

THERESA GRANT,

Grievant,

v.

Docket No. 04-06-345

CABELL COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Grievant, Theresa Grant, filed this grievance against the Cabell County Board of Education ("CCBOE" or "Board") on September 13, 2004, over CCBOE's failure to correct a hostile work environment. Her Statement of Grievance says:

Violations of WV Code 18-29-2 sections a, n, o and Cabell County Policy GADBJG with regard to harassment. Grievant is working in a hostile environment, harassed, substantial detriment to and interference with job performance and health and safety of students and employees Due (sic) to the assistant principal's actions and verbal communication.

RELIEF SOUGHT: Relief sought is immediate action by school administration and school system to stop such actions with proper recourse and appropriate discipline of employees causing the harassment. [\(See footnote 1\)](#)

This grievance was denied at all lower levels. Grievant appealed to Level IV on September 21, 2004, and it was placed in abeyance by agreement of the parties on November 8, 2004, pending the outcome of another grievance. A Level IV hearing was held on October 4, 2005, at the Grievance Board's office in Charleston after the resolution of the other grievance. This case became mature for decision on November 14, 2005, after receipt of Grievant's and Respondent's proposed findings of fact and conclusions of law. [\(See footnote 2\)](#)

Issues and Arguments

Grievant asserts Karen Oldham ("Oldham"), the Assistant Principal at Cabell Midland High School when Grievant filed the complaint, and now the Principal at Cabell Midland High School, has harassed her and her family since her father, Ted Barr, President of CCBOE, failed to vote for Oldham to fill a principal's position at Barboursville Middle School in 2003. [\(See footnote 3\)](#)

Respondent asserts the harassment has ceased. Thus, the grievance is moot. Respondent notes Oldham served as principal at Huntington High School during the 2004 - 2005 school year and argues there was no harassment during this time, and there has been none since.

Grievant maintains the harassment has continued until the present, and she presented recent examples of harassment and hostile work environment. Grievant notes Oldham is now the principal of her school, Cabell Midland High School and as such has control over all aspects of her work environment.

After a detailed review of the entire record, the undersigned Administrative Law Judge makes the following Findings of Fact. It must be noted that due to the number of allegations Oldham made against Grievant, they will not all be discussed in detail. A representative sample will be given in order to demonstrate the type of harassment Grievant suffered on a frequent and continuous basis, and the hostile work environment created by this harassment.

Findings of Fact

1. Grievant has been employed by CCBOE for 20 years as an English teacher. At the time she filed this grievance, she was teaching English at Cabell Midland High School, and was in charge of the yearbook.
2. Grievant's father is the president of CCBOE. He has held that position for

several years.

3. It appears Grievant and Oldham began working together during the 2001 - 2002 school year. There was no evidence to suggest there were problems between these two employees during this time. There is no record Oldham filed complaints about Grievant, and while they were not really friends, they did speak to each other in a friendly manner.

4. During the 2002 - 2003 school year, Cabell Midland High School had a dress-up day year, and Grievant told Oldham she might dress like her. The next day, when then- Principal John Flowers saw Grievant dressed as Oldham, he called Oldham down to see Grievant's attire. [\(See footnote 4\)](#) At the time of this occurrence, everyone who saw Grievant and Oldham believed the matter was in good fun and reported Oldham did not appear upset. When Oldham saw Grievant she indicated that if she wanted to look like her she should decrease the size of her hips, and Grievant responded she would also need to lose some weight in the chest area. Contrary to Oldham's assertions in the following school years, Oldham was not upset about this event at the time it happened. Testimony Lake, Grievant, Schoelein.

5. On March 13, 2003, Oldham filed a grievance about the failure of CCBOE to select her to fill a principal's position. The Level IV hearing was held on December 5, 2003, and a Level IV decision granting the grievance was issued by the undersigned Administrative Law Judge on February 27, 2004. Oldham v. Cabell County Bd. of Educ., Docket No. 03-06-269 (Feb. 27, 2004).

6. At the start of the 2003 - 2004 school year, Grievant passed Oldham in the hall, and Oldham did not speak to Grievant. Grievant asked another teacher about this and was told Oldham was mad at Grievant because Grievant's father had not voted to place her in the Principal's position.

7. Thereafter, Grievant did not speak to Oldham when they passed in the hall. Subsequently, Oldham verbally complained to then-Principal Robert Lake stating she had passed Grievant in the hall fourteen times, and Grievant had not spoken to her.

