WILLIAM HAWKINS,

Grievant,

v. **Docket No. 02-DOE-325**

DEPARTMENT OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, William Hawkins, filed this grievance against his employer, the Department of Education ("DOE"), on June 4, 2002. The statement of grievance reads:

> I have repeatedly been prevented from performing my assigned duties, and I've been harassed and been publicly humiliated.

Grievant attached a statement to the grievance form outlining in detail the incidents which he alleged amounted to harassment and public humiliation by the Principal of the institutional education program operated by the West Virginia Department of Education at Anthony Correctional Center, Rowena Harman. The stated relief sought was “[t]ime to complete assigned work and the elimination of the harassment and public humiliation I have had to endure. Removal of reprimand letter from file.”

On June 7, 2002, Grievant was suspended for two days without pay. Grievant challenged the suspension through the grievance procedure, seeking rescission of the suspension. The two grievances were consolidated at Level II.

The suspension letter, signed by David Stewart, State Superintendent of Schools, reads as follows:

> The West Virginia Department of Education's Employee Handbook for institutional education programs sets forth standards of conduct and performance expectations for all staff members. The standards and expectations include: demonstrating self control; abiding by directives of the State Superintendent or designee; representing the Department in a positive and professional manner; and maintaining just and courteous professional relationships with administrative and supervisory personnel.

> In violation of the above standards of conduct and performance expectations, on June 3, 2002, you were given a directive by your immediate supervisor, Rowena Harman, Principal, Anthony Correctional Center[,] to take your class from the library to your classroom. You refused to comply with this directive for one hour, exhibited anger and threatened to leave the school building and file a grievance. An investigation of this matter by the Department on June 4-5, 2002, confirmed the veracity of the above events.
>
> As a result of your insubordination and violations of the standards of conduct and performance expectations, I am hereby suspending you without pay for two (2) days, beginning June 10, 2002[,] as disciplinary action.
>
> I trust and expect that you will hereafter observe the rules of professional conduct for your position. Should further violations of the standards of conduct or performance expectations occur, you will be subject to more serious disciplinary action, including possible termination.

What Grievant referred to in the harassment grievance as a letter of reprimand, is a letter written by Ms. Harman, arising out of the same event described in the suspension letter. It states that Grievant's actions constitute insubordination, and she is recommending disciplinary action.

The following Findings of Fact are made based upon the evidence presented at Levels II and IV. (See footnote 1)

FINDINGS OF FACT

1. Grievant has been employed by DOE as an Adult Basic Education teacher at Anthony Correctional Center ("ACC") for five years. He teaches social studies, math, and essay writing. 2. Grievant also is the data manager at ACC. He is responsible for completing monthly contact hour reports which are submitted to DOE.

3. ACC is a correctional facility for offenders ages 18 to 23, male and female, operated by the Department of Corrections. DOE employs teachers to provide instruction to those incarcerated at the facility so that they may work toward a GED or a high school diploma, and vocational training is also provided.

4. Rowena Harman became Acting Principal at ACC July 1, 2001. She became Principal in November, 2001. Prior to this she had been a counselor at ACC, and has been an ACC employee for

16 years.

5. In the Spring of 2001, ACC personnel were informed that they would be required to switch to a computerized system for reporting contact hours to DOE, referred to as AEMIS (Adult Education Management Information System). This was a federal requirement, tied to funding. Prior to this, Grievant had prepared monthly reports by hand, which summarized the contact hours of all teachers at ACC. Grievant could prepare these reports in his classroom. He would assign his students work, and then work on the reports. It took him two full days each month to complete these reports.

6. Use of AEMIS requires internet access. Neither Grievant nor any of the other teachers at ACC have access to the internet in their classrooms. Until February 2002, in order to enter data into AEMIS, Grievant had to use either the secretary's computer, Principal Harman's computer, or the computer in the counselor's office. The computer in the counselor's office was available to Grievant and other teachers from September 2001, until a counselor was hired in March 2002, but the other two computers were not always available for Grievant and other teachers to use during the periods of the day they had free. In February 2002, two additional computers in the administration area were made internet accessible. 7. Grievant and Ann Toney, a secretary at ACC, went to a training session in June 2001, to learn how to enter data and prepare the new reports. The plan was for Ms. Toney to enter the data. However, Ms. Toney was not able to take on this task. Grievant was not immediately made aware that Ms. Toney would not be entering data.

