

Maynard, Justice, dissenting:

FILED
December 6, 2002
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

RELEASED
December 9, 2002
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

I wonder just what a teacher has to do to be insubordinate in West Virginia schools today. Apparently, threatening to shoot or kill the principal is not enough. Throwing an observation form on the floor and stomping on it is not enough either. Nor is repeatedly refusing to sign that form.

I dissent in this case because, unlike the majority, I believe that Mrs. Maxey's termination was based on "insubordination" and not "performance." The majority states that "the insubordination claim was derivative of the original performance issue." However, the record shows otherwise.

As mentioned hereinabove, Mrs. Maxey demonstrated an ongoing and persistent course of insubordination throughout the school year which culminated with the events that occurred on March 7, 1997. In particular, Mrs. Maxey was insubordinate when she refused to sign the teacher observation forms presented to her by her principal, Mr. Spencer. She was also insubordinate when she threw one of the observation forms on the floor and stomped on it. She was further insubordinate at the conference which occurred on

March 7, 1997.

At the March 7, 1997 conference, Mrs. Maxey again flatly refused to sign the observation forms even though she was advised that serious consequences could result from her failure to do so. She also made inappropriate comments to her supervisors throughout the conference, the most egregious of which was the comment to Mr. Spencer, as reported by at least two of those present, that she “should have blown [his] head off with a shotgun.” Mrs. Maxey maintains that she actually said, “Mr. Spencer, had I shot you, I would have been in less trouble. I would have been over in jail and the taxpayers would have been supporting me and I wouldn’t have been worried about my employment.” Even if one believes Mrs. Maxey’s version of what she said, it is still very violent, chilling, and threatening. Furthermore, it is certainly language that simply has no place in our schools.

Given these facts, I believe the McDowell County Board of Education acted reasonably in terminating Mrs. Maxey’s employment for insubordination. While I understand that Mrs. Maxey is a veteran of the McDowell County school system and has a record of excellent evaluations, her experience does not excuse her conduct. It is an unfortunate fact that in today’s world, the possibility of shootings in the workplace and in our schools has become a frightening reality. Mrs. Maxey’s comment that she should have shot Mr. Spencer in the head cannot be excused or overlooked, especially in light of her other repeated acts of gross insubordination. W.Va. Code § 18A-2-8 (1990) provides that a teacher may be dismissed at

any time for insubordination. In that instance, Policy 5300 does not apply.

The majority has remanded this case for a hearing to determine whether Mrs. Maxey's conduct is "correctable" under a feasible improvement plan. In the event that Mrs. Maxey's actions are "found correctable" and she is allowed to return to the classroom, the majority has ordered that she be granted back pay. Without a doubt, I believe Mrs. Maxey will be reinstated. Consequently, she will be handsomely rewarded for her violent misconduct and gross insubordination. In fact, assuming Mrs. Maxey was making more than \$30,000 annually, she will probably be awarded more than \$180,000 in back pay for the six years she has been out of the classroom. Is this how we should handle such conduct? I don't think so.

For the reasons stated above, I would affirm the circuit court's order which upholds the termination of Mrs. Maxey's employment by the McDowell County Board of Education. Thus, I dissent from the majority's opinion in this case.