THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

REBECCA BLACKBURN,
Grievant,

v. **DOCKET NO. 2009-0618-BroED**

BROOKE COUNTY BOARD OF EDUCATION,
Respondent.

DECISION

This grievance was filed by Grievant, Rebecca Blackburn,[1] at level three of the grievance procedure, on October 30, 2008, contesting a 60-day suspension without pay imposed by her employer, the Brooke County Board of Education ("BBOE"). The statement of grievance reads:

> The grievant has been suspended without pay in violation of WV Code Section 18A-2-8. The grounds for the suspension were not proven by the evidence submitted to the Board of Education. To the extent the evidence presented justified disciplinary action by the Board, the discipline ordered was excessive, arbitrary and capricious in light of said evidence.

The relief sought by Grievant is to have the suspension revoked, "and that she recover her lost wages and attorney fees."[2]

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[1] Grievant passed away shortly after the level three hearing, however, as the relief requested involves back pay, this grievance is not moot, and Grievant's estate would be entitled to receive any monetary award.

[2] "It is well established that the Grievance Board does not have the authority to award attorney fees. *Brown-Stobbe/Riggs v. Dep't of Health and Human Resources*, Docket No. 06-HHR-313 (Nov. 30, 2006); *Chafin v. Boone County Health Dep't*, Docket No. 95-BCHD-362R (June 21, 1996). New WEST VIRGINIA CODE § 6C-2-6 is entitled, 'Allocation of expenses and attorney's fees.' It specifically states: '(a) Any expenses incurred relative to the grievance procedure at levels one, two or three shall be borne by the party incurring

A level three hearing was held before the undersigned Administrative Law Judge on February 18, 2009, in the Grievance Board's Westover office. Grievant was represented by Eric M. Gordon, Esquire, Berry, Kessler, Crutchfield, Taylor & Gordon, and Respondent was represented by David F. Cross, Esquire, Brooke County Prosecuting Attorney. This matter became mature for decision upon receipt of the last of the parties' Proposed Findings of Fact and Conclusions of Law on April 29, 2009.

Synopsis

Grievant was suspended for 60-days without pay and placed on an improvement plan for willful neglect of duty, cruelty, and intemperance. The superintendent had recommended a 30-day suspension without pay. Respondent did not prove all the charges against Grievant. Several of the charges proven were minor infractions, for which a reprimand would be appropriate for an employee, such as Grievant, who had never been disciplined. The remaining significant charge proven was that Grievant had made inappropriate, unprofessional comments to a student on the bus, and she raised her voice when speaking to him. Grievant demonstrated that a 60-day suspension without pay was so clearly disproportionate to the offense that it amounted to an abuse of discretion.

The following Findings of Fact are made based upon the record developed at level three.

Findings of Fact

1. Grievant has been employed by the Brooke County Board of Education ("BBOE") for 28 years. She began working for BBOE in 1981 as a substitute bus operator,

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the expense.'" *Cosner v. Dep't of Transp.*, Docket No. 2008-0633-DOT (Dec. 23, 2008).

and became a full-time employee in 1987. Since 2000, she has been employed by BBOE as a special education aide.

2. Grievant was the special education aide on a bus for special needs students. Francis Helsel was the bus operator. Grievant had been the special education aide on this bus for three years. The children who ride this bus have both physical and mental disabilities.

3. On September 8, 2008, a parent and her son, Brandon, met with George Brindley, Principal of Brooke High School, to complain that, on September 5, 2008, Ms. Helsel had yelled at Brandon while he was on the bus and had hit him in the stomach.

4. John Lyonett, Assistant Superintendent, Joyce Rea, Special Education Director, and Ron Ujcich, Director of Tranpsortation, reviewed the videotape from the bus for September 5, 2008. Then Mr. Lyonett and Mr. Ujcich took statements from Grievant and Ms. Helsel and interviewed them.[3]

5. On September 18, 2008, Grievant was advised by BBOE Superintendent Mary K. Hervey DeGarmo that she was being suspended for 30 days without pay for "willful neglect of duty, intemperance and cruelty," subject to the approval of BBOE. The letter outlines the basis of the charges as follows:

> The bus operator was trying to make a special needs student move to the correct seat. The driver said that she was going to write a discipline slip on this student because he would not move to the correct seat. You also tried to get him to move to the correct seat. When the child did not move, you engaged in several mocking comments directed to the student because he was not moving. You were directed by the bus operator to seat another child on top of this student to make him more uncomfortable. You did seat

[3] Ms. Helsel resigned her employment at the October 22, 2008 Board meeting where BBOE heard the evidence against her and Grievant.