Oldham complained that as Grievant's superior, Grievant should be required to speak to her. Principal Lake investigated this complaint and found it was true that Grievant had stopped speaking to Oldham after her non-response at the start of the school year. Principal Lake did not see any need to take further action.

8. Oldham continued to make numerous verbal complaints about Grievant, Grievant's husband, and Grievant's son, who was a student at Cabell Midland High School. Principal Lake investigated all these complaints, and found many could not be proven one way or the other, and others were simply not true. Responding to these complaints took many of Grievant's planning periods, and at times, she had to stay after school to complete her work.

9. Tom Roach, an employee at Cabell Midland High School, frequently accompanied Oldham to Principal Lake's office when she filed these complaints. [\(See footnote 5\)](#)

10. Grievant asked Principal Lake to schedule a meeting with Oldham to see if the problems could be worked out. Oldham refused, citing the advice of her attorney. Over the course of the 2003 - 2004 school year, Grievant asked for mediation two more times and each request was refused by Oldham.

11. Because of the number of complaints, Principal Lake asked Oldham to put further complaints in writing and she did. [\(See footnote 6\)](#) Principal Lake continued to investigate these complaints and continued to find no substance in them. Responding to these complaints continued to take up a lot of Principal Lake's and Grievant's time.

12. Sometime during the spring semester of 2004, Oldham's husband filed a citizen's complaint with the central office repeating many of the complaints previously made to Principal Lake about Grievant and adding numerous complaints about Principal Lake. [\(See footnote 7\)](#)

13. Principal Lake repeatedly asked his supervisor for assistance in dealing with the complaints filed by Oldham and the conflict between Grievant and Oldham. Little help was forthcoming. He followed the small amount of advice he received, read books

on the subject of conflict resolution, and even consulted his minister. He became very stressed, was afraid he might have another heart attack, and turned in his resignation to retire in April 2004. CCBOE asked him to reconsider his resignation, and Principal Lake agreed to rescind his resignation. President Barr was not one of the board members who called Principal Lake.

14. After Principal Lake withdrew his resignation, Oldham's husband filed approximately nineteen more complaints regarding Principal Lake, Grievant, Grievant's husband, and Grievant's son. Again, several of these complaints were the same ones Oldham had filed with Principal Lake, and he found to be without substance. When Principal Lake asked Oldham why she was doing this, she responded he might change his mind about resigning. [\(See footnote 8\)](#)

15. A lengthy and time-consuming investigation into these citizen complaints was conducted by Allyson Schoelein and Dennis Miller from the Central Office. (Oldham put the number of these complaints as thirty-eight. Grt. No. 1 at Level IV.) Thirty-eight employees were questioned, and the investigation took ten to fifteen hours a week of Ms. Schoelein's time for months. Ms. Schoelein found the investigation to be a waste of time because of all the charges filed in these citizen complaints, only one was proven. Principal Lake readily admitted he allowed Cabell Midland High School teachers input on which classes their children were placed in while they attended Cabell Midland High School. After he was told this action was incorrect, he never did it again. It is unclear when these investigative reports were completed.

16. Some examples of the complaints filed both by Oldham with Principal Lake and by Oldham's husband as citizen complaints during the 2003 - 2004 school year are:

- a. Oldham reprised the complaint Grievant intentionally dressed like Oldham the year before with the intent and purpose of causing Oldham embarrassment. Oldham was very embarrassed and made several complaints to Principal Flowers. The investigation found Grievant had not complained to Principal Flowers about this act, and

at the time the action occurred, everyone, including Oldham, saw the event as in good fun.

b. Grievant and another teacher repeatedly came to the office of Assistant Principal Meadows with the intent and purpose of harassing Oldham whose office was next door. The investigation found Grievant and the other teacher came to Assistant Principal Meadows' office once on school business. Assistant Principal Meadows was Grievant's evaluating administrator. Shortly thereafter, Assistant Principal Meadows asked, through his union representative, to have his office moved away from Oldham.

c. Grievant repeatedly broke into Oldham's office, and Oldham had her keys changed three times. No evidence was found to support this allegation, and Oldham never reported anything missing.

d. Grievant's husband repeatedly videotaped Oldham. The investigation established Grievant's husband was parked at school to pick up his son. He believed he was legally parked, and other cars were parked where he was. He was told, after Oldham complained, that he must move and park his car elsewhere. The next day, Grievant's husband stood across the road, not on school property, and videotaped the cars parked exactly where he had been parked the previous day, and noted these cars were not asked to move. He did not remember seeing Oldham at all while he videotaped.

