groff's statement that he would



not be bullied when viewed in the context of the entire discussion is insufficient to establish that Groff or the Board maintained such animus toward Bodenlos for filing the DOE complaint that her eventual transfer was done for predominately disciplinary reasons.

**DISTRICT'S REASONS FOR TRANSFER**

The Board contends that Bodenlos was transferred because she was the District's school psychologist with the most experience, training and expertise in working with children with behavioral disabilities. As such, they determined that her skills and experience would be best utilized as the school psychologist/case manager for all of the behavioral disabilities classes which were to be housed at a single location, Roland Rogers, beginning with the 2008-2009 school year. Additionally, the Board asserts that it believed it was important that there be a tenured member on the Roland Rogers child study team and without Bodenlos, who was tenured, there would be none. These reasons, if proven would show that "the transfer was intended to accomplish educational and staffing objectives", one of the factors considered by the Commission in transfer cases pursuant to West New York Bd. of Ed.

Evidence contained in the record reveals that sometime in early 2008 Hand began to meet with school principals and child

study teams, including the one Bodenlos served on at Reed Road.<sup>8/</sup> Bodenlos attended at least one such meeting in April 2008. The purpose of these meetings was to discuss proposals for assignments of resource teachers, child study team members, and classes for the 2008-2009 school year. Hand also had begun to consult with Zipparo and Groff about his plan to move all of the behavioral disabilities classes to Roland Rogers. Sometime before April 30, Hand proposed to Bodenlos that she consider becoming the school psychologist/case manager for the elementary level behavioral disability classes. He repeated his proposal to Bodenlos in writing on April 30, 2008. In his letter he specifically noted that his proposal was based upon her experience, training and the expertise she had developed in working with students with behavioral and emotional problems. He also noted that he believed such a move would be the best way for Bodenlos and the District to utilize her skills.

---

<sup>8/</sup> The petitioner argues that the timing of the Board's decision to transfer Bodenlos in retaliation for her filing the DOE complaint in March also proves that the decision was triggered by the DOE complaint and, therefore, was made for predominately disciplinary reasons. While the timing of the two events is a factor to consider, the evidence shows that the Board had initiated a process for considering not only Bodenlos' transfer but class assignment and child study team assignments at least around the same time Bodenlos filed the complaint. On balance, and in the context of the other factors the Board considered in deciding to transfer Bodenlos, I find that the timing of the Board's decision to transfer Bodenlos does not establish a disciplinary motive for the transfer, particularly since there is insufficient evidence of independent animus on the part of the Board.

There is significant evidence in the record of Bodenlos' extensive experience as case manager for behavioral disabilities students while at Reeds Road. In that position she counseled students and collaborated with parents, teachers, and other mental health professionals on behalf of the students. Throughout her 19 years at Reeds Road she also attended various training workshops and presentations which, at a minimum, related to issues common to students with behavioral and emotional disabilities. While the training she attended may not have been entitled "case management" training, Bodenlos testified that she had specific training regarding emotional and psychological problems of children. She also testified that she views case management of behavioral disabilities students as different from case management of regular resource students but that she was capable of doing both. The record shows that Bodenlos saw her training as important in working with behavioral disabilities students describing it an "investment" in herself. Admittedly Bodenlos also provided services for students with other types of special needs for which the District had trained her. For example, she had training and had worked with blind students. However, she acknowledged to Hand that her experience working with behavioral disabilities classes at Reeds Road had allowed her to develop an "expertise" in this particular area and she had become a consultant to teachers of students with behavioral

disabilities. While in her letter to Hand, Bodenlos attempted to downplay and minimize the training and experience she had with regard to behavioral disabilities, I find that prior to Hand's discussion of transferring her from Reeds Road, Bodenlos held herself out to Hand and to her colleagues as having expertise as a school psychologist in the area of behavioral disabilities. Likewise, she was not averse to being considered an expert in her field prior to Hand's proposal to transfer her. Therefore, I find Bodenlos' subsequent attempts to minimize her training, experience and skills in working with behavioral disabilities students to be self-serving.

Based upon all of the evidence, I am convinced that Hand's and Groff's decision to transfer Bodenlos to Roland Rogers as the school psychologist/case manager for students with behavioral disabilities was founded upon their evaluation and recognition of her experience and expertise. Both believed that her transfer would best satisfy the District's educational objectives and repeatedly attempted to explain to Bodenlos how her transfer was linked to meeting these objectives.<sup>2/</sup>

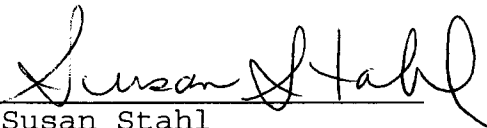
---

<sup>2/</sup> Even if I were to credit Bodenlos statements that she did not consider herself an expert with behavioral disabilities classes, how she perceives herself is irrelevant. It is the Board's perception in this area that is relevant and that perception was based upon all the factors set forth above.

**RECOMMENDATION**

For all of the foregoing reasons I find that the Petitioner has not proven by a preponderance of the evidence that the Board made its decision to transfer Bodenlos for predominately disciplinary reasons. Additionally, I find that the Board transferred Bodenlos for bona fide educational and staffing reasons.

Based upon all of the foregoing, I recommend that the Commission dismiss the GTEA petition for contested transfer determination.

  
Susan Stahl  
Hearing Examiner

DATED: August 25, 2009  
Trenton, New Jersey

Pursuant to N.J.A.C. 19:14-7.1, this case is deemed transferred to the Commission. Exceptions to this report and recommended decision may be filed with the Commission in accordance with N.J.A.C. 19:14-7.3. If no exceptions are filed, this recommended decision will become a final decision unless the Chairman or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further. N.J.A.C. 19:14-8.1(b).

Any exceptions are due by September 9, 2009.