8. Grievant learned during an AEMIS training session that in prior years, he had not been completing the monthly contact hour reports correctly, and that many more reports and a lot more work would be necessary. Grievant and the Principal at ACC at that time, Donna Legg, talked about this, and the extra work it was going to take to prepare the reports the correct way. Ms. Legg told him they would continue to do the reports as they had always done them. Grievant believed she was going to try to get approval for this, but this did not occur.

9. Ms. Legg and Grievant talked about giving Ms. Harman some time to get acclimated to her new position before approaching her with the problem of how to report contact hours. Grievant was still hopeful he would be able to do the reports the way he had done them in the past, and did not begin entering data into AEMIS.

10. The only times during the school day Grievant had free that he could leave his classroom and go to the counselor's office or administration to work on a computer were a 45 minute planning

period each day, and 45 minutes at the end of school each day, except on Wednesdays, when there was a scheduled staff meeting.

11. At the beginning of the 2001-2002 school year, and well into the school year, it was extremely time consuming to enter data into the AEMIS system. It took about 20 minutes to get to the site online, about 20 minutes to go to a prior month, and 10 minutes to save data which had been entered. Any data which was not saved within 60 minutes was lost. (See footnote 2)

12. Grievant did not approach Principal Harman about how they were to complete the reports until late September or October 2001. By that time, ACC was already behind in reporting contact hours, and no information had been entered into AEMIS.

13. Grievant contacted Louise Miller, Adult Basic Education technology coordinator, in October or November 2001, and told her he was concerned about being so far behind, and that he was not being given time to work on AEMIS. Ms. Miller met with Principal Harman in November 2001, and explained the situation to her. Principal Harman knew very little about AEMIS prior to this meeting. Ms. Miller told Principal Harman that either Grievant or the other teachers at ACC would need to be allowed at least one day a week to work on AEMIS until they got caught up. When she returned to ACC from this meeting, Principal Harman told Grievant the contact hour reports could not be done the way he had done them in the past. Grievant told her he would need some time to work on AEMIS. Principal Harman did not discuss giving Grievant one day a week to enter data at this time, nor did she take any steps to implement such a system. She told Grievant he would have to work on AEMIS in the evenings.

14. Grievant began entering data in AEMIS in November 2001. He did so during his planning period, and he would take the two students in his fourth period class to the administration area and assign them work, and monitor them while he worked on the computer on AEMIS. He asked Principal Harman to assign these students to other teachers during fourth period so he could have this time to work on AEMIS. Principal Harman told him she would do this; however, instead, Grievant was assigned more students in his fourth period class. With these additional students, he could not take the students to the administration area and work on AEMIS as he had been doing. Principal Harman did not explain to Grievant why this had occurred. 15. Grievant was also chair of the accreditation committee. In December 2001, or January 2002, Principal Harman and Grievant discussed the need to work on accreditation. Grievant believed Principal Harman wanted him to

focus on accreditation and put AEMIS “on the back burner.” Principal Harman does not recall saying anything to this effect.

16. Principal Harman did not understand how time consuming it was to enter data into AEMIS even though Grievant and at least one other teacher tried to explain this to her.

17. Early in 2002, Principal Harman received a telephone call from Fran Warsing, Supervising Principal of Adult Programs for the Office of Institutional Education, regarding how far behind ACC was in reporting contact hours on AEMIS. They decided they needed to give Grievant some time to get caught up.

18. Principal Harman was concerned that the AEMIS system was showing that the teachers at ACC were not doing anything, as no contact hours were being reported.

19. Principal Harman also spoke with Louise Miller about this matter. Ms. Miller told her Grievant would be able to enter all the data, even though Grievant was telling Principal Harman that it would be difficult, if not impossible, for him to do so.

