

**AMERICAN ARBITRATION ASSOCIATION**

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**In the Matter of Arbitration between**

**Westchester Community College Federation  
Of Teachers  
and**

**Westchester Community College**

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**Case No. 19 390 00166 0  
Grievant: Marion Isler Murphy**

**JOEL RONALD AX, ESQ.  
ARBITRATOR**

**FOR THE UNION:**

**David Eng-Wong, Esq.**

**FOR THE EMPLOYER:**

**Michael Wittenberg**

**HEARING:**

**November 15, 2000  
December 7, 2000**

**STATEMENT OF THE ISSUES:**

**At the hearing the parties stipulated the issue to be as follows:**

*Did the College violate the Collective Bargaining Agreement and existing practices when it scheduled and held a Step 2 disciplinary hearing for Professor Murphy? If so what is the remedy?*

In their briefs to the Arbitrator, both parties stated the issue slightly different.

The Union's statement was, "*Did the College violate the collective bargaining agreement and past practices when it held a Step II disciplinary hearing and placed a written warning in Professor Isler Murphy's personnel file? If so, what shall be the remedy?*"

The College's statement addressed two issues. "*Firstly, the Federation alleged the existence of a binding practice that required students to be referred back to faculty when making complaints. Secondly, the Federation argued that Professor Isler-Murphy never had been given a Step One Hearing making the Step Two Hearing inconsistent with the 1983 procedure.*"

#### SUMMARY OF THE FACTS

In 1997 a student complaint was made against Professor Isler Murphy, questioning her teaching method and, alleging that they were not being treated with respect. The matter was investigated, Professor Isler Murphy was advised of the complaint, a meeting between the Union and the College was held on December 11, 1997, concerning the complaint, and, a Step I disciplinary letter was sent to the concerned parties on December 15, 1997 (Employer 1).

In the summer of 1999, 10 students came to Dean Wang with a complaint about Professor Isler Murphy's class demeanor and teaching. Dean Wang asked and was told by the students that they had met or had tried to meet with Professor Isler Murphy but that the meeting wasn't helpful. The complaint was put in writing (Employer 2) and signed by 12 students. Acting for and with the advice of Department Chairmen, Dr. Madden, Dean Wang sent the parties a letter on July 26, 1999, requesting a meeting to discuss the complaint (Joint 5a). The parties meet on August 30, 1999, and on September 13, 1999, Dean Wang sent the parties a letter stating that the August 30<sup>th</sup> meeting was a Step II hearing. As a result of that meeting a disciplinary letter would be placed in Professor Isler Murphy's file (Employer 3) in accordance with Step II procedures.

On October 20, 1999, the Union filed a grievance with President Hankin, alleging that the bargaining agreement had been violated and that the College's disciplinary procedure has been improperly applied. President Hankin's reply was to direct Dean Wang and Professor Madden to meet with Professor Isler Murphy (Joint 5b). On January 5, 2000, the Union sought clarification regarding this meeting, from President Hankin (Joint 5c) and on January 24<sup>th</sup> he stated, by letter, (Joint 5d) "I am remanding the matter to the Department Chairperson and the Associate Dean to ask the students to speak with the former, or if they are unwilling, to have the professor speak to him."

Dr. Madden met with the students, had a separate meeting with Professor Isler Murphy and her Union representative and then he requested Dean Wang to set up a disciplinary meeting. That meeting was convened on May 15, 2000, and Dean Wang sent the Step II disciplinary letter, which is the subject of this hearing, to the parties, on May 22, 2000 (Joint 5e).

The validity of the student complaints in 1997 and 1999 are not before this Arbitrator. The Union's complaint is that the College did not follow the agreed to policies and practices for disciplinary proceeding and as a result of such failure, Professor Isler Murphy was denied her rights under the collective bargaining agreement.

#### TESTIMONY SUMMARY

Professor Frank Crowley testifying under direct and cross-examination stated that he has handled grievances for almost 25 years and was Vice President of the Union when this grievance

arose. Professor Crowley is now the Union President. He said that for many years the parties have recognized and followed a practice in student complaints that required the student to first meet with the faculty member to try and resolve the problem and, if that failed, the student would meet with the faculty member and the Department Chairperson. The procedures, which are followed by the parties in all the other College Divisions, are as outlined in the Union's letter of January 5, 2000 (Joint 5c). This procedure also tracks the procedures set forth in Student Rights and Responsibilities Document (Joint 6). The College, in this instance, did not refer the matter back for a meeting between the students and the faculty member, Professor Isler Murphy. Instead, the College proceeded to a Step II disciplinary hearing.