> another student in this student's seat. There were other seats available and it would have been more appropriate not to cause an uncomfortable situation [for] both students.
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> At one time during the bus-run, you sprayed disinfectant spray to cover up an odor. You walked up and down the aisle spraying seats. It appeared in the tape as though you sprayed right on top of students on the bus. This is an act of cruelty. There are medically fragile students on this bus and spraying disinfectant spray may endanger the health and safety of the students.
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> You permitted another special needs student to kneel on the seat and lean on the back of the seat during the bus route. Also during the trip, an empty wheelchair was not restrained properly and was allowed to roll about at the back of the bus. This presents a danger to the students on the bus. There are safety violations. You also received several phone calls and made on[e] phone call while on the bus.

6. At a special meeting of the BBOE on October 22, 2008, the Board voted to suspend Grievant for 60 days without pay, and to place her on a 90-day Improvement Plan. The BBOE did not state the reasons for the discipline, or the reasons for rejecting the superintendent's recommendation of a 30-day suspension.

7. On September 5, 2008, one of the students riding Grievant's bus had needed a wheel chair for a field trip. Grievant put the wheel chair on the lift to get it onto the bus. It is the practice on this bus that the person who puts the wheel chair on the lift does not strap it in place on the bus. Securing the wheel chair is the responsibility of the person on the bus, which in this case was Ms. Helsel. When Grievant boarded the bus, Ms. Helsel was in the bus aisle blocking Grievant's view of the wheel chair, and then Grievant immediately began assisting a child on the bus. Grievant did not check to make sure Ms. Helsel had secured the wheel chair. Ms. Helsel had not secured the wheel chair, as she

had been leaning over Brandon yelling at him and pointing her finger at him.[4] When the bus began moving, the wheel chair began to move. As soon as Grievant heard the wheel chair moving, she moved to the back of the bus where the wheel chair was, and strapped it into place. No one was injured in this incident. Ms. Helsel admitted that it was her responsibility to secure the wheel chair.

8. One of the students on the bus has Muscular Dystrophy. He is unable to walk up the steps to board the bus, and must use the lift to board the bus. This student is 18 years old.[5] Since before Grievant began working as an aide on this bus, this student has knelt on the seat rather than sitting on it, leaning his arms on the top of the seat in front of him for support. The reason for this is that, due to his disability, if this student sits on the bus seat, with his knees out of the aisle, he cannot get out of the seat when it is time for him to leave the bus. Grievant had not requested permission for this student to sit on the seat in this fashion. This student was kneeling on the seat on September 5, 2008.

9. The students on Grievant's bus have assigned seats. This provides the special education students with some stability in their routine.

10. On September 5, 2008, Brandon, who has Downs' Syndrome, sat in the wrong seat, and refused to move when he was told to do so by Ms. Helsel and Grievant.

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[4] It was this confrontation which led to the allegation that Ms. Helsel had hit Brandon in the stomach. No evidence was presented to support this allegation, and the videotape from the bus, admitted into evidence as Administration Exhibit Number 1 at the hearing before the Board of Education, does not show that Ms. Helsel hit Brandon. Grievant was not on the bus when Ms. Helsel was confronting Brandon.

[5] The record does not contain any evidence that this student has any mental disabilities. The videotape from the bus for this date shows that he is able to move to and from his seat on the bus without assistance, and was capable of balancing himself in the seat with his arms.

At one point he was sitting with his legs completely across the seat he was occupying so that no one else could sit down and he could not use his seatbelt, and he refused to sit up in the seat. He also had gas, and the odor on the bus was unpleasant because of this. This student is 20 years old, approximately 5'5" tall, and weighs around 190 pounds.

