THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

WALTER S. MCMANN,
Grievant,

v. **Docket No. 2009-0653-CONS**

JEFFERSON COUNTY BOARD OF EDUCATION,
Respondent.

DECISION

Grievant Walter McMann filed this grievance at level one against his employer, Respondent Jefferson County Board of Education, on September 25, 2008, following an incident on September 18, 2008, which resulted in Grievant being placed on administrative leave with pay. Grievant's level one Statement of Grievance, unedited, reads as follows:

> Last Thursday, September 18, 2008 I was escorted off the premises for the second time in less than 4 months and I believe that both incidents were the result of the Principal's effort to thwart my desire to teach and drive me from the profession. The first incident occurred just before the close of the 2007-08 school year and involved a heated exchange over the misuse of the intercom in my class. Charges were made against me and after a hearing I was given 5 days suspension without pay, three of which were served in the coming school year. The time between my removal from school grounds and the meeting with the superintendent was filled with streams of untruths and false promises that emanated from her office. My entire summer was spent waiting for a hearing that was put off again and again. My computer was tampered with, items removed from my room, and seldom was I afforded the courtesy of a return call. Nevertheless, I consider the incident a victory. Since returning to school my classes are only interrupted as [sic] the end of the day, not almost every period, as was formally the case. But aside from some great things happening in room 21 of the Charles Town Middle School, the absence of blaring disruption is the only positive aspect of the current school year that can be attributed to the administration.
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> At the August hearing Superintendent Susan Wall indicated that help would be made available to have my class ready by the beginning of the 2008-09 school year. She stated further that I was to serve the remaining three days without pay sometime during the upcoming school year, not, as she recently stated, the first week after Labor Day. Except for assistance in moving to a

new class room none of these promises materialized. Indeed, the School Superintendent's representative ignored my request for help in getting ready for the school year. If anything was going to get fixed in my room, if any teaching material or instructional assistance was going to be furnished, it was going to have to be done in spite of the administration. To my dismay, last year's dishonesty also raised its head.

Dale Shaffer apparently escorting me to my class room ostensibly to see that the Superintendent's assurances were carried out readily accepted the lie from Mr. Hampton that new computers would be forthcoming. I knew that they would never appear and Mr. Shaffer should have known. The new computers are still absent from my room. I finally got a working computer after my having to shame the resident technician into helping me. Work orders are still being ignored by both the school administrations and the Superintendent's office. The costly whiteboard is still inoperable as it was all last year. At the last PTSO meeting when the addition of new technology was being discussed I raised a point that we should get what technology we have working before discussing anything new. Here Mr. Hampton accused me of misinformation as I pointed out the three white boards were never used in the last school year. Fearing reprisals, I did not elaborate on the unused white boards. What is most disconcerting, however, is the Principal's constant throwing out impediments to what happens in my class rather than carrying out his job as a facilitator.

I was assigned one class of World Geography this year. I first learned of the assignment in August and had no time to prepare. I opted to teach the Civics segment first, capitalizing on the fact that this was an election year (see attachment 1). To enrich the subject, I invited speakers from the Obama and McCain camps to speak. Mr. Hampton reversed my invitation, having learned from Pat Blanc (county supervisor of instruction who thought it was a good idea) that the final authority on speakers is the principal. Other matters which to you may seem trivial was the approval form for audio visuals. My two submissions were disapproved on the grounds that I no [sic] specific times, a petty point but to a teacher desirous of support a troubling one. It is impossible to given specific times to an administrator who keeps me uninformed of what is happening in the school, the recently announced Westtests is a case in point.

Over two weeks ago, Mr. Hampton, called me into his office and told me that he was going to begin an improvement plan. I was aghast. This plan was suggested almost a year ago. I told him that the timing demands we forget about the plan, one was not even mentioned in the August hearing. At that time I told the hearing [sic] that its omission was tacit evidence that I did not need one. Mr Hampton disagreed and told be [sic] that it would be a personnel action taken for me. It was at this moment that I began to suspect

that Mr. Hampton may be trying to goad me into a heated response. The resurrection of a personnel action almost a year old led me to suspect that malice was present in this interview rather than an attempt to make me a better employee. On Thursday, September 18 these suspicions were solidified and I began to feel that Mr. Hampton might be helped by the head of Human Resources.