20. In early March, 2002, Grievant and Principal Harman discussed what needed to be done to get the data entered into AEMIS. Grievant proposed that he work on the problem over the week-end, and present scenarios for accomplishing this task on Monday.

21. When Grievant returned to work on Monday there was a copy of a letter in his mailbox, which Principal Harman had sent to Ms. Warsing, stating Grievant would be allowed one entire day each week to enter data into AEMIS. It agitated Grievant that Principal Harman did not wait for him to present the scenarios he had worked up, after they had agreed that he would do this over the week-end. Principal Harman wrote the letter to make it clear to Grievant that AEMIS was his responsibility. 22. Grievant presented his proposals to Principal Harman on Monday anyway. One proposal was for him to enter all the data, which he felt would take him two full days a week, although he noted he still did not believe this would be enough time. His other proposal was for all the teachers to be trained on AEMIS, and enter their own data, with each teacher being allowed one full day a week for this. Principal Harman told Grievant he would be responsible for entering all the data, and she would give him one day a week to do so. Later in the day Grievant told Principal Harman he was going to file a grievance, and she told him that was fine, and then told him she would give him two days a week to enter data into AEMIS. At the staff meeting that afternoon, she announced that Grievant would be given two days a week to enter data into AEMIS, and then stated

she did not think he needed that much time. Shortly thereafter, Principal Harman changed her mind, deciding that each teacher would enter his or her own data, and each would be given a day a week to do so.

23. Beginning sometime in March, 2002, all the teachers at ACC were trained on AEMIS so they could enter their own data. Each teacher was allocated one full day each week to enter his or her own data. Grievant's day was Monday.

24. When the teachers worked on AEMIS, their students would be placed in the library to work on an assignment from the GED book, or to watch an educational video.

25. Principal Harman set a deadline of May 3, 2002, for all the data to be entered on AEMIS. Grievant told her this deadline was unrealistic. Principal Harman believed Grievant had proposed this date.

26. All the data had not been entered into AEMIS by May 3, 2002. Teachers were still allowed one day a week to enter data after this deadline.

27. On Monday, May 6, 2002, and Monday, May 20, 2002, Principal Harman told Grievant he would have to take his students back to his classroom because there were other classes in the library, and he could not work on AEMIS. One of these days Grievanthad only two or three students, and he was able to place them with other teachers and then returned to work on AEMIS. The other day he convinced Principal Harman that his class was small enough that they could be left in the library, and he worked on AEMIS that day.

28. Monday, May 13, 2002, was an out of school environment day. Grievant was not required to report to work that day and did not work on AEMIS that day. Monday, May 27, 2002, was a holiday, and Grievant did not work on AEMIS that day.

29. Grievant did not ask Principal Harman for an additional day in May 2002, to enter data, to make up for the two non-working days.

30. On Monday, June 3, 2002, Grievant placed his eight students in the library, so he could work on AEMIS. Principal Harman told Grievant he would have to take his students back to his classroom, because two other teachers were out sick that day, and their students were in the library also. She believed there were too many students in the library. There were 16 students in the library. She told Grievant one of the teachers would be back at noon, and he could work on AEMIS then. Grievant became upset and said, “[w]ell, I'm sick too. I'm going home,” and he left the administration

area, leaving his students in the library. Grievant was not ill. Paige Curry, the school counselor, was present for this exchange. Principal Harman asked her to check on Grievant.

31. Ms. Curry spoke with Grievant, and he decided not to leave. Grievant told Principal Harman he would stay, and that he wanted a grievance form. Principal Harman's secretary was not in the office at that time, and Principal Harman told Grievant she did not know where the grievance forms were kept. Grievant took his students back to his classroom within an hour. Principal Harman provided Grievant with a grievance form later in the day.

32. Principal Harman documented this incident in a letter to Grievant dated June 3, 2002, which she copied to Frank Andrews, DOE's Superintendent of InstitutionalEducation Programs. She concluded that Grievant's actions constituted insubordination, and recommended disciplinary action be taken.

