WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

REGINA WIKLE,
Grievant,

v. **Docket No. 2012-0720-MnrED**

MONROE COUNTY BOARD OF EDUCATION,
Respondent.

D E C I S I O N

Grievant, Regina Wikle, filed this grievance against her employer, Monroe County Board of Education ("MCBOE"), Respondent on January 10, 2012, protesting a three-day suspension. The statement of grievance, in relevant part, states:

> Grievant was suspended for three days for releasing a pre-k student from her bus into the care of a neighbor instead of a parent or legal guardian. Grievant contends that this was arbitrary and capricious as this punishment was more than harsh meted out to two other bus operators guilty of a similar infraction. In particular, Grievant asserts that last school year Calvin Withrow was suspended for one day for a similar situation and Kelly Johnson was suspended for three days for a worse incident.

Relief requested:

> Grievant seeks reduction of her suspension to one day, restoration of appropriate seniority, and compensation for lost wages with interest.

Regarding the incident, which occurred on December 12, 2011, Monroe County School Board Superintendent, Dr. Kevin W. Siers, recommended to the MCBOE that Grievant be suspended for three days, without pay. A personnel hearing was held on December 20, 2011, before the MCBOE. Grievant appeared before the MCBOE, subsequent to the hearing, Respondent voted to approved the Superintendent's recommendation. Grievant was sent a certified letter confirming the result of the hearing.

On January 10, 2012, Grievant exercised her right pursuant to W. VA. CODE § 6C-2-4(a)(4) to file directly to level three of the grievance procedure. A level three hearing was held before the undersigned Administrative Law Judge on May 30, 2012, at the Grievance Board's Beckley office. Grievant was represented by John E. Roush, Esquire, West Virginia School Service Personnel Association. Respondent was represented by counsel, Jason S. Long of Dinsmore & Shohl, LLP. This case became mature for decision on June 29, 2012, the deadline for the submission of the parties' proposed findings of fact and conclusions of law. Both parties submitted fact/law proposals.

Synopsis

Grievant, a bus operator for Monroe County Board of Education, released a four year old pre-k student from her bus into the care of a neighbor instead of a parent or legal guardian in violation of MCBOE Policy EEA. The County School Board Superintendent recommended a three-day suspension, without pay, as disciplinary action which was subsequently approved and levied by Monroe County Board of Education, Respondent.

Grievant acknowledges the violation of applicable policy, but avers the circumstances and her good faith actions do not warrant such a severe penalty. Further, Grievant alleged she was not treated the same as other employees who committed a similar or more severe infraction. Grievant was aware of MCBOE Policy EEA, which provides that "students in grades preschool through grade three are required to be met by a parent or guardian at the bus stop," and she had been trained on Policy EEA on several occasions over the years. Grievant did not demonstrate that the penalty imposed was too severe or that Respondent's actions constitutes an abuse of discretion. Accordingly, this grievance is DENIED.

After a detailed review of the entire record, the undersigned Administrative Law Judge makes the following findings of fact.

Findings of Fact

1. Grievant is employed as a Bus Operator by Respondent MCBOE. She has been so employed for approximately fifteen years.

2. "B.N." is a four year old female child and a student in the school system of Respondent.[1] On some days when she is coming from or going to her parents' home, she rides Grievant's bus. On other days, when she is coming from or going to her grandparents' residence, she rides the bus of another one of Respondent's bus operators (Sizemore, Bus 197).

3. On December 12, 2011, four year old B.N. at Peterstown Elementary was placed on Grievant's bus by a school aide for the evening run. B.N. should have been placed on Bus 197 on this particular afternoon.

4. B.N., along with other preschool students, sat in the front of Grievant's bus. This was required by Monroe County's Guidance & Procedures for Preschool Children on County School Buses. (R. Exs. 13 and 14).

5. Grievant transported approximately eight students between preschool through grade three to B.N.'s bus stop.

6. MCBOE Policy EEA, Section 2.2, among other things, provides that: "Students in grades preschool through grade three are required to be met by a parent or guardian at the bus stop." (R. Ex. 17).

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[1]Consistent with the Grievance Board's practice, this student and all minors referenced will be referred to by initials in this decision.

7. When Grievant arrived at B.N.'s usual stop at about 3:40 pm, neither of B.N.'s parents were at the stop. At that point, Grievant was unaware that B.N. should have been on Mr. Sizemore's bus to be dropped off at her grandmother's house.

