ALLEN THOMAS,

Grievant,

v. Docket No. 05-13-433

GREENBRIER COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Allen Thomas, filed this grievance against his employer, the Greenbrier County Board of Education ("GCBOE" or "Board"). The Statement of Grievance reads:

> **Grievant is employed as a regular bus operator. Respondent suspended Grievant without pay for eighteen days. Grievant contends that he was not guilty of racial discrimination/harassment, did not promote use of controlled substance as charged by Respondent. While Grievant concedes that his playing of a tape given to him by a student on his bus without first previewing it was a misjudgement, he contends that his punishment was too severe (a) on its face, (b) in comparison with other disciplinary decision (See footnote 1) , and (c) in view of his good record and evaluations as an employee. (Unknown to Grievant, the tape contained racial slurs and other inappropriate material.) Grievant contends that the board of education violated West Virginia Code §§ 18A-2-7 & 18A-2-12a/W. Va. Bd. Of (sic) Ed. Policy No. 5300.**
>
> **Relief Sought: Grievant seeks compensation for all lost wages and benefits (pecuniary and nonpecuniary (sic)) with interest and expungement from his record of all mention of her (sic) suspension.**

This grievance was filed directly to Level IV on December 7, 2005. A Level IV hearing was held in the Grievance Board's Beckley office on January 13, 2006. This grievance became mature for decision on February 14, 2006, after receipt of the parties' proposed findings of fact and conclusions of law. (See footnote 2)

Issues and Arguments

Respondent asserts Grievant subjected the students on his bus to racial slurs, bad

language, and a song that promoted drug usage. Respondent also avers Grievant violated county policy and the West Virginia Department of Education Employee Code of Conduct.

Grievant alleges there was no intent in his actions; thus, he cannot he guilty of any wilful act such as violating any policy or the Employee Code of Conduct. Grievant maintains he personally did not engage in any racial discrimination or inflict any harassment on anyone. While noting he made a mistake in judgement, he asserts his error was to trust a student.

After a detailed review of the record in its entirety, the undersigned Administrative Law Judge makes the following Findings of Fact.

Findings of Fact

1. Grievant has been employed as a bus operator by GCBOE for approximately four years as a regular employee and two years as a substitute. Grievant has good evaluations and has not received any prior disciplinary action.

2. During the 2004 - 2005 school year, GCBOE had a lot of trouble with a student, JT. JT made racial comments, insulted other students, and caused fights. He received several suspensions and was finally placed in alterative schooling. Many of the events requiring discipline occurred on Grievant's bus. JT, now a high school student, was allowed to attend regular school for the 2005 - 2006 school year, and his behavior was improved. He still rides Grievant's bus. 3. On November 9, 2005, JT got on the bus and asked Grievant if he would place a tape in the bus's tape player. Grievant asked JT if it was a clean tape, and JT responded yes. Grievant put the tape in and played it. Grievant's bus transports students who are from preschool through 12th grade, and several of these students are African- American.

4. After a couple of country songs that had been recorded off the radio, an extremely racist song started to play. The refrain of this song was, "Some n------ never die they just smell that way." The song gave vivid descriptions of how offensive African Americans smelled and discussed the need to "kill" and "smash" them because they were engaged in "germ warfare."

5. Although Grievant asserted he turned down the volume so no one on the bus could hear the song when he heard the N word, this assertion is incorrect. Students in various places on the bus could clearly hear the words, and a couple of students were singing along

with the lyrics.

6. After Grievant judged this offensive song would be over, he asserts he turned the volume back up so the students could hear the next song. The next song was "The Devil Went Down to Jamaica," based on the old Charlie Daniels song, "The Devil went down to Georgia." Grievant believed this song was appropriate as it made fun of people who take drugs. Grievant is wrong in this assertion as the song glorifies the drug culture, talks about how much fun it is to smoke dope, and uses the word "ass."

7. The bus was new to Grievant, he had not dealt with this particular tape player before, and he did not know how to eject the tape without studying the machine, but the same knob that turns down the tape player also turns it off. 8. When the bus arrived at the middle school, JT asked for his tape back and inquired of Grievant how he liked the tape. Grievant responded some songs were OK, but "scolded" JT and said he didn't like the racial one. Grievant gave the tape back to JT. Grievant did not report the incident to anyone.