11. Ms. Helsel and Grievant raised their voices to Brandon ordering him to move, on more than one occasion, without success, made negative comments to him about his behavior, and told him he was getting a discipline slip. Grievant also made a comment about the odor. Ms. Helsel began to taunt Brandon, in a juvenile manner, telling him he was going to get a discipline slip, and would be off the bus for three days. Ms. Helsel continued to taunt Brandon for a significant period of time, and from time to time throughout the entire time he was on the bus. Grievant did not join Ms. Helsel in taunting Brandon.

12. Ms. Helsel told Grievant to place a seven year old student in the seat with Brandon, so that Brandon would have to sit up properly. When Grievant did so, Brandon sat up properly in the seat, and continued to do so. There was sufficient room on the seat for both students. Brandon was not being violent, and did not have violent tendencies. Brandon was just being stubborn.

13. Even though the bus windows were open, Grievant sprayed Lysol disinfectant on the bus while a few students were on board, to combat the unpleasant odor. Grievant walked up the bus aisle spraying a continuous stream of Lysol as she went, in the aisle and on the unoccupied seats. She did not spray any students with Lysol.

14. On September 5, 2008, while she was on duty on the bus, Grievant received and placed personal calls on her cell phone. These calls were of an emergency nature

from the school attended by her seven year old grandson, and to or from family members. There was a mix up, and no one had come to pick up her grandson after school to take him home. Grievant is a contact person for emergencies at the school involving her grandson. All of the telephone calls were related to taking care of this situation with her grandson. While on the telephone, Grievant was not focused on her job duties.

15. Grievant had never received a rating of less than satisfactory on any annual evaluation. Prior to this, she had never been disciplined by BBOE.

Discussion

In disciplinary matters, the employer bears the burden of establishing the charges against the employee by a preponderance of the evidence. *Nicholson v. Logan County Bd. of Educ.*, Docket No. 95-23-129 (Oct. 18, 1995); *Landy v. Raleigh County Bd. of Educ.*, Docket No. 89-41-232 (Dec. 14, 1989). A preponderance of the evidence is evidence which is 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 proven is more probable than not. *Petry v. Kanawha County Bd. of Educ.*, Docket No. 96-20-380 (Mar. 18, 1997).

The authority of a county board of education to discipline an employee must be based upon one or more of the causes listed in WEST VIRGINIA CODE § 18A-2-8, 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). WEST VIRGINIA CODE § 18A-2-8 provides that "[A] board may suspend or dismiss any person in its employment at any time 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 contendre to a felony charge." In the instant case, Respondent suspended Grievant for several acts, which it alleged constituted willful neglect of duty, intemperance, and cruelty.[6]

"Willful neglect of duty may be defined as an employee's intentional and inexcusable failure to perform a work-related responsibility. *Adkins v. Cabell County Bd. of Educ.*, Docket No. 89-06-656 (May 23, 1990). This is a fairly heavy burden, given that Respondent must not only prove that the acts it alleges did occur, but also that the reason for Grievant's neglect of duty was more than simple negligence." *Tolliver v. Monroe County Bd. of Educ.*, Docket No. 01-31-493 (Dec. 26, 2001). Willful neglect of duty "is conduct constituting a knowing and intentional act, rather than a negligent act.[7] *Williams v. Cabell*

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[6] There was some testimony at the hearing before BBOE about Grievant not monitoring a student in the back of the bus who was in a wheel chair, and that the student's head was bobbing. This charge was not in the suspension letter, "and will not be considered by the undersigned as Grievant was never properly placed on notice that this was one of the charges against [her]. *Yates v. Civil Service Comm'n*, 154 W. Va. 696, 178 S.E.2d 778 (1971)." *Frisenda v. Div. of Corr.,* Docket No. 97-CORR-373 (Mar. 24, 1998). However, the undersigned would note that Grievant was sitting on the opposite side of the aisle from this student, just one or two seats up. It is impossible to tell from the videotape whether Grievant could observe this child through her peripheral vision. It did appear that the child's head was moving with the motion of the bus, which is to be expected. Respondent's witnesses did not indicate what Grievant could have done to improve on this situation, and Grievant was not asked about this child. The testimony was that Grievant was to monitor the children. Presumably, this child had ridden the bus in the past, and in the same fashion, with no adverse consequences, and Grievant was familiar with the situation.