If the procedures for these meeting are followed, and the matter is not resolved, and the student puts the complaint in writing, it could result in a Step I meeting and letter, under the procedures outlined in John Flynn's memorandum of June 3, 1983 (Joint 7). Professor Crowley stated that if there are more complaints of a similar nature, those too, must be referred first to the faculty member and the student. If the informal procedure fails to resolve the problem, a Step II hearing could be convened.

Professor Crowley testified that a Step II was also wrongfully conducted because there had been no Step I. He stated that the Union had considered the 1997 complaint withdrawn and of no consequence and did not file a grievance over the December 15<sup>th</sup> letter. In addition, Crowley was of the opinion that the 1997 complaints were not similar in nature and, therefore, did not form the justification for a Step II meeting on the 1999 complaints.

Finally, Professor Crowley could give no specific examples of cases or complaints that had been referred back by Deans for informal resolution between student and faculty member but contended it was common knowledge that this was the procedure to be utilized. He stated that he had participated in many Step I meeting and all had begun with an informal meeting between the student and faculty member. Professor Crowley concluded by remembering that the "Galloway case" was one where Step II discipline was removed because of an improper Step I.

Between the first and second hearing day, the Union, at the request of the Arbitrator, furnished the parties with documents concerning the Galloway case (Union 1). Professor Crowley testified that in Galloway the College withdrew a Step II disciplinary letter, after the Union grieved over an improper Step I and a failure to refer the complaint to the student and faculty member.

Dean Jianping Wang, testifying under direct and cross-examination, stated that in the summer of 1999 she received a complaint about Professor Isler Murphy from 10 students. Dean Wang said that she asked the students if they had already met with the faculty member and they told her that they had but that the meeting was not helpful. They did not say when they had met with Professor Isler Murphy. She then told the students to put their complaint in writing. When Dean Wang received the written complaint she did not try to speak with Professor Isler Murphy. She referred the letter to Dr. Madden with whom she had spoken with before receiving the complaint in writing. He was away for the summer and by phone he expressed concern with what he believed was a pattern of complaints against Professor Isler Murphy and advised Dean Wang to ask for a hearing.

Dean Wang testified that on July 26<sup>th</sup> she sent Professor Isler Murphy a letter requesting a hearing and told Professor Isler Murphy that her Union representative could be present. She did not discuss with Dr. Madden whether the hearing would be a Step I or Step II hearing because it was her responsibility to determine this. Prior to sending the July 26<sup>th</sup> letter she did her research and determined that the meeting would be a Step II hearing. Dean Wang did not state in her letter that the hearing was Step II but testified that based on past practice she assumed that the parties knew it was a Step II meeting.

Dean Wang stated that the hearing was held on August 30, 1999. She recorded what happened at the meeting, discussed with her associates what was needed and sent out a disciplinary letter to Professor Isler Murphy on September 13, 1999 (Employer 3). When the Union grieved the

September 13<sup>th</sup> letter and President Hankin asked that another meeting be held Dean Wang turned the matter over to Dr. Madden and asked him to meet with the students and faculty member.

Finally, Dean Wang stated that normally when she received complaints, they were referred to the faculty member and if not satisfied, then to the Department Chair, and if still not satisfied, then with her. In this instance, the Department Chair, Dr. Madden, was off campus for the summer and was consulted by phone. It is the Department Chairs job to investigate the substance of the complaint and Dean Wang was responsible for the procedural grounds.

Dr. Frank Madden, Department Chair, testifying under direct and cross-examination stated that within the last two years he became aware of student complaints against Professor Isler Murphy. He said that he was in Florida when he received a phone call from Dean Wang, advising him that she had received a number of student complaints about Professor Isler Murphy. Dr. Madden told Dean Wang that there were other complaints and suggested that these complaints be put in writing. He testified that at this time he did not meet with the students or Professor Isler Murphy as he was in Florida.

Dr. Madden said that, at some time after the summer, he was asked by Dean Wang to investigate the validity of the complaints. He met with two of the students who had complained and then asked for a meeting with Professor Isler Murphy with the presence of her Union representative. Dr. Madden stated that a meeting was held on March 10<sup>th</sup>, after which he asked Dean Wang to take the complaints to the next level (Employer 5). Dean Wang sent out a Step II hearing request on March 28<sup>th</sup> (Employer 6), and a hearing was held on May 15, 2000. Dr. Madden testified that at the May 15<sup>th</sup> meeting the Unions objections were mostly procedural. As a result of this meeting Dean Wang sent out the May 22<sup>nd</sup> letter, which the Union grieved.