33. Ann Brewster was assigned by DOE to conduct an investigation of the incident. She interviewed several ACC employees on June 4 and 5, 2002, including Grievant and Principal Harman, and concluded that Grievant had been insubordinate.

34. By letter dated June 7, 2002, Grievant was suspended for two days without pay for insubordination, beginning June 10, 2002.

35. Teachers at ACC do not have to ask permission to leave, and are free to leave for any reason. They place their students with security, and report they are leaving.

36. Principal Harman did not tell Grievant he could not leave the premises on June 3, 2002.

37. One security officer patrols the hallways and classrooms and is responsible for supervising students in the library.

38. Major Wayne White has been the Chief Correctional Officer at ACC for 29 years. He did not believe having 15 to 20 students in the library created a security problem. Had there been such a problem, he could have provided additional security officers, or the students could have been returned to their dormitories.

39. On February 12, 2002, a student in Grievant's class wished to leave class. Grievant repeatedly told the student to sit down, and when he would not do so, Grievant physically moved the student's arm and shut the door. Grievant went to Principal Harman's office and told her what had occurred, that he felt he had been in a hostile situation and was a hostage, and that he was going to do a violation report. Principal Harman told Grievant, in the presence of other staff, that she thought

he should file a violation report, but cautioned him that it was policy that they do not touch the students. Grievant became upset with this response and said he would do the same thing again, and anyone else in the same situation would have done the same. Principal Harman also toldGrievant on another occasion, in the presence of other staff, that she did not believe he had handled another incident with a student correctly.

40. On March 1, 2002, during a staff meeting, Principal Harman asked Grievant how the contact hour reports had been done in the past. Grievant began to respond by stating the reports had not been done correctly. Principal Harman interrupted Grievant and said, “[t]hat's not what I asked you.” Grievant was embarrassed by this statement made in front of his peers, and left the staff meeting for about five minutes.

41. During the 2001-2002 school year, Principal Harman stated during a staff meeting that the students were having a lot of trouble taking the GED social studies and math tests, and finishing the social studies test. Grievant believed this was directed at his teaching skills. Principal Harman was reporting a fact to the staff. She did not believe this student difficulty had anything to do with Grievant's teaching abilities, and did not intend to demean Grievant. She believes this problem occurs because of the way the test is formatted, but she did not tell her staff this belief.

42. Instructors at ACC serve as “focus teachers,” working with a small group as advisors in a setting similar to a homeroom. Grievant had a focus student who was involved in a white supremacist group, and was having some trouble in the dormitory due to this. Grievant was not aware of this until it was brought up in a staff meeting. Principal Harman asked Grievant if he was aware of the student's involvement, and when he responded that he was not, she commented in the presence of the other staff, “[t]his is who I have for focus teachers?” This comment upset Grievant. One of the teachers present felt the comment was directed at Grievant and was bothered by it, another teacher present felt the comment was directed at all the teachers and found the comment offensive.

DISCUSSION

With regard to the claims of harassment and public humiliation, Grievant bears the burden of proving each element of his grievance by a preponderance of the evidence. Conner v. Mingo County Bd. of Educ., Docket No. 95-29-476 (Mar. 28, 1996). Respondent, however, bears the burden of proving the charges against Grievant, which resulted in a two day suspension, by a preponderance of

the evidence. W. Va. Code § 29- 6A-6; Ramey v. W. Va. Dep't of Health, Docket No. H-88-005 (Dec. 6, 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 and Human Resources, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the employer has not met its burden. Id.

Grievant argued that Principal Harman repeatedly harassed him in front of other teachers, and prevented him from working on AEMIS. He argued he was not insubordinate, rather he was frustrated and upset. He noted that he was never given an order to take his class from the library, and that he is allowed to leave ACC at any time without permission to do so. He further pointed out that he did take his class from the library back to his classroom, as Principal Harman asked him to do.