[7]"It is not the label a county board of education attaches to the conduct of the employee . . . that is determinative. The critical inquiry is whether the board's evidence is sufficient to substantiate that the employee actually engaged in the conduct." *Allen v. Monroe County Bd. of Educ.*, Docket No. 90-31-021 (July 11, 1990); *Duruttya v. Mingo County Bd. of Educ.*, Docket No. 29-88-104 (Feb. 28, 1990).

County Bd. of Educ., Docket No. 95-06-325 (Oct. 31, 1996); *Jones v. Mingo County Bd. of Educ.*, Docket No. 95-29-151 (Aug. 24, 1995); *Hoover v. Lewis County Bd. of Educ.*, Docket No.93-21-427 (Feb. 24, 1994). Willful neglect of duty encompasses something more serious than incompetence. *Bd. of Educ. v. Chaddock*, 183 W. Va. 638, 398 S.E.2d 120, 122 (1990); *Sinsel v. Harrison County Bd. of Educ.*, Docket No. 96-17-219 (Dec. 31, 1996)." *Geho v. Marshall County Bd. of Educ.*, Docket No. 2008-1395-MarED (Oct. 30, 2008).

"Cruelty is a deliberate act to inflict pain and/or suffering. Behavior which is directed toward a student, and which may include harassment, belittling, threatening, and/or grabbing, slapping, and restraining, without the need for self-defense, meets this definition. *Sinsel v. Harrison County Bd. of Educ.*, Docket No. 96-17-219 (Dec. 31, 1996)." *Wimmer v. Braxton County Bd. of Educ.*, Docket No. 2008-1497-BraED (Aug. 14, 2008).

"'Intemperance,' as used in W. VA. CODE § 18A-2-8 refers to the effect of habitual or excessive intoxication upon one's ability to function in a given capacity." *Belcher v. Logan County Bd. of Educ.*, Docket No. 06-23-156 (Jan. 25, 2007). There was no evidence nor any indication at any time that Grievant was intoxicated. Grievant stated at the level three hearing that it was her understanding that this charge was not being pursued. Respondent's counsel did not correct her. Nonetheless, Respondent's Proposed Findings of Fact and Conclusions of Law address this charge, stating that intemperance "includes behavior which would reasonbl[y] inflict a course of great mental anguish upon an innocent party." This is the same as the charge of cruelty.

Respondent offered very little testimony. Most of the charges proven are minor infractions. Grievant was talking on her cell phone, and was not focused on her job; she sprayed a lot of Lysol on the bus while there were a few students on the bus; and she allowed a student with a medical condition which made it nearly impossible for him to sit properly on a bus seat, to kneel instead. All of these infractions are of the type that a warning or reprimand would be appropriate for a long term, good employee like Grievant. It should also be noted that, although Grievant acknowledged that spraying Lysol on the bus could create a risk for some students, she was not aware of any policy which prohibited this; she had not been told not to do it; she was not aware that any of the students on the bus had asthma or a Lysol allergy, and Respondent presented no evidence of this; and, the bus windows were open, allowing fresh air in, and Lysol odors out. As to the cell phone usage, Grievant had an emergency situation with her grandchild. She was not gossiping to a friend. Surely Respondent wanted her to take this call, however, she probably should have asked the caller to hold while she was performing certain duties; although the undersigned is just speculating, based upon common sense, as no testimony was offered on this point. Finally, the student kneeling on the seat was 18 years old, had been doing this before Grievant started working on this bus, and allowing him to kneel on the seat was an accommodation for his disability. Respondent presented no testimony that this student could, in fact, sit normally on a bus seat without discomfort, and that he could get out of the seat if he were made to sit in the seat, or that there was some other action which would have been more appropriate in this situation.

Respondent did not demonstrate that Grievant did anything wrong by placing a seven year old in the same seat as Brandon. The bus seats accommodate two passengers, and Brandon was not being violent and did not have violent tendencies. He was just being stubborn. No testimony was offered that Brandon was dangerous. Placing this child in the seat with Brandon caused Brandon to sit in the seat properly. Respondent did not demonstrate that this child was placed at risk.