e. Grievant's husband came to school one day with the intent and purpose of harassing Oldham. The investigation revealed Grievant's husband came to school to watch his wife receive the Staff Member of the Month Award, and he signed in properly. In regard to this same event, Oldham also complained Principal Lake had illegally changed her job description, when he did not allow Oldham to give Grievant this award. Principal Lake determined it would not be appropriate for Oldham to give Grievant this award because of the numerous complaints she had lodged against Grievant.

f. Principal Lake told Oldham to call Grievant's ex-husband's wife so this

woman could tell Oldham about the mistreatment she had received from Grievant.

Oldham testified she called this woman because she "was fearful of her life." Principal Lake did not tell Oldham to call this woman, and, indeed, this woman called Grievant to inform Grievant that Oldham had called her trying to obtain information.

17. On July 2, 2004, during a hearing on two other grievances filed by Oldham, Oldham repeated many of the previous allegations against Grievant. These accusations were after the citizen complaint investigations were completed finding no substantiation of the allegations. Some of these accusations were:

a. Grievant had "wreaked havoc" on her life at Cabell Midland High School during the school year and has a history of retaliatory acts.

b. Grievant and her son followed her, and a police report was filed on this act. [\(See footnote 9\)](#) (It should be noted that while Oldham complained to the Milton Police Department, no report was taken as no crime was reported.) As with the other complaints, this accusation has never been proven. In addition, Grievant does not leave Cabell Midland High School at the same time Oldham does. (There was also an accusation Grievant's son followed Oldham, but he did not have his driver's license at the time of this complaint.)

c. Grievant dressed up like her and made a reference about Oldham's breast size.

d. Grievant sent hate e-mail to her home that said things like "you are dismissed," and "counterstrike." No evidence established the email came from Grievant.

e. Grievant stopped her on the first day she started work at Cabell Midland High School and said if you are nice to me and do me favors, then maybe my daddy would vote for you sometime. Oldham's response was, "That's not how I attain votes. I attain votes on my merits and my credentials." Grt. No. 1 at Level IV. Oldham also voiced this complaint at the Level IV hearing. She stated Grievant had "repeatedly" and "time and again" made this remark. On close questioning, Oldham testified Grievant had

made this remark once to her in 2001 and again in 2002.

18. In the deposition of July 2, 2004, Oldham also accused the successful applicant for the position she was grieving of snapping her bra strap in the middle of a professional meeting. (The undersigned Administrative Law Judge does not find this assertion to have merit.) Oldham also found it very offensive that Principal Lake had asked her if she would like to take a ride on his motorcycle. Grt. No. 1 at Level IV.

19. Oldham was awarded the Huntington High School Principal position for the 2004 - 2005 school year. Throughout this school year, Grievant had little direct contact with Oldham, but received reports from friends that Oldham was "trashing" her. Grievant continued to receive hate mail, but could not confirm Oldham sent these missives.

20. Pursuant to a Level IV grievance Decision, Oldham was awarded the Principal's position at Cabell Midland High School for the 2004 - 2005 school year. Oldham v. Cabell County Bd. of Educ., Docket No. 04-06-286 (June 23, 2005). [\(See footnote 10\)](#) Upon her return to Cabell Midland High School, and during the short time before this Level IV hearing, she has harassed Grievant, told lies about her, and has harassed those who are friendly to Grievant. Examples of these acts are:

a. Oldham refused to let Amy Neal, a teacher with twenty years of employment with CCBOE, pass out free food to the police officers who work at the football games. Ms. Neal has served this food to the officers for years. [\(See footnote 11\)](#) Ms. Neal also believes Oldham has taken action against her relatives because she is a friend of Grievant and because she wanted to be a part of a group grievance filed against Oldham. Ms. Neal tried to discuss the situation with Oldham in the presence of her representative, but this conversation "did not go well."

b. Oldham accused Grievant of touching her when she had not, reported this alleged act to the central office, and demanded action to prevent a reoccurrence of this behavior.

21. Oldham has also filed complaints about Mike Bauman, an Assistant Principal

at Cabell Midland High School, and Regina Sanders, a teacher at the school.

22. Ms. Neal, Ms. Sanders, and Mr. Bauman were in tears and very concerned that their testimony at Level IV would cause Oldham to take out her anger on their children, but testified anyway.