8. Christina Richardson, a neighbour of B.N.'s parents and the parent of another child on Grievant's bus, volunteered to take B.N. and escort her to her mother. Ms. Richardson informed Grievant that B.N.'s mother was in her nearby home, a trailer, with her newborn baby.

9. Grievant had known Ms. Richardson for several years and believed that she was a trustworthy and responsible individual. Grievant released B.N. to Christina Richardson.

10. MCBOE Policy EEA, Section 2.1.2, among other things, provides that: "If there is no one to meet the PK-3rd grade child at the bus stop, the driver is to keep the child on the bus, and attempt to contact the parent while stopped, either by cell phone if possible, or by radio. If no answer, the driver is to contact the school or transportation coordinator. The information provided by the parent and kept on the enrollment card in the bus, can be relayed to the school or coordinator for the purpose of contacting either the parent/guardian or an emergency contact for the child." Grievant admittedly did not follow this procedure although aware of the release restrictions applicable to preschool through grade three students. MCBOE Policy EEA, Section 2.2.

11. At approximately 3:50 p.m., after dropping student B.N. off, Grievant received a CB radio transmission from Elizabeth Robertson, Secretary at Peterstown Elementary. Ms. Robertson had been contacted by B.N.'s grandmother inquiring as to B.N.'s whereabouts.

12. Ms. Robertson explained to Grievant that B.N. should have been placed on Ms. Sizemore's bus to go to B.N.'s grandparent's domicile.

13. After speaking with Ms. Robertson, Grievant arranged telephone contact between Christina Richardson and B.N.'s grandparents. B.N. was transferred from Ms. Richardson to B.N.'s grandparents without incident prior to 5 p.m.

14. On the following day, Leigh Boggess, Principal of Peterstown Elementary, and Larry Dunbar, Transportation and Safety Director, met with B.N.'s father at his request. B.N.'s father was "very irate" that B.N. had been permitted to leave the bus with someone other than her parents, while B.N.'s mother asked that Grievant "do her best not [to let it] happen again."

15. MCBOE has provided several in-service/staff development trainings to bus operators on MCBOE Policy EEA and drop off policy issues. Specifically, on August 17-18, 2011, August 19-20, 2010, August 24, 2009, and August 2007. (R. Exs. 10, 11, 12, 13, 15, 16 and 18).

16. Grievant was a participant of the in-service/staff development trainings. Further, Grievant executed a School Bus Operator's Responsibilities & Procedures Orientation form dated August 8, 2011. (R. Ex. 14). This form was a part of the August 17-18, 2011, training which included Monroe County's Guidance & Procedures for Preschool Children on County School Buses. (R. Ex. 13). The form acknowledged by Grievant, among other things, provided that "When the bus arrives at the child's home or drop off site, I will not allow the preschool child to exit the bus unless there is a designated and responsible adult there to receive the child." (R. Ex. 14).

17. Calvin Withrow, bus operator for the MCBOE, allowed a preschool student to be dropped off at the wrong location on the second day of school for preschool students during the 2010-11 school year Dr. Siers recommended a three-day suspension without pay, and the MCBOE originally accepted this recommendation, but after learning of additional facts, subsequently changed the suspension to one day.[2] (R. Ex. 3). Mr. Withrow's demeanor subsequent to the event was substantially different than that of Grievant.

18. Kelly Johnson, a bus operator for the MCBOE, on or about June 1, 2010, released a kindergarten student from his bus without a parent or guardian visible, a violation of MCBOE Policy EEA. Dr. Lyn Guy, former Superintendent, recommended a three-day suspension, without pay, which was subsequently approved by the MCBOE. (R. Exs. 4 and 5). The student was released with no adult supervision approximately twenty feet from the child's house.

19. Marie Carr, formerly a bus operator for the MCBOE, on March 8, 2010, allowed two Peterstown Elementary students, kindergarten twins, to be released without visually observing a parent or guardian at the bus stop. Dr. Guy recommended a three-day suspension, without pay, which was subsequently approved by the MCBOE. (R. Exs. 6, 7 and 8). The students were released with no adult supervision.

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[2] Driver was not informed regarding the student's schedule and being only the second day of the Pre-K program's operation it was believed that the driver involved could not have reasonably been familiar with the student and/or family situation. The factual circumstances surrounding Bus Operator Withrow's situation was determined by MCBOE to be special circumstances. Further, Administration was convinced that Withrow would make adequate adjustments to insure that such an event would never happen again.