9. Several middle school students went to their Principal, Christina Chambers. EJ, an eighth grader, asked Principal Chambers if it was all right to play racial songs on the bus. After talking to EJ, learning what was on the tape, and asking Sally Dalton, the Title IX Coordinator, what to do, Principal Chambers and her assistant principal took statements from students who were on the bus. These students clearly remembered the tape, and the offensive language that was on it. They were upset, and many stated the bus operator appeared to think the tape was amusing because he was smiling. Examples of student statements are:

> **It made me mad because I have colored friends . . . it was wrong**
>
> **The bus driver played unacceptable music**
>
> **[S]ome of the songs made me feel not very good**
>
> **I felt emberrassed (sic) and as[h]amed**
>
> **I didn't fell (sic) comfortable with the songs . . . . There were filthy words on the tape**

10. Student EJ has been threatened and harassed since he reported the event.

11. The principal of JT's high school obtained the tape from him, listened to it, sent it to Principal Chambers, she listened to it, and she sent it to Ms. Dalton. 12. Grievant was

suspended immediately, and this suspension was in effect until Ms. Dalton completed her investigation.

13. Ms. Dalton's investigation found Grievant had violated the State Board of Education's Employee Code of Conduct and GCBOE's Policies on "Bullying, Harassment and Intimidation" and "Racial, Sexual, Religious/Ethnic Harassment and Violence." She noted the playing of the music created an "intimidating, hostile, or offensive academic environment" by "[a]llowing a verbal message of hatred and bias" to be played in a confined environment where students were unable to leave. Ms. Dalton noted the retaliation against the student who reported the event.

14. The Employee Code of Conduct and the policies identified in Finding of Fact 13 are contained in the Employee Calendar given to all employees. Grievant stated he was aware of these policies.

15. By letter dated November 11, 2005, Superintendent John Curry informed Grievant he had recommended to GCBOE that he receive a thirty-day suspension, and he had a right to a pre-disciplinary hearing. GCBOE had a pre-disciplinary hearing on December 5, 2005, upheld the suspension, but reduced the suspension to eighteen days.

Discussion

In disciplinary matters, the employer bears the burden of establishing the charges by a preponderance of the evidence. W. Va. Code §18-29-6; Hoover v. Lewis County Bd. of Educ., Docket No. 93-21-427 (Feb. 24, 1994); Landy v. Raleigh County Bd. of Educ., Docket No. 89-41-232 (Dec. 14, 1989). "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 moreprobable than not. It may not be determined by the number of the witnesses, but by the greater weight of the evidence, which does not necessarily mean the greater number of witnesses, but the opportunity for knowledge, information possessed, and manner of testifying[; this] determines the weight of the testimony." Petry v. Kanawha County Bd. of Educ., Docket No. 96-20-380 (Mar. 18, 1997). See Black's Law Dictionary, 5th ed. at 1064. 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 and 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.; See Adkins v. Smith, 142 W. Va. 772, 98 S.E.2d 712 (1957); Burchell v. Bd. of Trustees/Marshall Univ., Docket No. 97-BOT-011 (Aug. 29, 1997).

I. Credibility

An issue that must be addressed briefly is credibility, as Grievant testified he turned down the volume during the "N" song so no one on the bus could hear it, and the students stated he did not, and they could clearly hear the words. As revealed in the testimony, it is clear the volume was not turned down, as all the students interviewed were able to quote lyrics from the songs. Additionally, when asked why he turned the volume back up after the "N song," why he gave the tape back, and why he did not report the event, his standard response was, "I never thought nothin' more about it." This response appears evasive and does little to explain Grievant's actions.

II. Merits W. Va. Code §18A-2-8 identifies the types of conduct that can result in disciplinary action and provides, in pertinent part:

> **Notwithstanding any other provisions of law, a board may suspend or dismiss any person in its employment at any time for: Immorality, incompetency, cruelty, insubordination, intemperance, willful neglect of duty, unsatisfactory performance, the conviction of a felony or a guilty plea or a plea of nolo contendere to a felony charge. A charge of unsatisfactory performance shall not be made except as the result of an employee performance evaluation pursuant to section twelve of this article.**

It is not necessary for a board of education to identify an employee's offenses by the exact terms utilized in W. Va. Code § 18A-2-8, as long as the required written notice of charges specifically identifies the alleged acts of which the employee is accused. Jordan v. Mason County Bd. of Educ., Docket No. 99-26-080 (July 6, 1999). GCBOE provided Grievant written notice of the charges.