Respondent denied that Principal Harman's interaction with Grievant constituted harassment, and pointed out that Grievant had not done much to get data entered until late in the fall of 2001, had not kept Principal Harman informed about the problems he was having with AEMIS, and had not requested time to train teachers. Respondent asserted it was Grievant who had not acted in a professional manner when he angrily exited meetings. Respondent further argued that Grievant was given a directive which was legal and did not place him at risk, and he chose not to comply, constituting insubordination. Respondent argued it was very important that employees at ACC act professionally, and follow the directives of their supervisors, because the students are felons.

Grievant also argued for the first time in his post-hearing written argument that he was not provided a pre-deprivation hearing prior to his suspension. Respondent objected to this new argument, as it was not on notice that this was an issue, and had not beenallowed the opportunity to present evidence or argument on this issue. In fact, neither party presented evidence which would be sufficient for the undersigned to address this issue. As is the Grievance Board's policy, this new argument will not be addressed for the very reasons articulated by Respondent. Beckley v. Lincoln County Bd. of Educ., Docket No. 95-22-107 (Feb. 29, 1996).

Whether Grievant's actions constitute insubordination must be examined in light of a recent decision in this area. The Supreme Court of Appeals of West Virginia has stated that insubordination “includes, and perhaps requires, a wilful disobedience of, or refusal to obey, a reasonable and valid rule, regulation, or order issued by . . . an administrative superior.” Butts v. Higher Educ. Interim Governing Board/Shepherd College, __ W. Va. __, 569 S.E.2d 456 (2002). “[F]or there to be

'insubordination,' the following must be present: (a) an employee must refuse to obey an order (or rule or regulation); (b) the refusal must be wilful; and (c) the order (or rule or regulation) must be reasonable and valid." Id. "If an employer's policy forbids certain conduct, an order which directs an employee to engage in the banned conduct, is an unreasonable and/or invalid order. Id." Butts v. Higher Educ. Interim Governing Bd., Docket No. 01-HE-100R (Dec. 6, 2002). "[F]or a refusal to obey to be 'wilful,' the motivation for the disobedience must be contumaciousness or a defiance of, or contempt for authority, rather than a legitimate disagreement over the legal propriety or reasonableness of an order." Butts, supra, 569 S.E.2d 456. "Failure to act must be based on a 'good faith belief.' Id." Butts, supra, Docket No. 01-HE-100R. "Employees are expected to respect authority and do not have the unfettered discretion to disobey or ignore clear instructions." Reynolds v. Kanawha- Charleston Health Dep't, Docket No. 90-H-128 (Aug. 8, 1990) citing Meads v. Veteran Admin., 36 M.S.P.R. 574 (1988). See also Daniel v. U. S. Postal Serv., 16 M.S.P.R. 486 (1983); Davis v. Smithsonian Inst., 13 M.S.P.R. 77 (1983). "Uttering abusive language to a supervisor may constitute insubordination. Payne v. W. Va. Dept. of Transp., Docket No.93-DOH-454 (Apr. 29, 1994). See Burton Mfg. Co. v. Boilermakers Local 590, 82 Lab. Arb. (BNA) 1228 (1994) (Holley, Arb.)." Conner v. Barbour County Bd. of Educ., Docket No. 94- 01-394 (Jan. 31, 1995).

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." "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. Id; Metz v. Wood County Bd. of Educ., Docket No. 97-54-463 (July 6, 1998).

Whether Grievant's actions on June 3, 2002, constitute insubordination is a close call. While Grievant was not given an "order," it is clear that Principal Harman intended that Grievant comply with her request, and that Grievant rejected this request. Grievant's response to Principal Harman's request that he remove his students from the library, however, represented a legitimate disagreement with the reasonableness of her request. As demonstrated by the testimony of Major White, in retrospect, Principal Harman's concern that there were too many students in the library was

erroneous; however, there was no indication that Grievant believed this at the time of the exchange. It is also clear that Grievant's response was unprofessional, showed disrespect for Principal Harman, and was inappropriate, regardless of his frustration level. Grievant's response to being told to remove his students from the library is reminiscent of a temper tantrum by a child who does not get what he wants. It does not matter whether Grievant was right. It is imperative that an adult professional, working as a teacher with felons in a correctional facility, be able to exercise more self-control than was shown here. Grievant's argument that he was notinsubordinate because he declared he was sick too, and he could leave without permission at any time, is specious.

