THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

JULIE ANNETTE HANSROTE and
DARLENE FAYE PENNINGTON,
Grievants,

v. **DOCKET NO. 2009-0636-CONS**

DEPARTMENT OF EDUCATION/SOUTH
BRANCH CAREER AND TECHNICAL CENTER,
Respondent.

DECISION

Separate grievances were filed by Grievants, Julie Annette Hansrote and Darlene Faye Pennington on February 20, and March 11, 2009, against their employer, the Department of Education/South Branch Career and Technical Center. On May 13, 2009, Grievant Hansrote filed a second grievance. The statement of grievance for each Grievant, as condensed upon appeal to level three, is the same, and reads as follows:

> Grievant contends that she was subjected to a hostile work environment, harassment, and discrimination. Grievant asserts a violation of W. Va. Code 6C-2-2 & 18A-5-1c.

As relief Grievants seek, "restoration of personal leave and lost wages and benefits resulting from her work conditions, reimbursement for medical expenses[1] and implementation of appropriate steps to address and remedy the hostile work environment."

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[1] "[T]he type of relief Grievant is seeking for a work-related injury is not properly addressed to this agency. Compensation for a work-related injury is appropriately addressed to Workers' Compensation." *Spencer v. Bur. of Emp. Programs*, Docket No. 97-BEP-139R (Aug. 31, 2000). Grievants did not address this relief in their Proposed Findings of Fact and Conclusions of Law.

At the level three hearing Grievant Hansrote withdrew her request that Respondent be required to remedy the hostile work environment, stating that most of the problems had been adequately addressed, and what remained as issues could be resolved without intervention by the Grievance Board.

A hearing was held at level one on Grievant Hansrote's grievances on July 23, 2009, and a level one conference was held on Grievant Pennington's grievance on that same date. The grievances were denied at level one on August 13, 2009. Both Grievants appealed to level two on August 20, 2009. Mediation sessions were held on each grievance on November 3, 2009. Grievants appealed separately to level three on December 1 and 2, 2009, and the grievances were consolidated after appeal to level three. Two days of hearing were held at level three before the undersigned Administrative Law Judge, in Elkins, West Virginia, on March 17, and May 26, 2010. Grievants were represented by John Everett Roush, Esquire, West Virginia School Service Personnel Association, and Respondent was represented by Sherri Goodman, Esquire. This matter became mature for decision on June 30, 2010, upon receipt of the last of the parties' Proposed Findings of Fact and Conclusions of Law.

Synopsis

Grievants are employed at South Branch Career and Technical Center as clerical staff, and are seeking to be paid for the approximately two months they were off work, and had no sick leave to cover their absences, claiming their absences were caused by the hostile work environment at South Branch. When Grievants began working at South Branch in 2007, the working conditions were extremely poor due to the rift between the Executive Director and most of the teachers. Respondent stepped in and began the

process of correcting the problems. Nonetheless, bad feelings persisted, and the teachers continued to treat Grievants in a disrespectful manner. On February 19, 2009, a teacher wrote "KMFA" on an absence slip which Grievant Hansrote had sent back to him for proper completion. Grievant Hansrote became extremely upset, and her blood pressure became so elevated that she had to be taken to the hospital. By the next day her blood pressure was back to normal. Grievant Hansrote did not return to work for over two months. She ran out of sick leave on March 4, 2009, but did not request a leave of absence or even talk to her supervisor about her situation, or her fears of returning to work. She returned to work on May 6, 2009, without any notice, and did not provide a fitness to return to work certification from her doctor. Grievant Hansrote's behavior caused her supervisor to become concerned that there might be medical limitations of which she needed to be aware, and she sent Grievant Hansrote home until she could provide a fitness to work statement. Grievant Hansrote did not demonstrate that Respondent could not require a fitness to work statement, nor did she demonstrate that she was unable to return to work due to a hostile work environment from February 20 through May 5, 2009, and should be paid for the time she did not appear for work. Grievant Pennington was off work for approximately this same period of time due to a gall bladder problem, which took some time to diagnose. Her illness was not caused by the work environment at South Branch.

The following Findings of Fact are properly made from the record developed at levels one and three.

Findings of Fact

1. Grievant Hansrote has been employed at the South Branch Career and Technical Center ("South Branch") since August 2007. She was hired as a Secretary II/Accountant, and later became the Financial Coordinator.