That Thursday Mr. Hampton called me into his office and told me that Mr. Shaffer and he had decided to drop the improvement plan (so essential a few days earlier) and began with a clean slate. He further stated that my three day suspension was to begin on Monday, September 22 and run through the 24th. At this moment, my thoughts turned to my classes and the looming question of why I was not to be suspended during those days that would not require a substitute. The timing-right in the middle of the first nine weeks-was so ridiculous that I could not believe what I was hearing. My grades would be distorted since I could make no meaningful assessment (a violation of state mandates), special projects for the students would flounder, and the momentum of continued class discussion would end. I tried to explain this to Mr. Hampton but he lied and told me the suspension without pay must take place on those dates. At that point I became heated and announced that I would resign, got up, and left the office.

Perhaps sensing that he might finally be getting rid of a teacher that constantly questioned his veracity, Mr. Hampton followed me out into the hall demanding that I submit my resignation. As I walked away from Mr. Hampton I heard him tell someone to call the school board and 911 in what I believe was a ruse to recreate the scene that culminated in my removal from the school grounds four months ago. Violations of the West Virginia Code by the principal include Articles 18a-2-9, 18-2-5 and 18-2e-5, Mr. Hampton's failure to carry out his duties as a Principal, his failure to provide for the education of children, and his failure not to intervene in correcting impairments to children's education respectively. I also believe that Dale Shaffer's litany of misstatements regarding these incidents makes him culpable in these matters.

I did not see anything in the codes that addressed the need for officials to be honest in these matters, but given the dishonesty displayed by Messrs. Hampton and Shaffer I urge the hearing to consider this factor. I would also like to reiterate that by the Superintendent's action she has tampered with my grades, a violation of state codes (Mr. Shaffer acknowledged this fact in a similar incident). If this process is prolonged there will come a point in this hearing that will have undermined my classes such that it will make it impossible to regain the learning environment present on September 18, 2008. If this becomes the case, I would like to know if I am able to amend the relief sought section of the grievance.

Grievant seeks immediate reinstatement to his classroom.

A meeting was conducted between Respondent and Grievant on October 15, 2008 during which charges of insubordination were presented as well as evidence in support of the allegation that Grievant had been insubordinate to a number of administrative officials on September 18, 2008. The Superintendent of Schools advised Grievant that she intended to recommend to the Board that he be suspended without pay for thirty-days by letter dated October 27, 2008. This letter also directed that Grievant submit to a mental health evaluation on the question of his fitness to return to the classroom. The Jefferson County Board of Education approved the recommendation that Grievant be suspended for thirty-days at its meeting held on October 29, 2008.[1] Grievant and his representative were present for this Board of Education meeting which was conducted as a level one hearing. Grievant was notified of this decision by letter dated October 30, 2008.

Grievant then filed another grievance form at level one on November 6, 2008. His Statement of Grievance, somewhat edited by the undersigned, reads as follows:

> I have a letter dated October 30, 2008 (enclosed as attachment I). On the surface the letter seems rather straight forward, but upon examination by someone directly involved it must be classified as a document exhibiting harassment, intimidation, and mean spiritedness.
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> . . .
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> Another alarming aspect of this matter is the relationship between my WVEA representative and the respondent. My representative was invited in by the Superintendent to review my files. I was not. The charges and testimony were given to me at 7:00 p.m., the time the Jefferson County School Board convened to hear my appeal. I protested but was dismissed by both my representative and the Board Chairman as being out of order. My

[1]The transcript of this meeting is referred to as the level one transcript in this Decision.

> representative conducted the meeting on my behalf and thwarted many of my attempts to raise issues that I thought would be helpful in my case. The General Counsel for the county as she was showing my representative my records discussed with her how I had misused the white board. This latter episode can only be classified as an attempt to prejudice my WVEA representative.
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> Lastly, I consider being coerced into undergoing a Medical Examination another example of the Superintendent's continued attempt to drive me from the teaching profession. Her reasons for the evaluation are based on allegations that are still being evaluated by the Grievance Board and accusations that appear to have been gleaned from a portion of the West Virginia Code that mentions insubordination.