Discussion

In disciplinary matters, the employer bears the burden of establishing the charges against the employee by a preponderance of the evidence. Procedural Rules of the Public Employees Grievance Board, 156 C.S.R. 1 § 3 (2008). "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). Where the evidence equally supports both sides, a party has not met its burden of proof. *Id.*

MCBOE Policy EEA, clearly states "Students in grades preschool through grade three are required to be met by a parent or guardian at the bus stop." The Policy further states, "If there is no one to meet the PK-3rd grade child at the bus stop, the driver is to keep the child on the bus, and attempt to contact the parent while stopped, either by cell phone if possible, or by radio. If no answer, the driver is to contact the school or transportation coordinator. The information provided by the parent and kept on the enrollment card in the bus, can be relayed to the school or coordinator for the purpose of contacting either the parent/guardian or an emergency contact for the child." Grievant violated the MCBOE Policy EEA and procedures, despite having been trained on the procedures on several occasions during her tenure.[3]

[3]MCBOE Policy EEA, Section 2.1.2, among other things, provides that: "If there is no one to meet the PK-3rd grade child at the bus stop, the driver is to keep the child on the

The undersigned has been made aware that it may be difficult to contact the administration at B.N.'s school after 4 p.m. Further, Grievant contends she was not provided with the emergency card that indicated to whom B.N. could be released or who needed to be contacted in an emergency. Nevertheless, Grievant admittedly violated MCBOE Policy EEA in allowing a four-year-old to be released at the bus stop with someone other than her parent or duly authorized person. Grievant made a rational, though not proper decision to leave B.N. with a neighbor. In this day and age, Grievant's conduct is recognized as potentially dangerous to the well-being of a child.

Superintendent Siers, by recommending a three day suspension, without pay, acted within his authority as permitted by W. VA. CODE § 18A-2-7, which provides, "[t]he superintendent, subject only to approval of the board, shall have the authority to . . . suspend school personnel." The types of conduct that can result in disciplinary action are outlined in W. VA. CODE § 18A-2-8 and include, immorality, incompetency, cruelty, insubordination, intemperance, willful neglect of duty, unsatisfactory performance, the conviction of a felony or guilty plea or plea of *nolo contendere* to a felony charge.

Staff development training expressly counsels bus operators regarding their heightened responsibility regarding PreK-3rd grade students drop offs. (R. Exs. 13 and 17). Failure to adhere to known applicable rules and regulations has been interpreted as insubordinate and/or willful neglect of duty.

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bus, and attempt to contact the parent while stopped, either by cell phone if possible, or by radio. If no answer, the driver is to contact the school or transportation coordinator. The information provided by the parent and kept on the enrollment card in the bus, can be relayed to the school or coordinator for the purpose of contacting either the parent/guardian or an emergency contact for the child." Grievant did not follow this procedure although aware of the requirements of MCBOE Policy EEA.

Insubordination "encompasses more than an explicit order and subsequent refusal to carry it out. It may also involve a flagrant or willful disregard for implied directions of an employer." *Sexton v. Marshall Univ.*, Docket No. BOR2-88-029-4 (May 25, 1988) *citing Weber v. Buncombe County Bd. of Educ.*, 266 S.E.2d 42 (N.C. 1980). Insubordination has been defined as the "willful failure or refusal to obey reasonable orders of a superior entitled to give such order." *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). Insubordination "'includes, and perhaps requires, a willful disobedience of, or a refusal to obey, a reasonable and valid rule, regulation, or order issued . . . [by] an administrative superior.'" *Hoover v. Wirt County Bd. of Educ.*, Docket No. 2008-1482-WirED (Feb. 12, 2009) (quoting *Butts v. Higher Educ. Interim Governing Bd.*, 212 W. Va. 209, 569 S.E.2d 456 (2002) (per curiam). "'[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 willful; and (c) the order (or rule or regulation) must be reasonable and valid.'" *Id.* "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).

Respondent highlights that at the December 20, 2011, MCBOE Board Meeting, Grievant testified, among other things, that she would “do it again.” Respondent avers that Grievant exhibits a lack of appreciation of the need to follow directives.

“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.[4] *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).