A. Willful Neglect of Duty

Grievant's actions can best be described as willful neglect of duty in relation to this incident. GCBOE must prove a charge of willful neglect of duty by a preponderance of the evidence. Arbaugh v. Putnam County Bd. of Educ., Docket No. 90-40-437 (May 22, 1991).

Although the West Virginia Supreme Court of Appeals has not formulated a precise definition of "willful neglect of duty," it does encompass something more serious than incompetence and imports "a knowing and intentional act, as distinguished from a negligent act." Bd. of Educ. v. Chaddock, 183 W. Va. 638, 398 S.E.2d 120 (1990). Hence, to prove willful neglect of duty, the employer must establish that the employee's conduct constituted a knowing and intentional act, rather than a negligent act. Hoover v. Lewis County Bd. of Educ., Docket No. 93-21-427 (Feb. 24, 1994). See Chaddock, supra. Respondent has met its burden of proof by a preponderance of the evidence. While Grievant attempts to avoid blame by saying it was not his tape, and his only mistake was trusting a student, this excuse will not fly, as it does not explain the entirety of Grievant's actions.

The first question is why Grievant would trust this student after all the trouble from the prior year, but while puzzling, this action is basically a nonissue. If all Grievant had done was mistakenly play the wrong song, and then turned it off when he heard the N word, no one would blame him for that act alone. At best, this mistake would require some counseling about how to handle the situation differently the next time.

The real problem comes from Grievant's failure to take appropriate action after he heard the N word. Although it is hard to believe Grievant did not know the students could still hear the song, the undersigned Administrative Law Judge will look at this event in the light most favorable to Grievant. If as Grievant says, he thought it would be dangerous to try and remove the tape while the bus was moving, then why did he not turn the tape off instead of down - it was the same knob?

Next, Grievant did not provide a valid reason for turning the volume back up, as he alleges, after he already knew of the prior, racist song. His statement that he thought the racist song would be over is inadequate. It was highly likely more inappropriate music would follow, and it did.

Lastly, Grievant's rationale about why he gave the tape back and did not report the incident is basically, "I never thought no more about it." It was his job to think about it and to provide an environment for the students on his bus that was free from harassment, intimidation, demeaning racial comments, and foul language. The undersigned Administrative Law Judge finds Grievant, pursuant to his own testimony, was well aware of the Employee Code of

Conduct and the "Bullying, Harassment and Intimidation" and "Racial, Sexual, Religious/Ethnic Harassment and Violence" Policies." It is clear the Employee Code of Conduct and GCBOE's Policies were violated by Grievant's conduct. Grievant's defense, that he did not directly commit the act does not excuse his actions and inactions. The Employee Code of Conduct W. Va. C. St. R. §126-162-4 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.**
>
> **4.2.5 immediately intervene in any code of conduct violation, that has a negative impact on students, in a manner that preserves confidentiality and the dignity of each person.**
>
> **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.**

It is clear Grievant did not "maintain a safe and healthy environment, free from harassment, intimidation, bullying, substance abuse, and/or violence, and free from bias and discrimination" or "immediately intervene in any code of conduct violation, that has a negative impact on students, in a manner that preserves confidentiality and the dignity ofeach

person." Grievant's failure to take action is unjustifiable. Action was clearly mandated by the Employee Code of Conduct, especially since the students on the bus were a captive audience. It is Grievant's job to protect the students under his care from harm. It should be noted EJ, the student who did report the incident and did what Grievant would not, did suffer harm. GCBOE has met its burden of proof and demonstrated Grievant was guilty of willful neglect of duty.