This grievance was consolidated with the previous grievance. A level two mediation session was conducted on January 14, 2009. Grievant appealed to level three on January 29, 2009. The undersigned Administrative Law Judge conducted a level three hearing on April 30, 2009. Grievant appeared pro se. Respondent appeared by its counsel, Amy S. Brown. This case was initially consolidated with a grievance filed on March 19, 2009, challenging Grievant's termination. The undersigned granted Grievant's request to sever that grievance to allow for a separate hearing on that issue. The parties agreed to submit their proposals following the hearing on the termination grievance.[2] Accordingly, this matter became mature for consideration following the receipt of the parties' fact/law proposals on August 19, 2009.

Synopsis

After two separate incidents of insubordination, Grievant was suspended for thirty days without pay for insubordination. Grievant had previously been suspended for a five-

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[2]Notwithstanding this agreement, Grievant sought a default judgement when Respondent did not file proposals on the date Grievant misunderstood as the cutoff. The undersigned denied this request for default, and Grievant appealed to circuit court.

day period, but did not serve the entirety of that suspension because it was issued at the end of the school year. At the beginning of the following school year, the principal met with Grievant to discuss the days for which the balance of the suspension would be served. Grievant became agitated and displayed an angry, almost irrational response. Grievant's response to his supervisor was unprofessional, inappropriate, and showed disrespect for his supervisor; he was insubordinate. Grievant's claim that Respondent harassed him was not proven. This grievance is denied.

The following Findings of Fact are based upon the record developed at level one and level three:

Findings of Fact

1. Grievant was employed by Respondent as a classroom teacher at Charles Town Middle School for approximately seven years. He teaches science.

2. Charles Hampton has been principal at Charles Town Middle School for the past four years. Grievant has had a history of anger management problems during that time.

3. In the past, Grievant has screamed at secretaries, guidance counselors, and other co-workers. Grievant becomes agitated and that leads to a volatile state in which he has a tendency to invade others' personal space.

4. Grievant's relationship with Mr. Hampton, his immediate supervisor, has been combative and defiant.

5. On June 4, 2008, during a weather warning of strong storms and high winds, Grievant had an outburst in the office of the school, including the threatening of an assistant principal.

6. On June 5, 2008, an announcement was made on the P.A. system of no real consequence, Grievant sent his entire class to the office with the message, “If you’re going to make an announcement, we’re all coming up here.” Level one transcript, page 39. In short, the entire class was dismissed during a period of instruction to enter the administration’s office.

7. Mr. Hampton confronted Grievant concerning this behavior, during which time Grievant became extremely volatile and was removed from school grounds by a member of Human Resources.

8. Grievant was suspended for five days without pay. Grievant only served two days of the suspension due to the school year ending.

9. At the beginning of the following school year, Mr. Hampton informed Grievant on September 18, 2008, the days on which he would be serving the balance of the five-day suspension. Grievant became upset and told Mr. Hampton this was a moot point and stated, “I quit.” Level one transcript, page 44.

10. Mr. Hampton followed Grievant out of his office and down the corridor. Mr. Hampton asked Grievant if he was leaving and if a substitute needed to be contacted. Grievant shouted back, “I don’t have to answer you; I’m not going to answer to you; I’m not telling you anything.” Level one transcript, page 45. A few moments later, in the teachers’ lounge, Grievant stated to Mr. Hampton, “You can’t listen to anything I say when I’m in this frame of mind and you know that.” Level one transcript, page 47.

11. Grievant was removed from the school building by Central Office staff when the incident could not be resolved and administrators felt Grievant was in no shape to continue teaching for the remainder of the day.

12. Co-workers and members of the administration that witnessed the September 18, 2008, incident corroborated that Grievant was disrespectful to Mr. Hampton.

13. On September 25, 2008, Grievant was notified by Susan K. Wall, Superintendent of Jefferson County Schools, that he had been placed on administrative leave with pay until further notice. Grievant was instructed to contact a member of the Human Resources office to schedule a meeting and provide his side of the story.

14. A meeting was conducted on October 15, 2008, during which the incident was discussed between Grievant, his representative, Superintendent Wall, Dale Shaffer, Human Resources Coordinator, Amy S. Brown, Respondent's general counsel, and Mr. Hampton.