"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." "Generally, an action is considered arbitrary and capricious if the agency did not rely on criteria intended to be considered, explained or reached the decision in a manner contrary to the evidence before it, or reached a decision that was so implausible that it cannot be ascribed to a difference of opinion. *See Bedford County Memorial Hosp. v. Health and Human Serv.*, 769 F.2d 1017 (4th Cir. 1985); *Yokum v. W. Va. Schools for the Deaf and the Blind*, Docket No. 96-DOE-081 (Oct. 16, 1996)." *Trimboli v. Dep't of Health and Human Res.*, Docket No. 93-HHR-322 (June 27, 1997). Arbitrary and capricious actions have been found to be closely related to ones that are unreasonable. *State ex rel. Eads v. Duncil*, 196 W. Va. 604, 474

[4]"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).

S.E.2d 534 (1996). An action is recognized as arbitrary and capricious when "it is unreasonable, without consideration, and in disregard of facts and circumstances of the case." *Eads, supra* (*citing Arlington Hosp. v. Schweiker*, 547 F. Supp. 670 (E.D. Va. 1982)).

Respondent's actions were not arbitrary and capricious. The nature of the conduct was such that the Respondent's actions constitute a reasonable and sufficiently substantial basis for disciplinary actions. Grievant violated applicable provisions of MCBOE Policy EEA by allowing a four year old to be released at the bus stop with someone other than her parent or designated person. All of the evidence at the hearing in this matter demonstrates an absolute knowing and intentional act, and a failure to perform a work-related responsibility, on the part of Grievant. Respondent has met its burden of proof and demonstrated, by a preponderance of the evidence, that Grievant was guilty of insubordination and willful neglect of duty.

Grievant alleges that similarly-situated employees were more favorably treated than her in like situation. Further, Grievant avers it is less serious to leave a child in the charge of a responsible, trustworthy, identified adult than to leave a child at a stop in the charge of the whims of fate.

For an employee to prevail on a claim of disparate treatment [in discipline], she must establish that there is no rational basis for distinguishing specific penalties for the same or substantially similar misconduct. The misconduct brought into question must be similar or more serious than that with which the grievant is charged. *Clark v. Dept. of Navy,* 6 MSPB 24 (1981). The grievant must also show that the other employee's disciplinary record is similar to her own. *Clancy v. Dept. of Navy*, 6 MSPB 173 (1981). Finally, the grievant must

establish that her position is similar to that of the other employee to whom she is compared with respect to the trust and responsibility expected of her position. *Rohn v. Dept. of Army*, 30 MSPR 157 (1986); *McVicker v. Kanawha County Bd. of Educ.*, Docket No. 95-20-339 (Feb. 9, 1996); *Olson v. Kanawha County Bd. of Educ.*, Docket No. 02-20-380 (May 30, 2003).

MCBOE treated Grievant no differently from the other bus operators under similar circumstances. All other bus operators, with the exception of Calvin Withrow, received the same discipline (three-day suspension, without pay) for violation of applicable drop off provisions of MCBOE Policy EEA and procedures.[5] Grievant failed to establish disparate treatment.

Further, the argument that discipline is excessive given the facts of the situation is an affirmative defense, and Grievant bears the burden of demonstrating the penalty was "clearly excessive or reflects an abuse of the agency['s] discretion or an inherent disproportion between the offense and the personnel action." *Martin v. W. Va. Fire Comm'n*, Docket No. 89-SFC-145 (Aug. 8, 1989). 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). It has not

[5] The factual circumstances surrounding bus operator Withrow's situation was determined by MCBOE to be special circumstances. No such determination has been made in the facts of this matter.

been demonstrated that the disciplinary measure levied was disproportionate to Grievant's offense nor that the MCBOE's actions constitutes an abuse of discretion.

The facts of this matter depict an unfortunate and regrettable incident, but the undersigned cannot find that a three-day suspension is too severe a penalty for clearly prohibited conduct. Given the considerable deference afforded to employers in disciplinary situations, the undersigned is without sufficient justification to rule that the discipline imposed was excessive. Respondent has substantial discretion to determine a penalty in these types of situations, and the undersigned Administrative Law Judge can not substitute his judgment for that of the employer. *Tickett v. Cabell County Bd. of Educ.*, Docket No. 97-06-233 (Mar. 12, 1998); *Huffstutler v. Cabell County Bd. of Educ.*, Docket No. 97-06-150 (Oct. 31, 1997). Grievant failed to offer sufficient evidence in support of mitigating her suspension. Respondent established by a preponderance of the evidence that Grievant knowingly failed to perform a work-related responsibility and intentionally disregarded applicable safety regulation(s).