23. When asked at hearing by CCBOE's attorney what could be done to work out or at least make the situation more harmonious, Oldham's response was, the situation was "hopeless," and she had "given up," and when Grievant had "impacted" her family there was "no turning back at that point." Oldham also stated,

If she just maintains professionalism, I'm not going to cross in her direct path at all. I could care less as long as she's doing what she should be doing for the students in that school and what is best for Cabell Midland, and that's not forming wedges and causing that building to deteriorate. Even the person that was her colleague that she hung out with all the time transferred to another school because people came to me time and time again. They did not want to be pulled into the middle of this, and Mr. Seufer, I completely understand because I have lived it for two years, and I will not live it another year. . . . She has to understand that she is a teacher there, she is a professional, I am the boss. Am I going to go after her? No. I have no desire to I don't have time for her nonsense.

24. Oldham has harassed Grievant, told lies about her, caused her stress and pain, and created a hostile work environment.

25. At the conclusion of this one day, Level IV hearing, Oldham, who appeared pursuant to a subpoena from Grievant, submitted a typed request for mileage for travel to the hearing. This was appropriate, however, she also requested \$35.00 as a meal allowance. Since Oldham did not attach any receipts, it is unclear why she requested this amount of money for lunch.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of

the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2004); 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). See W. Va. Code § 18-29-6. "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).

I. Credibility

An issue to address is credibility, as Oldham's report of the alleged events varies substantially from the information provided by Grievant and other witnesses. [\(See footnote 12\)](#) Oldham's allegations continue to accuse Grievant of many evils, even though lengthy and repeated investigations have been unable to establish these events occurred and in many incidences demonstrated they did NOT occur.

In situations where the existence or nonexistence of certain material facts hinges on witness credibility, detailed findings of fact and explicit credibility determinations are required. Jones v. W. Va. Dep't of Health & Human Res., Docket No. 96-HHR-371 (Oct. 30, 1996); Pine v. W. Va. Dep't of Health & Human Res., Docket No. 95-HHR-066 (May 12, 1995). An Administrative Law Judge is charged with assessing the credibility of the witnesses. See Lanehart v. Logan County Bd. of Educ., Docket No. 95-23-235 (Dec. 29, 1995); Perdue v. Dep't of Health and Human Res./Huntington State Hosp., Docket No. 93- HHR-050 (Feb. 4, 1993). "The fact that [some of] this testimony is offered in written form does not alter this responsibility." Browning v. Mingo County Bd. of Educ., Docket No. 96- 29-154 (Sept. 30, 1996).

The Grievance Board has applied the following factors to assess a witness's testimony: 1) demeanor; 2) opportunity or capacity to perceive and communicate; 3) reputation for honesty; 4) attitude toward the action; and 5) admission of untruthfulness. Additionally, the administrative law judge should consider 1) the presence or absence of

bias, interest, or motive; 2) the consistency of prior statements; 3) the existence or nonexistence of any fact testified to by the witness; and 4) the plausibility of the witness's information. [\(See footnote 13\)](#) See Holmes v. Bd. of Directors/W.Va. State College, Docket No. 99-BOD- 216 (Dec. 28, 1999); Perdue, *supra*.

"[A] [f]actor to be considered in making and explaining credibility determinations is [the] possibility that [the] witness is biased and may consciously or unconsciously shade his or her testimony for or against one of the other witnesses or parties." Chin v. Dep't of Treasury, 44 M.S.P.R. 201 (1990). The undersigned Administrative Law Judge finds Oldham's interpretation of events to be profoundly skewed and rather paranoid. Thus, her credibility is nil. The Findings of Fact support this conclusion of the undersigned Administrative Law Judge. Additionally, Oldham's demeanor at hearing was odd, almost manic. She had to be directed repeatedly to answer the question asked and not ramble off point. When Oldham did not want to answer the question, she was evasive and used the opportunity to give more examples of how she believed Grievant had mistreated her. Several of her statements were just not plausible or believable, and other of her statements were outright lies or gross exaggerations.

For example:

1) Oldham stated at Level IV that Grievant told her the first time Oldham met her and many times thereafter, that her father was Ted Barr the President of CCBOE. Grievant allegedly followed with this statement with, "If you are nice to me, I'll get my daddy to vote for you." (See Finding of Fact 17e for Oldham recanting of this statement.) It is observed that people just do not talk this way, especially to people they just met. Additionally, the undersigned Administrative Law Judge had an opportunity to observe Mr. Barr and to listen to his testimony in two grievance hearings. She agrees with his daughter, that Mr. Barr makes up his own mind and is not a person to do something because his daughter "tells" him to do it.