15. On October 27, 2008, Superintendent Wall wrote Grievant detailing the outcome of the meeting held on October 15, 2008. She indicated that she would be recommending disciplinary action be taken against Grievant to the Board of Education. She outlined the following specifics relating to her charge of insubordination:

> - Your demeanor suggests that you lack the ability to control your emotions.
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> - You have displayed an angry and defiant attitude when addressing school and county administrators and have shown a blatant disregard for authority.
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> - Your outbursts have been displayed in the school office and in other various parts of Charles Town Middle School in full view of parents, students, and other staff members.
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> - You have exhibited acts of insubordination over a period of time including an incident which occurred on June 4th and 5th of 2008. As disciplinary action for that incident, you served a five day suspension without pay.
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> - On September 18, 2008, you became angry and left a meeting with two of your supervisors, Charles Hampton and Ann Workman, Assistant Principal of Charles Town Middle School.

- You created a disturbance in the school by raising your voice and refusing to calm down or respond to direct inquiries from your supervisor.

- By creating a disturbance, you left your supervisors with no choice but to contact Human Resources to intervene in the situation.

- You stated in front of Bettina Grahek, Assistant Principal of Charles Town Middle School, and Charles Hampton that "You can't pay attention to what I say when I am in that frame of mind."

- Your anger and agitated manner caused your supervisors to fear for the safety of students and staff at Charles Town Middle School.

- You initially refused to meet with county administrators if your immediate supervisor, Mr. Hampton was present.

- You made rude and disrespectful comments to Mr. Hampton and Ms. Bev Hughes regarding your perceptions about their lack of veracity.

- After being asked to leave school premises, you made inappropriate comments to Mr. Shaffer about his sleep patterns and you made these comments in very close proximity to Mr. Shaffer.

- You accused Mr. Shaffer of making false statements.

16. The October 15th meeting and the correspondence of October 27th memorializing the meeting also advised Greivant that he was to undergo a mental health evaluation to determine his ability to perform his responsibilities as a teacher.[3]

17. On October 29, 2008, the Jefferson County Board of Education voted to suspend Grievant for thirty days without pay.

Discussion

With regard to the claim of harassment, Grievant bears the burden of proving each element of his grievance by a preponderance of the evidence. Procedural Rules of the W.

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[3]Grievant's employment was eventually terminated as a result of this evaluation. That termination was grieved, and the undersigned will address that grievance in a separate decision.

Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008); *Holly v. Logan County Bd. of Educ.*, Docket No. 96-23-174 (Apr. 30, 1997); *Hanshaw v. McDowell County Bd. of Educ.*, Docket No. 33-88-130 (Aug. 19, 1988). "A preponderance of the evidence is evidence of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." *Petry v. Kanawha County Bd. of Educ.*, Docket No. 96-20-380 (Mar. 18, 1997). In other words, "[t]he preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." *Leichliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

W. VA. CODE § 6C-2-2(l) defines "harassment" as "repeated or continual disturbance, irritation or annoyance of an employee that is contrary to the behavior expected by law, policy and profession." What constitutes harassment varies based upon the factual situation in each individual grievance. *Sellers v. Wetzel County Bd. of Educ.*, Docket No. 97-52-183 (Sept. 30, 1997). "Harassment has been found in cases in which a supervisor has constantly criticized an employee's work and created unreasonable performance expectations, to a degree where the employee cannot perform her duties without considerable difficulty. *See Moreland v. Bd. of Trustees*, Docket No. 96-BOT-462 (Aug. 29, 1997)." *Pauley v. Lincoln County Bd. of Educ.*, Docket No. 98-22-495 (Jan. 29, 1999). A single incident does not constitute harassment. *Johnson v. Dep't of Health and Human Res.*, Docket No. 98-HHR-302 (Mar. 18, 1999); *Metz v. Wood County Bd. of Educ.*, Docket No. 97-54-463 (July 6, 1998).

Grievant argued that Principal Hampton repeatedly harassed him in front of others, and prevented him from effectively teaching his students to his fullest potential for a variety of reasons. He argued he was not insubordinate. Rather, he was frustrated and upset. Grievant alleged that Principal Hampton changed midterm grades for his students. Parents and students were notified that their midterm grades would not be available because Grievant was on administrative leave. Grievant and Mr. Hampton also had a difference of opinion regarding forms required to be completed pursuant to Respondent's Board Policy and Standard Operating Procedures. Grievant indicated that he was often too busy to complete forms related to his classes viewing tapes and movies. Mr. Hampton noted that no other professional employee required to complete these forms had problems complying with county policy. Principal Hampton was merely requiring Grievant to complete the same forms as every other teacher.