The following conclusions of law are appropriate in this matter:

Conclusions of Law

1. In disciplinary matters, the employer has the burden of proving the charges by a preponderance of the evidence. Procedural Rules of the Public Employees Grievance Board, 156 C.S.R. 1 § 3 (2008). "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).

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 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).

3. "Generally, an action is considered arbitrary and capricious if the agency did not rely on criteria intended to be considered, explained or reached the decision in a manner contrary to the evidence before it, or reached a decision that was so implausible that it cannot be ascribed to a difference of opinion. *See Bedford County Memorial Hosp. v. Health and Human Serv.*, 769 F.2d 1017 (4th Cir. 1985); *Yokum v. W. Va. Schools for the Deaf and the Blind*, Docket No. 96-DOE-081 (Oct. 16, 1996)." *Trimboli v. Dep't of Health and Human Res.,* Docket No. 93-HHR-322 (June 27, 1997). An action is recognized as arbitrary and capricious when "'it is unreasonable, without consideration, and in disregard of facts and circumstances of the case.'" *State ex rel. Eads v. Duncil*, 196 W. Va. 604, 474 S.E.2d 534 (1996) (citing *Arlington Hosp. v. Schweiker,* 547 F. Supp. 670 (E.D. Va. 1982)). "While a searching inquiry into the facts is required to determine if an action was arbitrary and capricious, the scope of review is narrow, and an administrative law judge may not simply substitute his judgment for that of a board of education. *See generally, Harrison v. Ginsberg,* [169 W. Va. 162], 286 S.E.2d 276, 283 (1982)." *Trimboli*, *supra, Blake v. Kanawha County Bd. of Educ.*, Docket No. 01-20-470 (Oct. 29, 2001).

4. Respondent demonstrated its disciplinary action, in the facts of this case, were not arbitrary or capricious. Respondent established by a preponderance of the

evidence that Grievant knowingly failed to perform a work-related responsibility and intentionally disregarded applicable safety regulation(s).

5. 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." *Overbee v. Dep't of Health and Human Res./Welch Emergency Hosp.*, Docket No. 96-HHR-183 (Oct. 3, 1996).

6. Respondents had discretionary options in the circumstances of this case. Considerable deference is afforded to employers in disciplinary situations. An Administrative Law Judge will not substitute his judgment for that of the employer. *Tickett v. Cabell County Bd. of Educ.*, Docket No. 97-06-233 (Mar. 12, 1998); *Huffstutler v. Cabell County Bd. of Educ.*, Docket No. 97-06-150 (Oct. 31, 1997).

7. Grievant failed to demonstrate the penalty levied was clearly excessive or reflects an inherent disproportion between the offense and the disciplinary action.

8. Insubordination "encompasses more than an explicit order and subsequent refusal to carry it out. It may also involve a flagrant or willful disregard for implied directions of an employer." *Sexton v. Marshall Univ.*, Docket No. BOR2-88-029-4 (May 25, 1988) *citing Weber v. Buncombe County Bd. of Educ.*, 266 S.E.2d 42 (N.C. 1980). Insubordination has been defined as the "willful failure or refusal to obey reasonable orders of a superior entitled to give such order." *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). Insubordination "'includes, and perhaps requires, a willful disobedience of, or a refusal to obey, a reasonable and valid rule, regulation, or

order issued . . . [by] an administrative superior.'" *Hoover v. Wirt County Bd. of Educ.*, Docket No. 2008-1482-WirED (Feb. 12, 2009) (quoting *Butts v. Higher Educ. Interim Governing Bd.*, 212 W. Va. 209, 569 S.E.2d 456 (2002) (per curiam). "'[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 willful; and (c) the order (or rule or regulation) must be reasonable and valid.'" *Id.* "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).

9. 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).

10. Respondent has met its burden of proof by a preponderance of the evidence, and proven the charges against Grievant that led to her three-day suspension. Respondent demonstrated, by a preponderance of the evidence, that Grievant was guilty of insubordination and willful neglect of duty.

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: December 4, 2012

Landon R. Brown
Administrative Law Judge