2) Oldham complained Grievant "constantly" invited her to dinner parties. The truth

is, the first couple of years at Cabell Midland High School, Grievant asked Oldham to a Christmas party along with others.

3) Oldham stated she "paid no attention to the yearbook," but complained about Grievant's handling of the yearbook's content to Katy Hoosaflook at Central Office. Ms. Hoosaflook came to Cabell Midland High School, examined the yearbook and found no problems.

4) Oldham denied she shared confidential information with her husband about Grievant's son, but the citizen complaints revealed Oldham's husband knew confidential information about Grievant's son. (Oldham also wrote a memo to Principal Lake identifying Grievant's son, an honor student, as "disabled" when he is not.) 5) Oldham accused Grievant's husband of taking a position at Cabell Midland High School that he did not need and saying to Oldham, he was there to watch the fireworks and he "could go to jail for murder." Grievant's husband, a former CCBOE teacher, had some health problems and held a position where he traveled constantly all over the country. He applied for two posted positions at Cabell Midland High School and Huntington High School and was told he could not have the position at Huntington High School because Oldham was there. He then received the position at Cabell Midland High School. Later Oldham was placed in the Cabell Midland High School position. (Grievant's husband has been off work much of this year because of a heart attack.)

It should also be noted Oldham's credibility has already been called into question in Oldham v. Cabell County Board of Education, Docket No. 04-06-280 (June 23, 2005). In this case Oldham alleged a board member had intentionally embarrassed, humiliated, and terrified her son. The findings of the administrative law judge in that case did not support Oldham's allegations.

By contrast the testimony of Grievant, Principal Lake, and teachers at Cabell Midland High School was straightforward, heartfelt, reasonable, and consistent. At the Level IV hearing, several witnesses were in tears because of their concern that Oldham would

harass their children the way Grievant's child had been harassed because of their testimony. One individual had asked to be released from her subpoena, and Grievant granted this request, but the teacher testified anyway because she wanted to do "the right thing."

A key witness was Ms. Schoelein, who conducted the citizen complaint investigations. She did not have a relationship with either Grievant or Oldham and had no bias or motive to attempt to affect the outcome of this grievance. Clearly, she conducted a lengthy investigation talking to 38 witnesses. She found nothing to support Oldham's allegations.

Because of the type and number of unsupported allegations made by Oldham about Grievant and others, the overall flavor of her assertions was rather paranoid and grandiose. To follow Oldham's logic, Grievant, who received a staff member of the month award, during this time, engaged in constant acts of wrongdoing. Additionally, Grievant's husband and her son also engaged in repeated acts designed to harass her. It should be noted that while Oldham's testimony lacked credibility, it is not necessarily found that Oldham knew she was lying, but rather the undersigned Administrative Law Judge finds Oldham is unable to perceive events properly when they involve Grievant, Grievant's husband, Grievant's son, and certain other teachers at Cabell Midland High School. This is truly a shame, and these inaccurate perceptions do not appear correctable.

II. Harassment

Grievant asserts Oldham's treatment of her constitutes a pattern of harassment. W. Va. Code §18-29-2(n) defines "harassment" as "repeated or continual disturbance, irritation or annoyance of an employee which would be contrary to the demeanor 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). Similarly, repeated comments of a sexual nature by a supervisor have been found to constitute harassment. Hall v. W. Va. Dep't of Transp., Docket No. 96-DOH-433 (Sept. 12, 1997). See Tibbs v. Hancock County Bd. of Educ., Docket No. 98-15-016 (June 16, 1998). A single incident does not constitute harassment. Id; Metz v. Wood County Bd. of Educ., Docket No. 97-54-463 (July 6, 1998). Johnson v. Dep't of Health and Human Res., Docket No. 98-HHR-302 (Mar. 18, 1999).

Grievant has clearly demonstrated she has been subjected to harassment by her then-Assistant Principal, and that she is currently harassed by her Principal. Grievant has established a pattern of repeated and continual maltreatment by Oldham, and she has demonstrated she has been treated in a manner contrary to law. This treatment has interfered with Grievant's job performance and increased the amount of time needed to complete her work, as well as creating stress and concern for herself and her family.