B. Insubordination

Grievant's behavior can also be labeled as insubordination. 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 Bd., 212 W. Va. 209, 569 S.E.2d 456 (2002)(per curiam). See 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 wilful disobedience of, or refusal to obey, a reasonable and valid rule, regulation, or order issued . . . [by] an administrative superior." Butts, supra. See Riddle, supra; Webb, supra. "[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." Butts, supra. "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). The same reasoning applied in the willful neglect of duty discussion would apply here. The elements identified in the Butts test are met: (a) Grievant did not follow GCBOE's policies; (b) Grievant was aware of these policies and aware of the behavior; and (c) GCBOE's policies are reasonable and valid. GCBOE has demonstrated Grievant was insubordinate.

Additionally, "[i]t has been held by this Grievance Board that an employee who violates [the Employee Code of Conduct] by failing to 'exhibit professional behavior,' 'maintain a[n] environment, free from harassment [and] intimidation,' 'create a culture of caring through understanding and support,' or 'demonstrate responsible citizenship by maintaining a high standard of conduct, self-control[,]' has engaged in insubordinate conduct as contemplated by W. Va. Code § 18A-2-8. Domingues v. Fayette County Bd. of Educ., Docket No. 04-10-341

(Jan. 28, 2005)." Booth & Ware v. Randolph County Bd. of Educ., Docket No. 04-42-418 (Mar. 28, 2005.

III. Mitigation/Severity of Penalty

The argument Grievant's suspension 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).

"When considering whether to mitigate the punishment, factors to be considered include the employee's work history and personnel evaluations; whether the penalty is clearly disproportionate to the offense proven; the penalties employed by the employer against other employees guilty of similar offenses; and the clarity with which the employeewas advised of prohibitions against the conduct involved." Phillips v. Summers County Bd. of Educ., Docket No. 93-45-105 (Mar. 31, 1994). See Austin v. Kanawha County Bd. of Educ., Docket No. 97-20-089 (May 5, 1997). Mitigation of a penalty is considered on a case by case basis. Conner v. Barbour County Bd. of Educ., Docket No. 95-01-031 (Sept. 29, 1995); McVay v. Wood County Bd. of Educ., Docket No. 95-54-041 (May 18, 1995). A lesser disciplinary action may be imposed when mitigating circumstances exist. Mitigating circumstances are generally defined as conditions which support a reduction in the level of discipline in the interest of fairness and objectivity, and also include consideration of an employee's long service with a history of otherwise satisfactory work performance. Pingley v. Div. of Corr., Docket No. 95-CORR-252 (July 23, 1996). This 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). Respondent has substantial discretion to determine a penalty in these types of situations, and the undersigned Administrative Law Judge will not substitute her judgement 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).

The undersigned Administrative Law Judge cannot find that a thirty-day suspension, reduced to an eighteen-day suspension, was excessive given Grievant's failure to followcounty policies and to protect the students in his care. Additionally, the reduction of the suspension by GCBOE indicates Grievant's prior good record was considered.

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

Conclusions of Law

1. In disciplinary matters, the employer bears the burden of establishing the charges by a preponderance of the evidence. W. Va. Code § 18-29-6; Hoover v. Lewis County Bd. of Educ., Docket No. 93-21-427 (Feb. 24, 1994); Landy v. Raleigh County Bd. of Educ., Docket No. 89-41-232 (Dec. 14, 1989).

2. "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. It may not be determined by the number of the witnesses, but by the greater weight of the evidence, which does not necessarily mean the greater number of witnesses, but the opportunity for knowledge, information possessed, and manner of testifying[; this] determines the weight of the testimony." Petry v. Kanawha County Bd. of Educ., Docket No. 96-20-380 (Mar. 18, 1997). See Black's Law Dictionary, 5th ed. at 1064. 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 and 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.; See Adkins v. Smith, 142 W. Va. 772, 98 S.E.2d 712 (1957); Burchell v. Bd. of Trustees/Marshall Univ., Docket No. 97-BOT-011 (Aug. 29, 1997).

3. A county board of education possesses the authority to suspended an employee, but this authority cannot be exercised in an arbitrary and capricious manner. W. Va. Code §18A-2-8. See Lanehart v. Logan County Bd. of Educ., Docket No. 95-23- 235 (Dec. 29, 1995).