In regard to the 1997 students complaint against Professor Isler Murphy, Dr. Madden said that he participated in those meetings and considered them to be of a similar nature to the 1999 complaints. He said that he had tried to refer the students back to Professor Isler Murphy but they felt that she had humiliated them and wouldn't meet with her. He couldn't recall whether the Union had raised factual and procedural issues but he did not consider the complaint withdrawn or dropped and did not know why the Union did not grieve.

Professor Isler Murphy testifying under direct and cross-examination stated that she had been told, any number of times that the 1997 complaint had been dropped and need not be taken any further. She considered the matter of no substance and therefore resolved. As to the 1999 complaints, Professor Isler Murphy stated that she first became aware of them when she received them in writing and that none of the students who complained had met or tried to meet with her.

#### UNION'S POSITION

The College held a premature Step II hearing on the student complaints in 1999. The disciplinary procedure outlined in Dean Flynn's 1983 memorandum is not in dispute but students complaints can only lead to disciplinary action if they are legitimate, factually based, and have followed the student complaint procedure. The action of the College, in placing a disciplinary letter in Professor Isler Murphy's file was improper in two respects.

A Step I must precede any Step II action and in the instant case there was no valid Step I. The 1997 events relied on by the College for the Step I had been withdrawn and dropped and, therefore, the Step I letter sounded no alarms and could not be the foundation of a Step II. New student complaints could not be similar in nature and, if unresolved, would have to be treated as a Step I.

"The employer violated the practice for resolution of student complaints." The student meets with the faculty member, then the Department Chair. If the complaint is put in writing and

filed with the Dean, the disciplinary process is initiated. When the students went to Dean Wang, she was required to send them back to meet with the faculty member and should not have accepted a written complaint until that was done. No opportunity was presented for the faculty member to resolve the complaint with her students.

The Union requests that the policy and practice of requiring informal meetings between the student and faculty member and the students, faculty member and Department Chair, on all students complaints be confirmed; that the letter of May 22, 2000 be removed from Professor Isler Murphy's file; that the College bear the full cost of the second days hearing because they failed to produce the witness promised.

#### COLLEGE'S POSITION

The 1997 Step I hearing and letter was a proper prerequisite for a Step II hearing in 2000. The complaints in 1997 and 2000 were similar in nature, the Step I hearing was communicated to the Professor and to the Union in the form required by the 1983 agreement and no grievance was filed by the Union after Acting Dean Klein's letter was received.

There is no policy or practice, in regard to student complaints, which requires an informal attempt at settlement between the student and the faculty member. The Students Rights and Responsibilities Document is unrelated to the manner in which the College disciplines faculty members. The Union's evidence does not support the existence of this practice. The Galloway Case does not support the Union's contention because the note does not state that referral was required and the case was not withdrawn because referral had not taken place.

The College requests that the hearing of May of 2000 be found to be a proper Step II hearing; that a binding practice requiring a student and faculty member meeting on all student complaints does not exist; that the Union's grievance be denied.

#### DISCUSSION AND CONCLUSION

##### *The 1997 Step I Hearing and Letter.*

The parties dispute the merit of the 1997 student complaints but that dispute is not before this Arbitrator. What is a part of this hearing is whether in 1997 the procedural requirement for a Step I were met, and, whether the events in 1997 served as a prerequisite for a Step II disciplinary action in 2000.

Neither party contends that the required investigations and formal meetings were not held in 1997. Witnesses for both sides testified that the complaints concerned Professors Isler Murphy's classroom conduct and attitude towards her students. The complaints in 1999 were about classroom conduct and attitude. When the 1997 proceedings were concluded a letter, meeting all the requirement for a Step I notice, was sent to all interested parties.

Professor Crowley and Isler Murphy testified that it was their belief that the complaints had been resolved and/or withdrawn and no further action was necessary because the meetings had established that the complaints were nonsensical and baseless. They did not view the December 15, 1997 letter as a Step I letter and an indication that the matter had not been withdrawn.