III. Hostile Work Environment

Grievant also asserted Oldham created a hostile work environment. "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, 513 S.E.2d 463, 467 (1998). See Hanlon v. Chambers, 195 W.Va. 99, 464 S.E.2d 741 (1995). As established by the Findings of Fact, Oldham has abused her position of authority, and generated a work environment for Grievant characterized by repeated accusations. It should also be noted that while Oldham was not Grievant's immediate supervisor during the 2003 - 2004 school year, Grievant was in a subordinate position to Oldham. The case of Woody v. Division of Rehabilitation, Docket No. 02-RS-382 (June 8, 2005) is

somewhat instructive. In Woody, the agency removed a supervisor from her position because she was unfit for the supervisory assignment to which her otherwise good work performance had catapulted her. She abused her power by harassing and threatening her employees, and bragging about her power over them.

Here, Oldham has many paper qualifications, numerous educational skills, and an abundance of additional training. Oldham has her doctorate and has gone to more specialized education/training than anyone the undersigned Administrative Law Judge has ever seen, but clearly she has severe limitations in the area of conflict resolution, interpersonal relationships, and recognition of her own behavior and its effect. Oldham did create a hostile work environment for Grievant.

IV. Employee Code of Conduct

Although not raised by the parties, the undersigned Administrative Law Judge finds it necessary to address Oldham's failure to abide by the Employee Code of Conduct at W. Va. C. St. R. §126-162-4. In pertinent part, this Code of Conduct **requires** all West Virginia school employees to:

4.2.1. exhibit professional behavior by showing positive examples of preparedness, communication, fairness, punctuality, attendance, language, and appearance.

4.2.2. contribute, cooperate, and participate in creating an environment in which all employees/students are accepted and are provided the opportunity to achieve at the highest levels in all areas of development.

4.2.3. maintain a safe and healthy environment, free from harassment, intimidation, bullying, substance abuse, and/or violence, and free from bias and discrimination.

4.2.4. create a culture of caring through understanding and support.

. . .

4.2.6. demonstrate responsible citizenship by maintaining a high standard of conduct, self-control, and moral/ethical behavior.

4.2.7. comply with all Federal and West Virginia laws, policies, regulations and procedures.

As noted by the above cited Code of Conduct, it is clear Oldham has violated these requirements and has not conducted herself in a professional and responsible manner. Oldham has specifically not "maintain[ed] a safe and healthy environment, free from harassment, intimidation, bullying," and has not "demonstrate[d] responsible citizenship by maintaining a high standard of conduct, self-control, and moral/ethical behavior." Oldham and her husband abused the various methods designed by the school system to resolve complaints to carry out a vendetta against Grievant and Principal Lake, and the really lamentable part is the administration let Oldham run roughshod over these two long-term employees. Contrary to Oldham's assertions, it would appear being the daughter of CCBOE President has actually resulted in less protection for Grievant.

One of the essential functions of the administrators in the Central Office is to protect its employees from abuse and harassment. It is also their role to assist principals when the need arises. Principal Lake's supervisor did not help him resolve the issues Oldham had with Grievant, and when he attempted to deal with the problem, Oldham then turned her hate campaign on Principal Lake until he tendered his resignation.

CCBOE also had a duty to protect its employees. While the undersigned Administrative Law Judge is aware Oldham has now filed a civil suit against the majority of CCBOE board members (she volunteered this information at the Level IV hearing), this does not excuse these elected officials from carrying out their duty to protect their

employees. ([See footnote 14](#))

It is noted CCBOE dealt with this issue by saying it is now moot, because Oldham was placed at Huntington High School for a while. Yet, even after Oldham left Cabell Midland High School, she continued to harass Grievant as noted by her testimony in one of her grievance hearings on July 2, 2004. Additionally, Oldham has already reported Grievant to the Central Office for acts she did not do, and has harassed Grievant's friends this school year. Accordingly, since the harassment has not ceased, this issue cannot be moot.

V. Relief sought

W. Va. Code § 18-29-5(b) states an administrative law judge may "provide such relief as is deemed fair and equitable in accordance with the provisions of this article" Given this directive, the undersigned Administrative Law Judge must attempt to fashion relief that will prevent any further interaction between Grievant and Oldham, remove any supervisory control Oldham could have over Grievant in any way, and to make it clear to Oldham that this type of behavior is unacceptable and MUST cease.