2. Grievant Pennington has been employed at South Branch since October 2007. She was hired as the Financial Coordinator, and later became an Executive Secretary.

3. Both Grievants were hired by Randy Whetstone, who was the Executive Director at South Branch at that time.

4. A large number of the employees at South Branch had problems with Mr. Whetstone, and many filed grievances as a result of the relationships with Mr. Whetstone. The school became divided. Grievants continued to perform the work assigned to them by Mr. Whetstone, and did not join those who filed the grievances. Grievants were perceived by the other employees as being on Mr. Whetstone's side.

5. At the time Grievants were hired, South Branch was overseen by an administrative council which had been delegated this authority by the West Virginia State Department of Education ("DOE"). In the Spring of 2008, DOE received a report from its Office of Education Performance Audits. This report concluded that the environment at South Branch was tense and volatile, and that relationships had "deteriorated to the point of open conflict and confrontation of a hostile nature," and called for "an emergency to be declared to restore a safe environment at the school." The report recommended that DOE rescind the authority of the administrative council. DOE voted at a Board meeting in April

2008 to disband the administrative council for South Branch, and retake control of the facility.

6. DOE sent Ronald Grimes to South Branch as a state monitor to identify the cause of the problems at South Branch, to make sure deadlines were met, to make sure the school's finances were in order, to obtain control over the environment, and to generally make sure the school was functional. Mr. Grimes found a poor, stress filled atmosphere at South Branch. After Mr. Whetstone left in late 2008, the atmosphere improved.

7. In September 2008, Cynthia Kolsun was appointed by DOE to be the state monitor at South Branch. Mr. Grimes also continued to be a monitor at South Branch, and to provide technical assistance.

8. After Ms. Kolsun became the state monitor, Grievants continued to express concerns to Mr. Grimes about actions taken by various teachers toward them, or comments made by the teachers regarding the previous secretary, Tammy Kitzmiller, who had done everything for the teachers for years. Grievants felt denigrated by the continual remarks by teachers regarding Ms. Kitzmiller's skills. Mr. Grimes urged Grievants to make Ms. Kolsun aware of their concerns.

9. On February 18, 2009, Grievants met with Ms. Kolsun and advised her of their concerns, particularly noting that the teachers were complaining at a staff dinner because Grievants were requiring them to complete requisitions when Ms. Kitzmiller had apparently done this for them, and that they felt the teachers were trying to push them out. The teachers were upset because information which was necessary to the completion of reports for the North Central Accreditation was either missing or had not been maintained

by Grievants, and were very demanding, often hovering over Grievants, interrupting them when they were busy, and making comments that made Grievants feel incompetent. Ms. Kolsun tried to assure Grievants that none of this was their fault, and that the teachers were not trying to get rid of them.

10. On February 19, 2009, Grievant Pennington was not at work. A student brought his absence slip to Grievant Hansrote. Jeff Barger, a teacher at South Branch, had not noted the high school the student attended on the absence slip, which is required. Ms. Hansrote asked the student to take the slip back to Mr. Barger to complete it. Mr. Barger completed the absence slip, and wrote "KMFA" on the slip, and had the student return the slip to Grievant Hansrote. Ms. Hansrote became extremely upset, and took the slip to Ms. Kolsun. Grievant Hansrote and Ms. Kolsun both read this note to be shorthand for "kiss my fucking ass." Ms. Kolsun was astounded and appalled by Mr. Barger's action. Grievant Hansrote tried to calm herself, and when she was unable to do so she told Ms. Kolsun she needed to go to the Health Department. Ms. Hansrote was shaking. Ms. Kolsun took Grievant Hansrote to the Health Department. Grievant Hansrote's blood pressure was very high, even though she had been taking medication to control her blood pressure for about two years prior to this time, and she was told to go to the hospital. Ms. Kolsun took Grievant Hansrote to the hospital.

11. Grievant Hansrote was placed on an oxygen monitor while she was at the hospital, and an EKG was done, which did not show any problems. Grievant Hansrote was allowed to go home that same day. The following day her blood pressure was normal.

12. Mr. Barger came to Ms. Kolsun's office later in the day on February 19, 2009, and acknowledged that he had behaved improperly, and that he needed to apologize to Grievant Hansrote.