Grievant also complained about his reassignment to teach one section of Social Studies. All teachers on his grade level group were required to teach a section of Social Studies due to reductions in staffing at Charles Town Middle School. Grievant complained that he should have been notified earlier in the summer about this change. All teachers were notified of the change at the same time upon their return to the building.

Nothing in Grievant's evidence suggests there was anything improper in his principal's expectations that he perform his duties pursuant to policy and in a manner that his co-workers are expected to maintain. Grievant has not demonstrated he was subjected to harassment under the facts of this case. Grievant has failed to prove by a preponderance of the evidence that he was harassed by his supervisor.

Respondent contends Grievant was insubordinate, and therefore suspended, due to a variety of inappropriate behavior on September 18, 2008. In disciplinary matters, the employer bears the burden of establishing the charges by a preponderance of the evidence. 156 C.S.R. 1 § 3 (2008); *Hoover v. Lewis County Bd. of Educ.*, Docket No. 93-21-427 (Feb. 24, 1994); *Landy v. Raleigh County Bd. of Educ.*, Docket No. 89-41-232 (Dec. 14, 1989). An employee of a county board of education may be suspended or dismissed only for immorality, incompetency, cruelty, insubordination, intemperance, willful neglect of duty, unsatisfactory performance, the conviction of a felony or a guilty plea or a plea of nolo contendere to a felony charge. W. VA. CODE § 18A-2-8. "The authority of a county board of education to discipline an employee must be based upon one or more of the causes listed in W. VA. CODE §18A-2-8, as amended, and must be exercised reasonably, not arbitrarily or capriciously. *Bell v. Kanawha County Bd. of Educ.*, Docket No. 91-20-005 (Apr. 16, 1991). *See Beverlin v. Bd. of Educ.*, 158 W. Va.1067, 216 S.E.2d 554 (1975)." *Graham v. Putnam County Bd. of Educ.*, Docket No. 99-40- 206 (Sep. 30, 1999).

Insubordination "includes, and perhaps requires, a wilful disobedience of, or refusal to obey, a reasonable and valid rule, regulation, or order issued . . . [by] an administrative superior." *Santer v. Kanawha County Bd. of Educ.*, Docket No. 03-20-092 (June 30, 2003); *Butts v. Higher Educ. Interim Governing Bd.*, 212 W. Va. 209, 569 S.E.2d 456 (2002) (*per curiam*). *See Riddle v. Bd. of Directors, So. W. Va. Community College*, Docket No. 93-BOD-309 (May 31, 1994); *Webb v. Mason County Bd. of Educ.*, Docket No. 26-89-004 (May 1, 1989). "[F]or there to be 'insubordination,' the following must be present: (a) an

employee must refuse to obey an order (or rule or regulation); (b) the refusal must be wilful; and (c) the order (or rule or regulation) must be reasonable and valid." *Butts, supra*.

Grievant engaged in a variety of inappropriate behavior on September 18, 2008, that led to his thirty-day suspension without pay. Grievant was removed from the school by Central Office staff when the incident could not be resolved in a manner where administrators felt Grievant could continue to teach for the remainder of the day. Grievant's conduct was clearly insubordinate on September 18, 2008. He refused to respond to questions and directives from his supervisor, Principal Hampton. He demonstrated a clear disregard for authority not only to Mr. Hampton but also to the Central Office personnel who responded to the school to address the situation. Grievant was angry, aggressive, and confrontational with his supervisor and Central Office personnel. Grievant's behavior manifested disrespect toward supervisory personnel that undermined their status and authority throughout his actions making up the entire incident. Grievant made personal attacks on several individuals' character and questioned their veracity without any sound reason.