Respondent also did not demonstrate that it was Grievant's responsibility to secure the wheel chair. Grievant could not even see the wheel chair when she boarded the bus because Ms. Helsel was standing in the bus aisle, and Grievant immediately began attending to one of the children. As soon as she became aware that Ms. Helsel had not secured the wheel chair, as was Ms. Helsel's responsibility this day, Grievant took immediate action to secure it.

The remaining charge is more serious. Grievant did engage in inappropriate, unprofessional behavior toward a student on the bus, Brandon.[8] She raised her voice, telling him to move to a different seat, several times, even though Brandon was ignoring her, she told him more than once that he was going to get a discipline slip, and she

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[8] There was an allegation in Respondent's Proposed Findings of Fact and Conclusions of Law that Grievant "allowed a special needs student to be verbally abused by the bus driver," however, this was not mentioned in the suspension letter, nor can the undersigned find anywhere else in the record that Grievant was previously put on notice that this was one of the charges against her. Grievant's Proposed Findings of Fact and Conclusions of Law do not list this as one of the charges, and do not address this charge. As Grievant was not put on notice that this was one of the charges against her which she needed to defend, this charge will not be addressed. *Frisdenda, supra.*

commented about the odor Brandon's digestive problems were creating. The question is, was a 60-day suspension warranted?

The Grievance Board has held that "mitigation of the punishment imposed by an employer is extraordinary relief, and is granted only when there is a showing that a particular disciplinary measure is so clearly disproportionate to the employee's offense that it indicates an abuse of discretion. Considerable deference is afforded the employer's assessment of the seriousness of the employee's conduct and the prospects for rehabilitation." *Overbee v. Dep't of Health and Human Res./Welch Emergency Hosp.*, Docket No. 96-HHR-183 (Oct. 3, 1996). "When considering whether to mitigate the punishment, factors to be considered include the employee's work history and personnel evaluations; whether the penalty is clearly disproportionate to the offense proven; the penalties employed by the employer against other employees guilty of similar offenses; and the clarity with which the employee was advised of prohibitions against the conduct involved." *Phillips v. Summers County Bd. of Educ.*, Docket No. 93-45-105 (Mar. 31, 1994). *See Austin v. Kanawha County Bd. of Educ.*, Docket No. 97-20-089 (May 5, 1997).

The superintendent recommended a 30-day suspension without pay for Grievant's behavior. The Board, however, imposed a 60-day suspension without pay, an extremely severe penalty, double that recommended by the superintendent, and placement on an Improvement Plan.[9] No explanation was offered for this decision. Grievant has

[9] By the time of the level three hearing, Grievant had already successfully completed the Improvement Plan.

demonstrated that the penalty imposed is without reason, and is so clearly disproportionate to the offense that it reflects an abuse of discretion.

Even the 30-day suspension without pay seems to the undersigned to be clearly disproportionate to the offense, and no explanation was offered for this severe penalty. Grievant had never been disciplined before, and had good evaluations. She raised her voice to Brandon and made inappropriate comments about his behavior. Certainly, no child should be subjected to this type of conduct, and Grievant should have known better. The undersigned concludes that a five-day suspension without pay, and placement on an Improvement Plan is a reasonable penalty for this behavior.

The following Conclusions of Law support the decision reached.

Conclusions of Law

1. The burden of proof in disciplinary matters rests with the employer, and the employer must meet that burden by proving the charges against an employee by a preponderance of the evidence. *Ramey v. W. Va. Dep't of Health*, Docket No. H-88-005 (Dec. 6, 1988).

2. The authority of a county board of education to discipline an employee must be based upon one or more of the causes listed in WEST VIRGINIA CODE § 18A-2-8, 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).

3. WEST VIRGINIA CODE § 18A-2-8 provides that "[A] board may suspend or dismiss any person in its employment at any time 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 contendre to a felony charge."