The undersigned concludes that Grievant's unprofessional, disrespectful response to Principal Harman constitutes insubordination, regardless of whether he had a legitimate gripe. There were certainly better ways for Grievant to handle his disagreement with his supervisor.

By the same token, Principal Harman did not treat Grievant with respect, or interact in a professional manner with him on certain occasions, which resulted in Grievant feeling humiliated and upset. Her remark about focus teachers was unprofessional and uncalled for, and while it certainly reflected on teachers other than Grievant, it obviously was primarily directed at Grievant. When she cut Grievant off in front of his peers, and told him that was not what she was asking, this was not the type of exchange expected between people who have to work together, but rather was the type of reprimand one might expect in an adversarial setting, and was obviously embarrassing to Grievant. Certainly, if Grievant needed to be taken to task about any matter, including touching students, this type of conversation should have been conducted in Principal Harman's office, not in the presence of Grievant's peers. Perhaps Grievant is overly sensitive to criticism, but this criticism was not constructive, and clearly added to the communication problems between Principal Harman and Grievant. While these comments do not amount to harassment, they were not professional or appropriate, and are not the type of interaction which foster mutual respect and good working relationships.

As to the problems and frustrations with AEMIS, this was a disaster waiting to happen, made worse by the change of administration. Grievant was obviously overwhelmed by the tasks with which he was suddenly and unexpectedly faced. He discovered that the job that had taken him two days a month in his classroom to complete, was going to take much longer than this, he could not complete any portion of this task inhis classroom, and Ms. Toney was not going to help him enter data as he

had been told. These circumstances were exacerbated by the inability of Grievant and Principal Harman to communicate in an effective manner, Principal Harman's lack of understanding of the situation, the delay in starting the project while Grievant was hoping he could complete the reports as he had in the past, Grievant's unwillingness to take the leading oar and to work on the project on his own time, Principal Harman's frustration with Grievant's lack of progress, and Principal Harman's unwillingness to give Grievant time to work on AEMIS when the problem was first brought to her attention. Certainly fault can be found with both Grievant and Principal Harman on this issue, and AEMIS is a subject which both parties should put behind them as an extreme situation which they hopefully will not face again. The record does not reflect why Principal Harman would not allow Grievant a day a week to work on AEMIS beginning in November 2001, as Ms. Miller recommended. Certainly, much of the problem would have been resolved had she done so this early in the year. Nonetheless, the undersigned cannot conclude that this decision constituted harassment.

As to Principal Harman telling Grievant he could not work on AEMIS on three occasions after the May 3, 2002 deadline, there is no evidence that Principal Harman's actions were undertaken simply to annoy and impede Grievant, although they certainly had this effect. She truly had concerns about the number of students in the library. While Principal Harman could have perhaps worked out some other method of dealing with this problem so that Grievant could work on AEMIS, the undersigned does not find any harassment of Grievant or unprofessional treatment by Principal Harman in this regard, or in connection with the AEMIS project throughout the year.

It is clear to the undersigned that there is little to no mutual trust or respect here, and that in order for Principal Harman and Grievant to continue to work together effectively, this rift will have to be repaired. This will require significant effort by both Grievant and Principal Harman, and a willingness to put the past behind them. The following Conclusions of Law support the Decision reached.

CONCLUSIONS OF LAW

1. Pursuant to W. Va. Code § 29-6A-6, the burden of proof in disciplinary matters rests with the employer, and the employer must meet that burden by proving the charges against an employee by a preponderance of the evidence. Ramey v. W. Va. Dep't of Health, Docket No. H-88-005 (Dec. 6, 1988).