Grievant had been previously reprimanded by Superintendent Wall for this type of behavior and had served two days of a five-day suspension for a similar outburst in June 2008. Grievant did not provide any meaningful defense for his actions on September 18, 2008, other than to explain that he felt he should be able to select the dates to finish his five day suspension. Superintendent Wall and Principal Hampton have the authority to assign those days of suspension without first consulting with Grievant. A belief that a supervisor's orders are incorrect does not relieve an employee from carrying out the directives. An employee may file a grievance later, but the prudent course at the time of

the request is to do what he or she is told. "Employees are expected to respect authority and do not have the unfettered discretion to disobey or ignore clear instructions." *Reynolds v. Kanawha-Charleston Health Dep't*, Docket No. 90-H-128 (Aug. 8, 1990) citing *Meads v. Veteran Admin.*, 36 M.S.P.R. 574 (1988). "Uttering abusive language to a supervisor may constitute insubordination." *Payne v. W. Va. Dept. of Transp.*, Docket No. 93-DOH-454 (Apr. 29, 1994).

Superintendent Wall's recommendation to the Board of Education was reasonable in light of the circumstances, and cannot be said to be arbitrary or capricious. Respondent has established that Grievant failed to comply with his supervisor's directions, and was insubordinate.

The following Conclusions of Law support the Decision reached:

Conclusions of Law

1. Grievant bears the burden of proving each element of his grievance alleging harassment by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008); *Holly v. Logan County Bd. of Educ.*, Docket No. 96-23-174 (Apr. 30, 1997); *Hanshaw v. McDowell County Bd. of Educ.*, Docket No. 33-88-130 (Aug. 19, 1988).

2. W. VA. CODE § 6C-2-2(l) defines "harassment" as "repeated or continual disturbance, irritation or annoyance of an employee that is contrary to the behavior expected by law, policy and profession." What constitutes harassment varies based upon the factual situation in each individual grievance. *Sellers v. Wetzel County Bd. of Educ.*, Docket No. 97-52-183 (Sept. 30, 1997). "Harassment has been found in cases in which

a supervisor has constantly criticized an employee's work and created unreasonable performance expectations, to a degree where the employee cannot perform her duties without considerable difficulty. *See Moreland v. Bd. of Trustees*, Docket No. 96-BOT-462 (Aug. 29, 1997)." *Pauley v. Lincoln County Bd. of Educ.*, Docket No. 98-22-495 (Jan. 29, 1999). A single incident does not constitute harassment. *Johnson v. Dep't of Health and Human Res.*, Docket No. 98-HHR-302 (Mar. 18, 1999); *Metz v. Wood County Bd. of Educ.*, Docket No. 97-54-463 (July 6, 1998).

3. In disciplinary matters, the employer bears the burden of establishing the charges by a preponderance of the evidence. 156 C.S.R. 1 § 3 (2008); *Hoover v. Lewis County Bd. of Educ.*, Docket No. 93-21-427 (Feb. 24, 1994); *Landy v. Raleigh County Bd. of Educ.*, Docket No. 89-41-232 (Dec. 14, 1989).

4. "Employees are expected to respect authority and do not have the unfettered discretion to disobey or ignore clear instructions." *Reynolds v. Kanawha-Charleston Health Dep't*, Docket No. 90-H-128 (Aug. 8, 1990) citing *Meads v. Veteran Admin.*, 36 M.S.P.R. 574 (1988). "Uttering abusive language to a supervisor may constitute insubordination." *Payne v. W. Va. Dep't. of Transp.*, Docket No. 93-DOH-454 (Apr. 29, 1994).

5. Insubordination "includes, and perhaps requires, a wilful disobedience of, or refusal to obey, a reasonable and valid rule, regulation, or order issued . . . [by] an administrative superior." *Santer v. Kanawha County Bd. of Educ.*, Docket No. 03-20-092 (June 30, 2003); *Butts v. Higher Educ. Interim Governing Bd.*, 212 W. Va. 209, 569 S.E.2d 456 (2002) (*per curiam*).

6. Grievant's behavior on September 18, 2008, was unprofessional and disrespectful of Principal Hampton's authority, and constitutes insubordination.

7. Grievant has not demonstrated he was subjected to harassment under the facts of this grievance.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. *See* W. VA. CODE § 6C-2-5. Neither the West Virginia Public Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. However, the appealing party is required by W. VA. CODE § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The Civil Action number should be included so that the certified record can be properly filed with the circuit court. *See also* 156 C.S.R. 1 § 6.20 (2008).

Date: October 21, 2009

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Ronald L. Reece
Administrative Law Judge