



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

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GASTON CAPERTON
GOVERNOR

PHYLLIS H. CARTER
EXECUTIVE DIRECTOR

March 27, 1989

Renita L. Cadel
Rt. 1, Box 127
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Calhoun County Board of
Education
P.O. Drawer J
Grantsville, WV 26147

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812 Quarrier St.
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Charleston, WV 25301

Re: Cadle v. Calhoun County Board of Education
PAREL-80-88

Dear Parties:

Herewith, please find the final order of the WV Human Rights Commission in the above-styled and numbered case.

Pursuant to WV Code, Chapter 5, Article 11, Section 11, amended and effective April 1, 1987, any party adversely affected by this final order may file a petition for review with the supreme court of appeals within 30 days of receipt of this final order.

Sincerely,

Phyllis H. Carter
Executive Director

PHC/mst
Attachments

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

NOTICE
OF STATUTORY RIGHT TO JUDICIAL REVIEW
AMENDED AND EFFECTIVE
AS OF APRIL 1, 1937

Enr. H. B. 2638]

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116 this article.

§5-11-11. Appeal and enforcement of commission orders.

1 (a) From any final order of the commission, an
2 application for review may be prosecuted by either
3 party to the supreme court of appeals within thirty days
4 from the receipt thereof by the filing of a petition
5 therefor to such court against the commission and the
6 adverse party as respondents, and the clerk of such
7 court shall notify each of the respondents and the
8 commission of the filing of such petition. The commis-
9 sion shall, within ten days after receipt of such notice,
10 file with the clerk of the court the record of the
11 proceedings had before it, including all the evidence.
12 The court or any judge thereof in vacation may
13 thereupon determine whether or not a review shall be
14 granted. And if granted to a nonresident of this state,
15 he shall be required to execute and file with the clerk
16 before such order or review shall become effective, a
17 bond, with security to be approved by the clerk,
18 conditioned to perform any judgment which may be
19 awarded against him thereon. The commission may
20 certify to the court and request its decision of any
21 question of law arising upon the record, and withhold
22 its further proceeding in the case, pending the decision
23 of court on the certified question, or until notice that the
24 court has declined to docket the same. If a review be
25 granted or the certified question be docketed for
26 hearing, the clerk shall notify the board and the parties
27 litigant or their attorneys and the commission of the fact
28 by mail. If a review be granted or the certified question
29 docketed, the case shall be heard by the court in the
30 manner provided for other cases.

31 The appeal procedure contained in this subsection
32 shall be the exclusive means of review, notwithstanding
33 the provisions of chapter twenty-nine-a of this code:
34 *Provided*, That such exclusive means of review shall not
35 apply to any case wherein an appeal or a petition for
36 enforcement of a cease and desist order has been filed
37 with a circuit court of this state prior to the first day
38 of April, one thousand nine hundred eighty-seven.

39 (b) In the event that any person shall fail to obey a
40 final order of the commission within thirty days after
41 receipt of the same, or, if applicable, within thirty days
42 after a final order of the supreme court of appeals, a
43 party or the commission may seek an order from the
44 circuit court for its enforcement. Such proceeding shall
45 be initiated by the filing of a petition in said court, and
46 served upon the respondent in the manner provided by
47 law for the service of summons in civil actions; a hearing
48 shall be held on such petition within sixty days of the
49 date of service. The court may grant appropriate
50 temporary relief, and shall make and enter upon the
51 pleadings, testimony and proceedings such order as is
52 necessary to enforce the order of the commission or
53 supreme court of appeals.

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

RENITA L. CADLE,
Complainant,

vs.

DOCKET NO.: PAREL-80-88

CALHOUN COUNTY BOARD
OF EDUCATION,

Respondent.

O R D E R

On the 12th day of January, 1989, the West Virginia Human Rights Commission reviewed the Recommended Findings of Fact and Conclusions of Law and Proposed Order and Decision of Hearing Examiner James Gerl and Complainant Renita L. Cadle's Exceptions to the Hearing Examiner's Findings of Fact and Conclusions of Law in the instant case.

After consideration of the Hearing Examiner's recommendations and Complainant's exceptions, the Commission does hereby adopt in toto the Recommended Findings of Fact and Conclusions of Law and Proposed Order and Decision.

It is hereby ORDERED that the Hearing Examiner's Recommended Findings of Fact and Conclusions of Law and Proposed Order and Decision be attached hereto and made a part of this final order.

By this final order, a copy of which shall be sent by certified mail to the parties, the parties are hereby notified that they have ten (10) days within which to request reconsideration of the West Virginia Human Rights Commission's

Order, and that they may seek judicial review.

ENTERED this 3rd day of March, 1989.