By constantly harassing Grievant and by being confrontational and unprofessional, Oldham has created a hostile work environment and has not demonstrated the leadership qualities CCBOE has a right to expect from her. W. Va. C. St. R. § 126-142-18 addresses the responsibilities for administrators, and it is clear Oldham did not meet these expectations. This failure to perform should have been noted in Oldham's evaluation for the 2003 - 2004 school year, and if this had been done it would have resulted in an unsatisfactory evaluation and a much needed Improvement Plan. Although Oldham's evaluations were not submitted into evidence, Oldham testified at Level IV that she walked out of her 2003 - 2004 evaluation with Principal Lake because he did not rate her as exemplary in all areas, but instead rated her as "meets standards" and "exceeds standards." Clearly, Oldham did not receive an unsatisfactory evaluation for that school year. Unfortunately, the undersigned Administrative Law Judge does not

have the authority to correct this error.

Accordingly, the undersigned Administrative Law Judge ORDERS Oldham's current supervisor to closely, correctly, and competently evaluate Oldham immediately utilizing the facts found in this Decision. Particular notice to areas involving effective communication, conflict resolution, effective leadership, etc. are to be addressed. Violations of the Employee Code of Conduct must be noted. This ordered evaluation cannot be a pretense or charade and should involve appropriate input of other CCBOE employees. Action necessary to correct problems, including an Improvement Plan or discipline, must follow this evaluation. As this assessment will be based on the Employee Code of Conduct and the defined evaluation process, there can be no surprise on Oldham's part that these areas are considered.

Additionally, the undersigned Administrative Law Judge notes that all supervision and interaction with Grievant at Cabell Midland High School is currently through an Assistant Principal. While not demeaning this individual in any way, this is insufficient, as the Assistant Principal is supervised and evaluated by Oldham. Thus, in order to protect Grievant and this Assistant Principal from the fallout of this Decision, Oldham's supervisor will now supervise Grievant and will make any and all decision affecting her employment. This supervision will NOT be held against Grievant, as she did not make this change necessary. Additionally, Oldham's supervisor will now supervise Mr. Bauman, Ms. Neal, and Ms. Sanders. This supervisor will be watchful for any attempt by Oldham to retaliate against these individuals, their spouses, and especially their children. Additionally, Tom Roach and Pam Hughes will make NO decisions affecting these named individuals in any way. [\(See footnote 15\)](#) Further, CCBOE is to pay Grievant for two planning periods a week during the 2003 - 2004 school year. [\(See footnote 16\)](#)

W. Va. Code § 18-29-2(p) defines reprisal as "the retaliation of an employer or agent toward a grievant or any other participant in the grievance procedure either for an alleged injury itself or any lawful attempt to redress it." It should be noted that no

reprisals of any kind may be taken by any agent of the employer against any interested party or other participant in the grievance procedure. A reprisal constitutes a grievance, and any person held responsible for reprisal action is subject to disciplinary action for insubordination. See Woody, supra. CCBOE should be on guard for any action by Oldham that would violate this Code Section.

The above-discussion will be supplemented by the following Conclusions of Law.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2004); 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). See W. Va. Code § 18-29-6. "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). Where the evidence equally supports both sides, the employer has not met its burden. Id.

2. In situations where the existence or nonexistence of certain material facts hinges on witness credibility, detailed findings of fact and explicit credibility determinations are required. Jones v. W. Va. Dep't of Health & Human Res., Docket No. 96-HHR-371 (Oct. 30, 1996); Pine v. W. Va. Dep't of Health & Human Res., Docket No. 95-HHR-066 (May 12, 1995). An Administrative Law Judge is charged with assessing the credibility of the witnesses. See Lanehart v. Logan County Bd. of Educ., Docket No. 95-23-235 (Dec. 29, 1995); Perdue v. Dep't of Health and Human Res./Huntington State Hosp., Docket No. 93-HHR-050 (Feb. 4, 1993). "The fact that [some of] this testimony is offered in written form does not alter this responsibility." Browning v. Mingo County Bd.

of Educ., Docket No. 96-29-154 (Sept. 30, 1996).

3. W. Va. Code §18-29-2(n) defines "harassment" as "repeated or continual disturbance, irritation or annoyance of an employee which would be contrary to the demeanor 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).

4. "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).

5. A single incident does not constitute harassment. Pauley, supra, Metz v. Wood County Bd. of Educ., Docket No. 97-54-463 (July 6, 1998). Johnson v. Dep't of Health and Human Res., Docket No. 98-HHR-302 (Mar. 18, 1999).

6. Grievant has clearly demonstrated she has been subjected to harassment by then-Assistant Principal Oldham, and that she is currently harassed by Principal Oldham.