I believe that the Union made an honest mistake in believing that no further action was required on the 1997 complaints but the December 15<sup>th</sup> letter, which meets all the requirements of a Step I letter, as set forth in Flynn's 1983 memo, should have alerted them to the fact the College did not share their belief. No further action was required by the College to establish a Step I disciplinary action.

I conclude that the 1997 events resulted in a Step I disciplinary notice as required by the 1983 memorandum. Based on the testimony of all the witnesses, I also conclude that the complaints in 1997 were similar in nature to the complaints in 1999 and were the bases for a Step II disciplinary proceeding.

*The informal resolution of complaints.*

I know of no labor-management setting that does not encourage the settlement of differences at their earliest and lowest level. Whether it's an industrial plant or an academic institution, parties have almost uniformly developed a procedure that requires the complainant to attempt a resolution informally, at the lowest level, before allowing the initiation of a formal proceeding. While parties are free to do otherwise, that is not what the College and Union have done.

I do not agree with the College, that the Students Rights and Responsibilities document is unrelated to the 1999 complaint. The philosophy and right are very broadly spelled out and include that, "6. A student should be treated with courtesy and respect." It goes on to state that if a student feels that this right or any other right has been violated, "...The student shall request an informal, direct meeting with the faculty member...". Without judging the merit of the complaints it is clear that the students felt that they were not being treated with courtesy and respect.

Although the College contends that a practice of requiring the student to first meet with the faculty member has not been consistently applied the witnesses testified otherwise. Professor Crowley testified that in his 25 years of experience in handling grievances based on student complaints, they all began with a meeting between the student and faculty member and then the Chair and faculty member. Dean Wang was apparently aware of this practice and stated, under cross-examination that when the students came to her with their complaints she asked them if they had met with the faculty member. The students told her that they had and I believe she believed them. It was only after being told that they had met with Professor Isler Murphy, that Dean Wang asked the students to put the complaint in writing.

I cannot fault the College and Dean Wang for acting on their belief that the students had met with Professor Isler Murphy and proceeding further. I note that once the complaint was in writing it was promptly sent to Professor Isler Murphy, in July, presumably at a time when the summer students were still on campus. Professor Murphy testified that no student, neither before nor after she received the written complaint, had spoken with her about the problems and she did not speak with the students after she received the complaint. Dean Wang should have met with Professor Isler Murphy and not have waited for Dr. Madden's return. Had she done so she might have learned that the students had not met with the faculty member and she could have encouraged such a meeting. When Professor Isler Murphy received the complaints, she could have sought a meeting with the students, which might have resolved the conflict.

Dr. Madden also appeared to be aware of the practice of referring student's complaints to a student-faculty member meeting. In testifying about the 1997 events, under cross-examination, he stated that he tried to refer the students back to Professor Isler Murphy but that they felt humiliated and would not do as he requested.

When the dispute arose over how the College had handled the 1999 student complaints and the Union grieved by letter to President Hankin, Hankin responded by asking Dean Wang and Professor Madden to meet with Professor Isler Murphy to obtain her side of the complaints. He made no mention of any attempt to have a meeting between the student and the faculty member. In an effort to clarify Hankin's response to the grievance, Constance A. Beck, the Union President, wrote Hankin and outlined in detail the procedures, which the Union felt, had not been followed and should not be altered. Beck's letter emphasized the informal process as a predicate to a formal disciplinary hearing. Although I find President Hankin's January 24<sup>th</sup> response unclear in regard to

the practice of informal meetings preceding a formal hearing he did add that the students be spoken with, and, I find more significant, he did not specifically dispute the Union's claim regarding the informal practice.

Based on the testimony present by both parties and the documents submitted in evidence I find that the procedures set forth in the Students Rights document, and the informal practice, as outline by Beck in her January 5, 2000, had become recognized by the parties and that there is sufficient evidence to establish this as a past practice which should be adhered to. When a student complaint is received, if the student has not met with the faculty member in an attempt to resolve the issue informally, the student should be directed to meet with the faculty member. If resolution fail, the Department Chair should meet with the parties and if still not resolved the complaint should be put in writing and forwarded to the Dean for a more formal proceeding. This should be the procedure for each student complaint even if they are of a similar nature, except that multiple complaints, presented together, such as the one in 1999, involving more than one student should be treated together as one complaint.

It is not my intention to burden the College with a procedure that required an unwilling student to meet with the faculty member. What is required is that a good faith effort be made to assure, as President Hankin stated in his January 24th letter, that "...both the faculty member and the student (are) given every chance to be heard..." I recognize that there may be complaints that may make such a meeting undesirable. In those circumstances the parties may initiate the practice at the next step.