CHAIR/VICE-CHAIR
WEST VIRGINIA HUMAN
RIGHTS COMMISSION

STATE OF WEST VIRGINIA
HUMAN RIGHTS COMMISSION

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RECEIVED

OCT 11 1988

W.V. HUMAN RIGHTS COMM.

RENITA CADLE

Complainant,

vs.

DOCKET NUMBER: PAREL-80-88

CALHOUN COUNTY BOARD
OF EDUCATION

Respondent.

PROPOSED ORDER AND DECISION

PRELIMINARY MATTERS

A public hearing for this matter was convened on June 9, 1988 in Grantsville, West Virginia. Commissioner Russell VanCleve served as Hearing Commissioner. The complaint was filed on August 18, 1987. The notice of hearing was issued on October 16, 1987. A telephone Status Conference was convened on December 14, 1987. Subsequent to the hearing, both parties filed proposed findings of fact and complainant filed proposed conclusions of law, but each party defied the Order of the Hearing Examiner to file briefs.

All proposed findings, conclusions and supporting arguments submitted by the parties have been considered. To the extent that the proposed findings, conclusions, and arguments advanced by the parties are in accordance with the findings, conclusions and views as stated herein, they have been accepted, and to the extent that they are inconsistent therewith, they have been rejected. Certain

proposed findings and conclusions have been omitted as not relevant or not necessary to a proper determination of the material issues as presented. To the extent that the testimony of various witnesses is not in accord with findings as stated herein, it is not credited.

CONTENTIONS OF THE PARTIES

Complainant contends that respondent discriminated against her on the basis of her religion by failing to issue her a high school diploma. Respondent maintains that it did accomodate complainant's religious beliefs but that complainant did not receive the mandatory physical education credit.

FINDINGS OF FACT

Based upon the parties stipulations of uncontested facts as set forth in the joint pre-hearing memorandum, the Hearing Examiner has made the following findings of fact:

1. Complainant was a student in good standing in all academic subjects at Calhoun High School, and she was scheduled to graduate with the Class of 1987.
2. The West Virginia Board of Education promulgates statewide public school policies, and requires that all students earn one credit of Physical Education to be eligible for graduation from High School.
3. Complainant did not obtain any credits of Physical Education while in high school.

4. Calhoun County High School did not grant complainant a high school diploma.

Based upon a preponderance of the evidence, the Hearing Examiner has made the following findings of fact:

5. Complainant is a practicing member of the Church of God located in Ovapa, West Virginia. She has been a member of said church for over six years.

6. Although it is not a teaching of her church, it is complainant's personal religious conviction that she should wear only long dresses, and not shorts and sweat clothes, and that it is inappropriate for females and males to participate in sports together.

7. The principal of Calhoun High School, Bonar, attempted to accommodate complainant's religious beliefs in many ways. Bonar offered to allow complainant to dress for physical education in any way she felt appropriate, including long dresses. Seachrist, complainant's physical education teacher, made the same offer as to complainant wearing a long dress during physical education. Bonar offered to schedule complainant into an all female physical education class. Bonar offered to allow complainant to exercise behind a curtain to avoid seeing her classmates exercise in clothing she objected to and to avoid participating in sports with males. Bonar offered to allow complainant to shower alone to avoid seeing classmates unclothed, and to avoid being seen by classmates while unclothed.

8. Complainant conferred with Talbot, her pastor, regarding the accommodations offered by respondent. Talbot advised complainant

that Bonar's response, especially the alternative of exercising behind a curtain, were persecutive measures.

9. Complainant failed to take advantage of the accommodations offered to her by Bonar.

10. On April 23, 1986 Bonar wrote a letter to complainant's parents asking them to work with him to create a modified physical education program for complainant. Said letter expressly warned complainant's parents that if a modified program was not agreed to, complainant would lack one credit in physical education and that respondent could not under those circumstances issue a diploma to complainant.

11. On April 29, 1986, complainant's mother wrote to the West Virginia Department of Education requesting that a waiver be issued for complainant with respect to the requirement of completion of one credit of Physical Education. Said request for waiver was denied in a letter from the State Superintendent of Schools dated May 22, 1986.

12. On September 10, 1986, Miller a counselor at Calhoun High School, wrote a letter to complainant's parents again advising them of the requirement that one credit in physical education must be completed by complainant in order for her to graduate. Said letter reminded complainant's parents that a modified physical education program was still an option.

13. West, another female who belongs to complainant's church, attended Calhoun High School and took the physical education course without objection.

14. Respondent has accommodated other students who have had

religious objections to physical education. Approximately two to four students per year are accomodated by Bonar for religious reasons. Females who object to leg lifts are permitted to do other exercises instead. Students who object to square dancing are permitted to participate in sports instead. Students who object to certain type of dress requirements are permitted to dress in other types of clothing that they find to be acceptable.