2 Grievant bears the burden of proving each element of his grievance alleging harassment and

public humiliation by a preponderance of the evidence. Conner v. Mingo County Bd. of Educ., Docket No. 95-29-476 (Mar. 28, 1996).

3. Insubordination "includes, and perhaps requires, a wilful disobedience of, or refusal to obey, a reasonable and valid rule, regulation, or order issued by . . . an administrative superior." Butts v. Higher Educ. Interim Governing Board/Shepherd College, __ W. Va. __, 569 S.E.2d 456 (2002). "[F]or there to be 'insubordination,' the following must be present: (a) an employee must refuse to obey an order (or rule or regulation); (b) the refusal must be wilful; and (c) the order (or rule or regulation) must be reasonable and valid." Id.

4. "If an employer's policy forbids certain conduct, an order which directs an employee to engage in the banned conduct, is an unreasonable and/or invalid order. Id." Butts v. Higher Educ. Interim Governing Bd., Docket No. 01-HE-100R (Dec. 6, 2002).

5. "[F]or a refusal to obey to be 'wilful,' the motivation for the disobedience must be contumaciousness or a defiance of, or contempt for authority, rather than a legitimate disagreement over the legal propriety or reasonableness of an order." Butts, supra, 569 S.E.2d 456. "Failure to act must be based on a 'good faith belief.' Id." Butts, supra, Docket No. 01-HE-100R.

6. "Employees are expected to respect authority and do not have the unfettered discretion to disobey or ignore clear instructions." Reynolds v. Kanawha-Charleston HealthDep't, Docket No. 90-H-128 (Aug. 8, 1990) citing Meads v. Veteran Admin., 36 M.S.P.R. 574 (1988). See also Daniel v. U. S. Postal Serv., 16 M.S.P.R. 486 (1983); Davis v. Smithsonian Inst., 13 M.S.P.R. 77 (1983). "Uttering abusive language to a supervisor may constitute insubordination. Payne v. W. Va. Dept. of Transp., Docket No. 93-DOH-454 (Apr. 29, 1994). See Burton Mfg. Co. v. Boilermakers Local 590, 82 Lab. Arb. (BNA) 1228 (1994) (Holley, Arb.)." Conner v. Barbour County Bd. of Educ., Docket No. 94-01-394 (Jan. 31, 1995).

7. 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." "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. Id; Metz v. Wood

County Bd. of Educ., Docket No. 97-54-463 (July 6, 1998).

8. Grievant's response to Principal Harman on June 3, 2002, when she told him she needed him to take his class out of the library was unprofessional and disrespectful of her authority, and constitutes insubordination.

9. Principal Harman's comment about focus teachers, which was primarily directed toward Grievant, was unprofessional and insulting to Grievant, as was her treatment of Grievant in front of his peers when she interrupted him and told him that was not what she had asked him, and when she told him he was not to touch students. Principal Harman's actions, however, do not constitute harassment.

10. Principal Harman did not harass Grievant when she asked him to take his students from the library, and did not allow him to work on AEMIS.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or the Circuit Court of Greenbrier 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 Grievance Board with the civil action number so that the record can be prepared and transmitted to the circuit court.

BRENDA L. GOULD

Administrative Law Judge

Dated: January 31, 2003

Footnote: 1

The grievance was denied at Level I on June 7, 2002. Grievant appealed to Level II, where a hearing was held on August 22, 2002. A Level II decision denying the grievance was issued on September 25, 2002. Grievant bypassed Level III, appealing to Level IV on October 3, 2002. A Level IV hearing was held on November 20, 2002. Grievant was represented by Gary Archer, and Respondent was represented by Heather Deskins, Esquire. This grievance became mature for decision on December 23, 2002, upon receipt of the last of the parties' written arguments.

Footnote: 2

One of the teachers at ACC, Helen Igo, described her nightmare experience with entering data, once the teachers began entering their own data (which will be explained shortly). She came in during spring break and worked trying to enter data from 7:30 a.m.to 4:00 p.m. Because it took so long to move from one screen to another on the system, and because data had to be saved within 60 minutes or it was lost, she lost all the data she entered that day.