#### The Step II Letter.

By way of remedy, the Union has requested that the Step II letter be removed from Professor Isler Murphy file. Although I have found that the Union is correcting in arguing that the College did not adhere to the informal practice of a student-faculty member meeting in the circumstances of this case, I am not going to direct them to remove the Step II letter from the file.

I do not find, as the Union argues, that the Galloway grievance handling supports removal. In Galloway, the Union filed a grievance, alleging that the Step I was procedurally defective. In the instant case I have found that the Step I was proper. In addition, President Hankin's direction to remove the Step II letter appears to be based more on substantive grounds than procedural ones.

The substance of the student complaints was not grieved by the Union. The complaints were investigated and discussed at various meeting of the parties. I do not find that Professor Isler Murphy and the Union were denied an opportunity to investigate because the matter had not been sent back for a student-faculty member meeting. Both became aware of the complaints on July 26, 1999. The Step II hearing was held on August 30<sup>th</sup>. The Union did not file its grievance until October 1999.

I find that the College did attempt to follow the informal procedure and moved the complaints to the next level when they were lied to by the students and honestly believed that the students had tried to resolve the problem with the faculty member. Such mistakes will not happen in the future handling of complaints, as I am sure the Department Chair will confirm with the faculty member that a meeting with the complaining student has taken place.

For all of the above reason, I am denying the Union's request that the Step II letter be removed from Professor Isler Murphy's file. I am also going to require the College, if there are any similar future complaints, which are not resolved informally, to treat this next similar complaint as if it were a Step II disciplinary hearing.

Finally, the Union's request that the College pay the full cost of the second days hearing, because they ..."forced an unnecessary day of hearing..." is denied. After the Union presented its first days evidence, the College asked for time to consult with President Hankin in regard to some of

the testimony presented as that they might want to present him as a witness. The Union did not object to a second day of hearing. It was agreed, by both parties, that the hearing would convene at a later date, at which time the Union would present any testimony it wished concerning the Galloway Case, after which, the College would go forward with its case.

#### AWARD

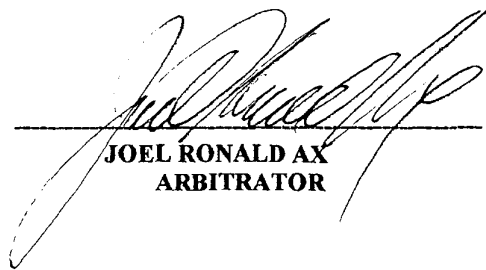
The Union's grievance is denied in part and granted in part.

In all future student complaints, whether in Step I or considered similar and therefore, in Step II, the parties will adhere to their informal practice of attempting a resolution at the earliest stage and lowest level. A good faith effort will be made to see that the student meets with the faculty member in an attempt to resolve the matter. If that fails to resolve the complaint the matter should be referred to the Department Chair who should meet with the faculty member and the student. If still unresolved, it should go to the appropriate Dean who can initiate the more formal disciplinary procedure outlined in John Flynn's 1983 memorandum.

The May 22, 2000 letter will remain a part of Professor Isler Murphy's file. Should future similar complaints against Professor Isler Murphy result in a formal disciplinary hearing and letter, that hear and letter will be consider to be Step II.

The parties shall bear the cost of this arbitration equally, in accordance with Section Seven of their Collective Bargaining Agreement.

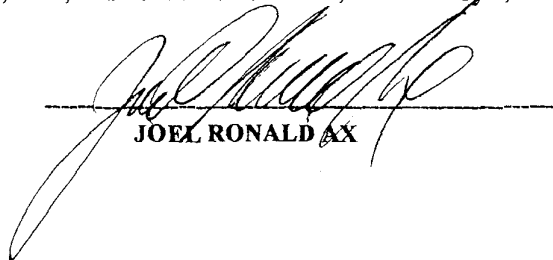
Dated: February 2, 2001



JOEL RONALD AX  
ARBITRATOR

JOEL RONALD AX, an Attorney admitted to practice in New York State, makes this affirmation under the penalties of perjury. I am the Arbitrator who conducted the hearing for the parties on November 15, 2000 and December 7, 2000, and issued this AWARD, on February 2, 2001, in Suffolk County, State of New York.

Dated: February 2, 2001



JOEL RONALD AX