7. "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, 513 S.E.2d 463, 467 (1998). See Hanlon v. Chambers, 195 W.Va. 99, 464 S.E.2d 741 (1995); Woody v. Div. of Rehab., Docket No. 02-RS-382 (June 8, 2005).

8. Oldham abused her position of authority and created a hostile work environment for Grievant.

9. The Employee Code of Conduct requires all school employees to "maintain a safe and healthy environment, free from harassment, intimidation, bullying," and to "demonstrate responsible citizenship by maintaining a high standard of conduct, self-control, and moral/ethical behavior."

10. Oldham is in violation of the Employee Code of Conduct.

11. W. Va. Code § 18-29-5(b) states an administrative law judge may "provide such relief as is deemed fair and equitable in accordance with the provisions of this article"

Accordingly, this grievance is **GRANTED**. Respondent is Ordered to take whatever steps that are appropriate and necessary, utilizing the corrective and disciplinary measures available to it, to resolve this situation. See White, supra. Respondent is also ordered to follow the directions given in this Decision, including the immediate evaluation of Oldham.

Oldham may not have any supervisory control over Grievant or any other witnesses to these proceedings. All children and spouses of these witnesses are to be protected from any and all retaliation by Oldham.

Any party may appeal this decision to the Circuit Court of Kanawha County, or to the Circuit Court of Cabell County. Any such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code § 18-29-7. Neither the West Virginia Education and State 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 record can be prepared and properly transmitted to the appropriate circuit court.

JANIS I. REYNOLDS

ADMINISTRATIVE LAW JUDGE

Dated: February 28, 2006

[Footnote: 1](#)

Grievant withdrew the request for discipline.

[Footnote: 2](#)

Grievant was represented by Susan Hubbard from the West Virginia Education Association, and CCBOE was represented by Attorney Howard Seufer of Bowles Rice McDavid Graff and Love.

[Footnote: 3](#)

It should be noted the undersigned Administrative Law Judge granted this grievance and directed CCBOE to place Oldham in this position. *Oldham v. Cabell County Bd. of Educ.*, Docket No. 03-06-269 (Feb. 27, 2004).

[Footnote: 4](#)

Mr. Flowers was the principal for the 2002 - 2003 school year, and Robert Lake was the principal for the 2003 - 2004 school year.

[Footnote: 5](#)

The undersigned Administrative Law Judge notes she may not have this name exactly correct.

[Footnote: 6](#)

Oldham also filed complaints about other Cabell Midland High School teachers.

[Footnote: 7](#)

No one was able to explain to the undersigned Administrative Law Judge how Oldham's husband had the right to file these complaints which were about his wife's work situation and not about his concerns or issues concerning his children.

[Footnote: 8](#)

It is unclear how many complaints were filed in total because many of the complaints Oldham filed with Principal Lake had multiple accusations in each one.

[Footnote: 9](#)

Oldham at other times said Grievant repeatedly followed her, and at other times said Grievant followed her three times.

[Footnote: 10](#)

No evidence of Oldham's treatment of Grievant was placed in the Level IV record, nor was there testimony about the investigations and the findings of these investigations.

[Footnote: 11](#)

Ms. Neal was one of several teachers who wanted to file a group grievance about their treatment by Oldham back in 2003. They were told they had to file separately. This information is incorrect. A group of employees may file as a group about their treatment by another employee. See *White v. Monogalia County Bd. of Educ.*, Docket No. 93-30-371 (Mar. 31, 1994).

[Footnote: 12](#)

It should be noted Oldham did not ask to intervene in this grievance, and CCBOE did not put any witnesses on the stand to substantiate any of Oldham's allegations. Indeed, given the report issued by Ms. Schoelein, it does not appear there is any substantiation of Oldham's allegations.

[Footnote: 13](#)

The undersigned Administrative Law Judge originally obtained this list of factors to use when assessing credibility from The United States Merit System Protection Board Handbook. Harold J. Asher and William C. Jackson, Representing the Agency before the United States Merit Systems Protection Board 152-53 (1984).

[Footnote: 14](#)

President Barr did not participate in the Level III hearing and Decision. In fact, he even left the building while the hearing was conducted.

[Footnote: 15](#)

These two teachers were identified as specific friends of Oldham. This is not to imply they could not be fair, but to protect all concerned from the appearance of impropriety.

[Footnote: 16](#)

Since it is unclear how many planning periods Grievant missed because she was required to deal with Oldham allegations, the undersigned Administrative Law Judge selected this amount as "fair and equitable."