4. "Willful neglect of duty may be defined as an employee's intentional and inexcusable failure to perform a work-related responsibility. *Adkins v. Cabell County Bd. of Educ.*, Docket No. 89-06-656 (May 23, 1990). This is a fairly heavy burden, given that Respondent must not only prove that the acts it alleges did occur, but also that the reason for Grievant's neglect of duty was more than simple negligence." *Tolliver v. Monroe County Bd. of Educ.*, Docket No. 01-31-493 (Dec. 26, 2001). Willful neglect of duty "is conduct constituting a knowing and intentional act, rather than a negligent act. *Williams v. Cabell County Bd. of Educ.*, Docket No. 95-06-325 (Oct. 31, 1996); *Jones v. Mingo County Bd. of Educ.*, Docket No. 95-29-151 (Aug. 24, 1995); *Hoover v. Lewis County Bd. of Educ.*, Docket No.93-21-427 (Feb. 24, 1994). Willful neglect of duty encompasses something more serious than incompetence. *Bd. of Educ. v. Chaddock*, 183 W. Va. 638, 398 S.E.2d 120, 122 (1990); *Sinsel v. Harrison County Bd. of Educ.*, Docket No. 96-17-219 (Dec. 31, 1996)." *Geho v. Marshall County Bd. of Educ.*, Docket No. 2008-1395-MarED (Oct. 30, 2008)(footnote omitted).

5. "Cruelty is a deliberate act to inflict pain and/or suffering. Behavior which is directed toward a student, and which may include harassment, belittling, threatening, and/or grabbing, slapping, and restraining, without the need for self-defense, meets this

definition. *Sinsel v. Harrison County Bd. of Educ.*, Docket No. 96-17-219 (Dec. 31, 1996)." *Wimmer v. Braxton County Bd. of Educ.*, Docket No. 2008-1497-BraED (Aug. 14, 2008).

6. "'Intemperance,' as used in W. VA. CODE § 18A-2-8 refers to the effect of habitual or excessive intoxication upon one's ability to function in a given capacity." *Belcher v. Logan County Bd. of Educ.*, Docket No. 06-23-156 (Jan. 25, 2007). Grievant was not intoxicated.

7. The Grievance Board has held that "mitigation of the punishment imposed by an employer is extraordinary relief, and is granted only when there is a showing that a particular disciplinary measure is so clearly disproportionate to the employee's offense that it indicates an abuse of discretion. Considerable deference is afforded the employer's assessment of the seriousness of the employee's conduct and the prospects for rehabilitation." *Overbee v. Dep't of Health and Human Res./Welch Emergency Hosp.*, Docket No. 96-HHR-183 (Oct. 3, 1996). "When considering whether to mitigate the punishment, factors to be considered include the employee's work history and personnel evaluations; whether the penalty is clearly disproportionate to the offense proven; the penalties employed by the employer against other employees guilty of similar offenses; and the clarity with which the employee was advised of prohibitions against the conduct involved." *Phillips v. Summers County Bd. of Educ.*, Docket No. 93-45-105 (Mar. 31, 1994). *See Austin v. Kanawha County Bd. of Educ.*, Docket No. 97-20-089 (May 5, 1997).

8. Respondent proved that Grievant was talking on her cell phone, and was not focused on her job; she sprayed a lot of Lysol on the bus while there were a few students on the bus; and she allowed a student with a medical condition which made it nearly

impossible for him to sit properly on a bus seat, to kneel instead, all of which are minor infractions. Respondent also demonstrated that Grievant raised her voice and made inappropriate, unprofessional comments to a student on the bus.

9. Grievant demonstrated that the penalty imposed was so clearly disproportionate to the offense that it reflects an abuse of discretion.

Accordingly, this grievance is **GRANTED IN PART, AND DENIED IN PART.** Respondent is **ORDERED** to reduce the 60-day suspension without pay imposed upon Grievant to a 5-day suspension without pay, plus interest at the statutory rate[10], and to pay her 55 days of back pay, and credit her with any benefits she lost due to the excess 55 days of suspension.

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[10] Although the Grievance Board does not generally award interest unless it is requested by the grievant, the undersigned finds it appropriate to award interest in this instance based upon the finding that the Board of Education abused its discretion in imposing this severe penalty.

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).

BRENDA L. GOULD
Administrative Law Judge

Date: May 27, 2009