13. Grievant Hansrote did not return to work until May 6, 2009. During the time she was off work she did not contact Ms. Kolsun to discuss how long she would need to be off work. Grievant Hansrote called in to report off work each day thereafter, until February 26, 2009, when Ms. Kolsun received a statement, signed by a Physician's Assistant, stating that Grievant Hansrote should not return to work until March 23, 2009. Ms. Kolsun then received a second statement in late March by facsimile, signed by the Physician's Assistant, stating the Grievant "is able to return to work/school on 4/8-09 pending follow-up." Then in April 2009, Ms. Kolsun received a third statement by facsimile, again signed by the Physician's Assistant, which stated that Grievant Hansrote "is able to return to work/school on 5-6-09. . . pending follow up 5/5/09." None of these statements provided any explanation of Grievant Hansrote's illness, or the reason she could not return to work.

14. Grievant Hansrote's doctor was on maternity leave during this time, and Grievant continued to see the Physician's Assistant. No tests were run on Grievant Hansrote during the period of time she was off work, except for blood tests. Grievant Hansrote simply advised the Physician's Assistant during the first two follow-up visits that she was anxious about returning to work, she was having chest pains and symptoms of irritable bowel syndrome, and that her chest would pound when she thought about returning to work. Grievant did not, however, have any diagnosed problems with her heart. The record does not reflect that the Physician's Assistant based her statements that

Grievant should not return to work on anything other than the statements made to her by Grievant. Grievant declined to take medication for her anxiety, and chose not to seek assistance from a psychologist, psychiatrist, or counselor.

15. Grievant Hansrote was afraid to return to work because she thought all the teachers would support Mr. Barger as a group, and be against her. She did not express this concern to Ms. Kolsun. Mr. Barger, however, sent Ms. Hansrote a letter of apology shortly after this incident, and Ms. Hansrote received the apology.

16. During her medical appointment on May 5, 2009, Grievant told the Physician's Assistant that she felt she was ready to deal with the work issues, and see whether she could continue to work at South Branch.

17. By letter dated March 4, 2009, Ms. Kolsun notified Grievant Hansrote that she had no remaining sick leave, and would not be paid for any further days she was absent. Ms. Kolsun also advised Grievant Hansrote that "more information is necessary regarding your condition, and what conditions are causing you to not be able to do your job. If we have to make accommodations to your work, we will do so, if possible. . . . If you do not return by March 23, 2009 we will set up an appointment for you with a doctor of our choice hired by South Branch Career and Technical Center to verify your need to return/not return to work." Grievant did not respond to this letter in any way. She did not request a leave of absence. Respondent did not schedule a doctor's appointment for Grievant Hansrote. Nonetheless, Respondent held Grievant Hansrote's job for her.

18. Grievant Hansrote did not contact Ms. Kolsun to advise her that she would be returning to work on May 6, 2009. She did not provide a return to work statement from her doctor clearing her to return to work, and Ms. Kolsun did not ask for one when she

appeared for work without notice on May 6. Grievant Hansrote had not provided any information to Ms. Kolsun regarding the reason she had been off work, and Ms. Kolsun did not know whether there were any work limitations of which she should be aware. Grievant Hansrote worked May 6, 7, 8, and 11.

19. Ms. Kolsun observed behavior from Grievant Hansrote which she believed was out of character, and she became concerned that perhaps there were medical limitations of which she needed to be aware. Ms. Kolsun consulted Assistant State Superintendent of Schools Hopkins regarding her concerns, and was advised that she should require Grievant Hansrote to provide a fitness to work statement from her doctor. On the afternoon of Monday, May 11, Ms. Kolsun handed Grievant Hansrote a letter telling her that she needed her to explain the reason for her extended absence, and that a physician's statement that she was able to return to work would be required, noting whether there were any restrictions or limitations applicable to her work situation. Grievant Hansrote was advised that she would not be allowed to work until this information was provided.

20. Grievant Hansrote's physician did not provide the necessary statement until May 29, 2009, and it was placed in the mail to Grievant. Grievant received the statement on June 4, but the statement was not provided to Respondent until June 12, 2009. The statement from Melissa D. Kitzmiller, M.D., noted there were no work restrictions, and that Grievant Hansrote "has a significant history of hypertension and also has recently been diagnosed with anxiety disorder secondary to extreme stress for work situation. At times, her work situation has led to elevated blood pressure and even trips to the emergency

room."[2] The statement did not explain which of these medical conditions had led to Grievant Hansrote being off work for over two months.