4. Willful neglect of duty is among the causes listed in W. Va. Code §18A-2-8 for which

an education employee may be disciplined. See Rovello v. Lewis County Bd. of Educ., 181 W. Va. 122, 381 S.E.2d 237 (1989); Beverlin v. Bd. of Educ., 158 W. Va. 1067, 216 S.E.2d 554 (1975); Woo v. Putnam County Bd. of Educ., Docket No. 93-40-420 (June 2, 1994), aff'd 202 W. Va. 409, 504 S.E.2d 644 (1998); Jones v. Mingo County Bd. of Educ., Docket No. 95-29-151 (Aug. 24, 1995).

5. To prove willful neglect of duty, the employer must establish that the employee's conduct constituted a knowing and intentional act, rather than a negligent act. Hoover v. Lewis County Bd. of Educ., Docket No. 93-21-427 (Feb. 24, 1994). See Bd. of Educ. v. Chaddock, 183 W. Va. 638, 398 S.E.2d 120 (1990).

6. "Willful neglect of duty," encompasses something more serious than incompetence and denotes "a knowing and intentional act, as distinguished from a negligent act." Chaddock, supra.

7. GCBOE has met its burden of proof by a preponderance of the evidence and demonstrated Grievant is guilty of willful neglect of duty under W. Va. Code § 18A-2-8.

8. 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 Bd., 212 W. Va. 209, 569 S.E.2d 456 (2002)(per curiam). See Riddle v. Bd. of Directors, So. W. Va. CommunityCollege, Docket No. 93-BOD-309 (May 31, 1994); Webb v. Mason County Bd. of Educ., Docket No. 26-89-004 (May 1, 1989).

9. 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, supra. See Riddle, supra; Webb, supra.

10. "[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." Butts, supra.

11. "an employee who violates [the Employee Code of Conduct] by failing to 'exhibit professional behavior,' 'maintain a[n] environment, free from harassment [and] intimidation,' 'create a culture of caring through understanding and support,' or 'demonstrate responsible citizenship by maintaining a high standard of conduct, self- control[,]' has engaged in

insubordinate conduct as contemplated by W. Va. Code § 18A-2- 8. Domingues v. Fayette County Bd. of Educ., Docket No. 04-10-341 (Jan. 28, 2005)." Booth & Ware v. Randolph County Bd. of Educ., Docket No. 04-42-418 (Mar. 28, 2005.

12. GCBOE has proven Grievant was guilty of insubordination.

13. An allegation that a particular disciplinary measure is disproportionate to the offense proven, or otherwise arbitrary and capricious, is an affirmative defense and the grievant bears the burden of demonstrating that the penalty was clearly excessive, or reflects an abuse of the employer's discretion, or an inherent disproportion between the offense and the personnel action. Conner v. Barbour County Bd. of Educ., Docket No. 94- 01-394 (Jan. 31, 1995). See Martin v. W. Va. Fire Comm'n, Docket No. 89-SFC-145 (Aug. 8, 1989). 14. "When considering whether to mitigate the punishment, factors to be considered include the employee's work history and personnel evaluations; whether the penalty is clearly disproportionate to the offense proven; the penalties employed by the employer against other employees guilty of similar offenses; and the clarity with which the employee was advised of prohibitions against the conduct involved." Phillips v. Summers County Bd. of Educ., Docket No. 93-45-105 (Mar. 31, 1994). See Austin v. Kanawha County Bd. of Educ., Docket No. 97-20-089 (May 5, 1997).

15. "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).

16. Respondent has substantial discretion to determine a penalty in these types of situations, and the undersigned Administrative Law Judge will not substitute her judgement 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).

17. Given the charge proven against Grievant, the penalty is not disproportionate or excessive, nor is the penalty arbitrary and capricious. See Lanehart v. Logan County Bd. of Educ., Docket No. 95-23-235 (Dec. 29, 1995); Bailey v. Logan County Bd. of Educ., Docket No.

93-23-383 (June 23, 1994); Bell v. Kanawha County Bd. of Educ., Docket No. 91-20-005 (Apr. 16, 1991). Accordingly, this grievance is DENIED.

Any party may appeal this decision to the Circuit Court of Kanawha or 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 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: March 17, 2006

Footnote: 1

Grievant noted at the Level IV hearing that he was no longer asserting this issue.

Footnote: 2

Grievant was represented by Attorney John Roush from the West Virginia School Service Personnel Association, and Respondent was represented by Attorney Erwin Conrad.