CONCLUSIONS OF LAW

1. Renita L. Cadle is an individual claiming to be aggrieved by an alleged unlawful discriminatory practice and is a proper complainant for purposes of the Human Rights Act. West Virginia Code, §5-11-10.

2. Calhoun County Board of Education is a place of public accomodation as defined by West Virginia Code Section 5-11-3(j) and is subject to the provisions of the Human Rights Act.

3. Complainant has not established a prima facie case of religious discrimination.

4. Respondent has articulated a legitimate non-discriminatory reason for its failure to issue a diploma to complainant.

5. Complainant has not demonstrated that the reason articulated by respondent for failing to issue her a diploma is pretextual.

6. Respondent has not discriminated against complainant on the basis of her religion by failing to issue her a diploma. West Virginia Code, §5-11-9(f) (1).

DISCUSSION OF CONCLUSIONS

In disparate treatment cases, the initial burden is upon the complainant to establish a prima facie case of discrimination. Shepherdstown Volunteer Fire Department v. West Virginia Human Rights Commission 309 S.E.2d 342, 352-353 (W.Va. 1983); McDonnell-Douglas Corporation v. Green 411 U.S. 792 (1973). If the complainant makes out a prima facie case, respondent is required to offer or articulate a legitimate non-discriminatory reason for the action which it has taken with respect to complainant. Shepherdstown Volunteer Fire Dept., supra; McDonnell Douglas, supra. If respondent articulates such a reason, complainant must show that such reason is pretextual. Shepherdstown Volunteer Fire Dept., supra; McDonnell Douglas, supra.

In the instant case, the failure of both attorneys to file a post-hearing brief as expressly directed by the Hearing Examiner makes it very difficult to determine either party's theory of the case or legal analysis. Apparently, each side determined that this case is so utterly devoid of merit that a brief was not warranted.

Complainant's proof falls far short of establishing a prima facie case. Complainant demonstrated only that she was a member of the Church of God, and that she had objections to wearing shorts or sweat clothes and to participating in physical activities with boys. Instead of requesting an accommodation, however, she demanded that she be exempted from physical education.

Even if complainant's proof constitutes a prima facie case,

respondent has articulated a legitimate non-discriminatory reason for failing to issue a diploma to complainant. The State requires one unit of physical education be completed. Complainant failed to complete any physical education course while in high school. Bonar, the principal, tried to create a modification to meet complainant's objections, but complainant refused to cooperate, Bonar sent a letter to complainant's parents requesting their cooperation to create a modified physical education program. Complainant's parents failed to respond. A counsellor sent another letter to complainant's parents reminding them of the modified physical education option. Complainant's parents failed to respond. Complainant did not graduate.

Complainant has not established that respondent's articulated reason is a pretext for religious discrimination. The testimony of complainant's witnesses because of their demeanor is less credible than the testimony of respondent's witnesses. Complainant's testimony was not credible because of her unsure demeanor and because her poor memory, for example she could not remember Bonar's response when she allegedly requested that she be permitted to walk and play volleyball. To the extent that there is any discrepancy between the testimony of complainant and the testimony of respondent's witnesses, the testimony of respondent's witnesses is accorded more weight.

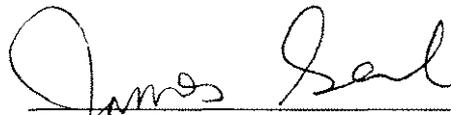
The conclusion that respondent's articulated reason is not a pretext for religious discrimination is buttressed by the fact that respondent has accommodated many other students who have voiced

religious objections to physical education class. Apparently complainant was the victim of some bad advice regarding whether respondent was persecuting her.

Despite the outcome of this case, the Hearing Examiner finds it difficult to believe that the parties cannot work out a resolution of this controversy. It appears that, as a result of each parties' desire to litigate, complainant, who has completed all other requirements, will be denied a high school diploma. This situation is clearly not religious discrimination, but the failure of the parties to reach some mutually acceptable compromise defies belief. The Hearing Examiner strongly urges the parties to sit down and talk this matter out, now.

PROPOSED ORDER

Based upon the foregoing, the Hearing Examiner hereby recommends that the Commission dismiss the complaint in this matter, with prejudice.



James Gerl
Hearing Examiner

ENTERED: October 6, 1988

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has served the foregoing PROPOSED ORDER AND DECISION by placing true and correct copies thereof in the United States Mail, postage pre-paid, addressed to the following:

Loren B. Hawley
Prosecuting Attorney
P.O. Box 337
Grantsville, WV 26147

Sharon Mullens
Deputy Attorney General
812 Quarrier Street
Charleston, WV 25301

on this 6th day of October, 1988.



James Gerl