21. South Branch follows the policies adopted by the Grant County Board of Education, which is the county in which the facility is located. The Grant County Board of Education has adopted Policy 4430-01 regarding Family and Medical Leave, Parental Leave and Extended Leaves.

22. Grievant Pennington was having some problems controlling a medical condition she had had for many years. She went to her doctor on February 27, 2009, and did not return to work until May 11, 2009. Grievant Pennington ran out of sick leave on March 11, 2009. The first week of March 2009, Grievant Pennington's doctor began running tests to determine the source of her problem. After many tests over a period of more than a month, Grievant Pennington's doctor determined that the problems were being caused by her gall bladder, and she had surgery to remove the gall bladder on April 15, 2009. The record contains no evidence that the atmosphere at South Branch contributed in any way to Grievant Pennington's gall bladder problems. Grievant Pennington kept in contact with Ms. Kolsun while she was off work, and continually updated her on her medical situation.

Discussion

As this grievance does not involve a disciplinary matter, Grievants have the burden of proving their grievance by a preponderance of the evidence. Procedural Rules of the Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008); *Howell v. W. Va. Dep't of*

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[2] Dr. Kitzmiller was not called as a witness in this matter.

Health & Human Res., Docket No. 89-DHS-72 (Nov. 29, 1990). *See also 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). "The 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).

Although it is unclear whether Grievant Pennington is still claiming that a hostile work environment exists at South Branch, it appears that the only issue remaining in this grievance is whether the Grievants should have any of their sick leave returned to them, and whether they are entitled to be paid for the days they missed work after their sick leave ran out. Grievants argued that the harassment and hostile work environment at South Branch caused both of them to be off work, and therefore Respondent should compensate them.

WEST VIRGINIA 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).

This Board has generally followed the analysis of the federal and state courts in determining what constitutes a hostile work environment. *See Lanehart v. Logan County Bd. of Educ.*, Docket No. 97-23-088 (June 13,1997). The point at which a work environment becomes hostile or abusive does not depend on any "mathematically precise test." *Harris v. Forklift Systems, Inc.,* 510 U.S. 17, at 22, (1993). Instead, "the objective severity of harassment should be judged from the perspective of a reasonable person in the plaintiffs position, considering all the circumstances." *Oncale v. Sundowner Offshore Servs., Inc.,* 523 U.S. 75 (1998) (quoting *Harris, supra*). These circumstances "may include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance," but are by no means limited to them, and "no single factor is required." *Harris,* supra at p.23; *Rogers v. W. Va. Reg'l Jail & Corr. Facility Auth.,* Docket No. 2009-0685-MAPS (Apr. 23, 2009). "'To create a hostile work environment, inappropriate conduct must be sufficiently severe or pervasive to alter the conditions of an employee's employment.' *Napier v. Stratton,* 204 W. Va. 415, 513 S.E.2d 463, 467 (1998). *See Hanlon v. Chambers,* 195 W. Va. 99, 464 S.E.2d 741 (1995)." *Corley, et al., v. Workforce West Virginia*, Docket No. 06-BEP-079 (Nov. 30, 2006). "As a general rule 'more than a few isolated incidents are required' to meet the pervasive requirement of proof for a hostile work environment case. *Fairmont Specialty Servs.,* [*v.*

W. Va. Human Rights Comm'n, 206 W. Va. 86, 522 S.E.2d 180 (1999)], *citing Kinzey v. Wal-Mart Stores, Inc.,*107 F.3d 568, 573 (8th Cir. 1997)." *Marty v. Dep't of Admin.,* Docket No. 02-ADMN-165 (Mar. 30, 2006).

"Certainly, an employer is entitled to expect its employees to conform to certain standards of civil behavior. *Redfearn v. Dep't of Labor*, 58 MSPR 307 (1993). All employees are 'expected to treat each other with a modicum of courtesy in their daily contacts.' *See Fonville v. DHHS*, 30 MSPR 351 (1986)(*citing Glover v. DHEW,* 1 MSPR 660 (1980)). Abusive language and abusive, inappropriate, and disrespectful behavior are not acceptable or conducive to a stable and effective working environment. *Hubble v. Dep't of Justice,* 6 MSPR 659, 6 MSPR 553 (1981). *See Graley v. W. Va. Parkways Economic Dev. and Tourism Auth.*, Docket No. 99-PEDTA-406 (Oct. 31, 2000)." *Corley, et al., supra.*

Respondent agreed that when DOE took control of South Branch, the atmosphere at the facility was poor, and that the teachers at South Branch did not act appropriately toward Grievants. However, as soon as Mr. Grimes came on the scene he began making clear to the teachers that he was not going to tolerate any adverse actions toward, or improper comments about, Grievants. After Mr. Whetstone left, conditions at the facility improved. Nonetheless, problems lingered, and the teachers and staff remained under pressure because of Mr. Whetstone's failure to complete required reports, and because records necessary to completion of these reports had either disappeared under his watch, or not been kept, and the teachers continued to hover over and place demands on the Grievants. Grievants continued to feel that the teachers were trying to push them out, and

the demands placed upon them and the comments made by the teachers comparing them to Ms. Kitzmiller made it unpleasant for them.

It is obvious that Mr. Barger's juvenile behavior on February 19, 2009, pushed an already vulnerable Grievant Hansrote over the edge. However, the undersigned is not convinced, despite the medical excuses signed by the Physician's Assistant, that Grievant Hansrote could not have returned to work immediately. The evidence presented gives the appearance that the Physician's Assistant let Grievant Hansrote make the determination as to whether she was medically able to work. Further, while the undersigned has no doubt that Grievant Hansrote had no desire to return to work to face the possibility that Mr. Barger, or any of the other teachers, would again harass her, Grievant did not demonstrate that the situation was so intolerable that a reasonable person could not have returned to work. While Grievant Hansrote stated she was fearful that the teachers would group together to support Mr. Barger, the fact is that Mr. Barger had recognized he was in the wrong, and sent Grievant Hansrote a written apology, making this fear unfounded. Perhaps had Grievant Hansrote simply talked to Ms. Kolsun about her fear, steps could have been taken to reassure her. Accordingly, the undersigned cannot conclude that Grievant Hansrote is entitled to any compensation from Respondent for the period of time she was off work after March 4 (when her sick leave ran out) through May 5, 2009. She is, however, entitled to have the sick leave taken on February 19, 2009, restored.

The next issue is whether Grievant Hansrote should be paid for the period of time from May 11, 2009, through June 12, 2009, while she was attempting to obtain a fitness for work slip. Grievant Hansrote argued that Respondent did not follow its own policies in

sending Grievant Hansrote home on May 11, and requiring her to bring a fitness for work slip.

Grant County Schools Policy 4430.01, Family and Medical Leave, Parental and Extended Leaves, requires that an employee be allowed up to 12 weeks of unpaid leave for a "serious health condition that makes the employee *unable to perform the functions of the position assigned."* (Emphasis added.) Grievant is correct that Respondent did not follow the applicable policy. Employees are to provide notice of the need for the leave, and "certification of a serious health condition," neither of which Grievant Hansrote did. While the undersigned questions whether Grievant Hansrote had a "serious health condition," Respondent, nonetheless, allowed Grievant Hansrote to be off work for several months, and maintained her position for her. This same Policy specifically provides that employees who are on leave for a serious health condition "submit a fitness for duty certification from their physician *prior to returning to work.* This certification *must be submitted* to the Human Resources Department prior to the start of the first return day." (Emphasis added.) Grievant did not provide such a statement, although it was *mandatory* that an employee off on leave due to a serious health condition do so prior to being allowed to return to work. Respondent likewise did not require the statement of Grievant when she showed up for work without any notice on May 6, 2009. This failure to require this mandatory statement prior to Grievant returning to work, however, did not operate to preclude Respondent from requiring the statement when Ms. Kolsun became concerned about Grievant Hansrote's behavior. The Policy specifically envisions that the employee will not be allowed to return to work without a doctor's certification that the employee is able to do so. While Respondent certainly should have reminded Grievant Hansrote early on of the requirement

of a fitness for work statement, the fact is Grievant Hansrote did not even bother to request any type of leave. It is difficult for the undersigned to imagine that an employee would not be aware of the need to sit down with her employer and discuss what she needed to do to retain her employment after her sick leave was exhausted. Grievant Hansrote was off work for over two months and never once personally communicated with Ms. Kolsun about her situation.

Further, the undersigned cannot imagine why it would take a month for Grievant Hansrote to acquire a fitness for work slip from a doctor, even with her regular physician being on maternity leave. It is clear that Grievant Hansrote did not make her doctor aware of the urgency of the situation, as her doctor put the return to work slip in the mail several days after the date on the slip (June 4), further delaying receipt. Then, even though Grievant received the slip at her home on June 4, 2009, it was not provided to Respondent until June 12, 2009, over a week later. None of the blame for these delays can be placed on Respondent, and Respondent was within its rights to require this certification.

Grievant Pennington presented no evidence that the medical issues which caused her to be off work from February 27 through May 8, 2009, were a result of the conditions she faced at South Branch. She is not entitled to have any of her sick leave returned, or to be reimbursed for any time she was off work and did not have sufficient sick leave to cover her time.

Finally, as noted, it is unclear to the undersigned whether Grievant Pennington continues to claim that a hostile work environment exists at South Branch. However, it is clear that Respondent is aware that problems remain, and is committed to continuing to improve the situation. The undersigned cannot do more than that.

The following Conclusions of Law support the Decision reached.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievants have the burden of proving their grievance by a preponderance of the evidence. Procedural Rules of the Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). *See also 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). "The 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).

2. "'To create a hostile work environment, inappropriate conduct must be sufficiently severe or pervasive to alter the conditions of an employee's employment.' *Napier v. Stratton,* 204 W. Va. 415, 513 S.E.2d 463, 467 (1998). *See Hanlon v. Chambers,* 195 W. Va. 99, 464 S.E.2d 741 (1995)." *Corley, et al., v. Workforce West Virginia*, Docket No. 06-BEP-079 (Nov. 30, 2006). "As a general rule 'more than a few isolated incidents are required' to meet the pervasive requirement of proof for a hostile work environment case. *Fairmont Specialty Servs.,* [*v. W. Va. Human Rights Comm'n*, 206 W. Va. 86, 522 S.E.2d 180 (1999)], *citing Kinzey v. Wal-Mart Stores, Inc.,*107 F.3d 568, 573 (8th Cir. 1997)." *Marty v. Dep't of Admin.,* Docket No. 02-ADMN-165 (Mar. 30, 2006).

3. "Certainly, an employer is entitled to expect its employees to conform to certain standards of civil behavior. *Redfearn v. Dep't of Labor*, 58 MSPR 307 (1993). All

employees are 'expected to treat each other with a modicum of courtesy in their daily contacts.' *See Fonville v. DHHS*, 30 MSPR 351 (1986)(*citing Glover v. DHEW,* 1 MSPR 660 (1980)). Abusive language and abusive, inappropriate, and disrespectful behavior are not acceptable or conducive to a stable and effective working environment. *Hubble v. Dep't of Justice,* 6 MSPR 659, 6 MSPR 553 (1981). *See Graley v. W. Va. Parkways Economic Dev. and Tourism Auth.*, Docket No. 99-PEDTA-406 (Oct. 31, 2000)." *Corley, et al., supra.*

4. WEST VIRGINIA 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).

5. Grievants demonstrated that they were not treated with respect by the teachers at South Branch, and that for an extended period of time the working conditions

at South Branch were undesirable for all of the employees. However, Respondent recognized the problems at South Branch and undertook to remedy the situation.

6. Grievant Hansrote demonstrated that the actions of teacher Jeff Barger on February 19, 2009, were disrespectful, inappropriate, and abusive, causing Grievant Hansrote to experience a huge elevation in her blood pressure, resulting in an emergency trip to the hospital on that day.

7. Grievant Hansrote failed to demonstrate that the conditions at South Branch prevented her from being able to return to work from February 20 through May 5, 2009.

8. Respondent follows the policies of the Grant County Board of Education. Policy 4430.01 allows employees to request a medical leave of absence for a serious illness. Employees who are on a leave of absence must provide certification from a doctor that they are fit to return to work prior to returning to work.

9. Grievant Hansrote did not demonstrate that Respondent could not require her to provide a fitness to work certification, despite the fact that Grievant did not follow the proper procedure and request a leave of absence, nor was a leave of absence officially granted.

10. Grievant Pennington did not demonstrate that her illness was caused by the working conditions at South Branch.

Accordingly, this grievance is **GRANTED IN PART, AND DENIED IN PART**. Respondent is **ORDERED** to restore to Grievant Hansrote the sick leave she used on February 19, 2009. In all other respects 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 appealing party must also provide the Board with the civil action number so that the certified record can be prepared and properly transmitted to the Circuit Court of Kanawha County. *See also* 156 C.S.R. 1 § 6.20 (2008).

BRENDA L. GOULD
Administrative Law Judge

Date: December 29, 2010