DAVID BELL,

Grievant,

v. **DOCKET NO. 97-29-172**

MINGO COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant David Bell was employed by the Mingo County Board of Education ("MBOE") as a classroom teacher until his employment was terminated by action of MBOE on April 3, 1997, following his suspension on March 7, 1997, "on the grounds of immorality, sexual misconduct, sexual assault, and ass[a]ult of Student `S.H.' at Matewan Middle School on or about March 5th and 6th, 1997," and a hearing before MBOE on April 3, 1997. (See footnote 1) Grievant appealed his termination directly to Level IV. (See footnote 2) Grievant is accused of asking a 13 year old, eighth grade student at Matewan Middle School, S.H. (See footnote 3) , to kiss him on the mouth, while the two of them were alone in his office, with the door closed, on March 5, 1997. Grievant stated he was counseling S.H., and admitted he gave S.H. a hug and a kiss on the cheek, as he had done with other students, for the purpose of offering support, not for sexual gratification. Grievant denied that he tried to kiss S.H. on the mouth, but admitted he made a comment about her giving him a hug and a kiss before the end of the year, and that he believed this upset S.H. As there were no witnesses to this incident, the outcome in this case is based upon a determination of whether Grievant or S.H. was the more credible witness.

The following formal Findings of Fact are properly made from the record developed at Level IV.

Findings of Fact

1. Grievant is 47 years old, (See footnote 4) and had been employed by MBOE 20 years as a classroom teacher prior to his termination. He was last employed at Matewan Middle School teaching

eighth grade West Virginia History and Civics. He had also been the assistant boys' basketball coach. His evaluations for the preceding four years rated his performance as satisfactory. Grievant's Exhibit 1.

2. Grievant is a preacher and state youth camp director for his church.

3. Students like Grievant and seek his counseling and advice.

4. Grievant is physically demonstrative, and quite often shows his support for students by hugging or touching, and only occasionally, kissing. 5. S.H. is a 13 year old, eighth grade student at Matewan Middle School. Grievant was S.H.'s West Virginia History teacher. Until this incident, Grievant was S.H.'s favorite teacher.

6. On March 5, 1997, S.H. met with Grievant in his office, which is located in the faculty lounge. When S.H. was leaving, Grievant gave her two hugs and kissed her four times on the cheeks. Grievant turned S.H.'s face toward him and asked her to kiss him on the mouth.

7. On March 6, 1997, Grievant gave S.H. a note apologizing for asking for a kiss, telling her she was a sweet girl, that maybe he was just an "old guy" trying to act young, and asking her not to tell anyone what had happened.

8. Superintendent Everett Conn advised Grievant in his March 7, 1997 suspension letter of the date of his pre-termination hearing, and that the grounds for suspension and the recommendation of dismissal were "immorality, sexual misconduct, sexual assault, and ass[a]ult of Student "S.H." at Matewan Middle School on or about March 5th and 6th, 1997." Prior to suspending Grievant, Superintendent Conn spoke with Grievant about this incident and the letter he had written to S.H.

Applicable Legal Standard

Pursuant to W. Va. Code § 18-29-6, 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. Hoover v. Lewis County Bd. of Educ., Docket No. 93-21-427 (Feb. 24, 1994). The dismissal of a teacher must be based upon one or more of the causes listed in W. Va. Code § 18A-2-8. The authority of a board of education to dismiss an employee must be exercised reasonably, and not arbitrarily and capriciously. Beverlin v. Bd. of Educ., 158 W. Va. 1067, 216 S.E.2d 554 (1975). W. Va. Code § 18A-2-8 provides that school service personnel may be suspended or dismissed at any time for immorality, incompetency, cruelty, insubordination,

intemperance, willful neglect of duty, unsatisfactory performance, a felony conviction, entry of a guilty plea or a plea of nolo contendere to a felony charge. Grievant was dismissed for immorality. "`Immorality' is defined as `conduct not in conformity with accepted principles of right and wrong behavior; contrary to the moral code of the community; wicked; especially, not in conformity with the acceptable standards of proper sexual behavior.' Golden v. Bd. of Educ. of County of Harrison, 285 S.E.2d 665 (W. Va. 1981)." Hayes v. Kanawha County Bd. of Educ., Docket No. 94-20-1143 (June 28, 1995). "`Immoral conduct is conduct which is always wrong. Just as one can never be accidentally or unwittingly dishonest, immoral conduct requires at least an inference of conscious intent.' See Hayes, [supra], citing Youngman v. Doerhoff, 890 S.W.2d 330 (Mo. 1994)." Petry v. Kanawha County Bd. of Educ., Docket No.96-20-380 (Mar. 18, 1997).

Grievant's counsel argued at the beginning of the Level IV hearing that the charges against Grievant were not specific, in that they did not set forth a particular factual charge, but were conclusory, and that MBOE did not state the facts supporting its dismissal decision. MBOE's counsel responded by pointing out the suspension letter noted the date and place of the alleged incident, and the charges against Grievant. The suspension letter also identified the student by her initials. Grievant did not pursue this issue in his post-hearing written argument.

It is well established that a tenured employee such as Grievant has a property and liberty interest in his continued employment, and must be provided with notice of the charges against him sufficient to allow him to make an informed response to the charges at the pre-termination hearing. Bd. of Educ. of County of Mercer v. Wirt, 192 W. Va. 568 (1994). "Where an act of misconduct isasserted in a notice of dismissal, it should be identified by date, specific or approximate, unless the characteristics are so singular that there is no reasonable doubt when it occurred. If an act of misconduct involves persons or property, these must be identified to the extent that the accused employee will have no reasonable doubt as to their identity." Syl. Pt. 2, Clarke v. W. Va. Bd. of Regents, 279 S.E.2d 169 (W. Va. 1981), citing Syl. Pts. 4 and 5 of Snyder v. Civil Serv. Comm'n, 238 S.E.2d 842 (W. Va. 1977).

In this case, Superintendent Conn confronted Grievant with the letter he had written to S.H. prior to Grievant's suspension, and Grievant admitted he had written it. The identity of the student was known to Grievant, and the approximate date and location of the alleged incident were made known to Grievant. While the suspension letter could have been drafted with more particularity to state that

S.H. had accused Grievant of kissing her on the cheek, and turning her face toward him and asking her to kiss him on the mouth, the charges are sufficiently stated that Grievant "knew the substance of the charges against him," and could provide his version of his contact with S.H., "and that is what the law requires." Clarke, supra. Further, Grievant heard the charges, and chose to present no evidence at the pre-termination hearing, because some of the witnesses he intended to call did not appear, and he decided to "simply defer to Level IV, and put on our case there, instead of putting on a half case here." Respondent's Exhibit 1, page 28. After that hearing, the charges were clear, and Grievant knew the basis of MBOE's decision to dismiss him from employment. Grievant was afforded the due process to which he was entitled.

S.H.'s version of what happened was that on the morning of March 5, 1997, she saw Grievant, and he told her he had heard some rumors about her and wanted to talk to her. She stated that afternoon when she was in the gymnasium in physical education class, Grievant appeared andtold her it was his free period and to tell her teacher he needed to see her. She stated she asked her physical education teacher if she could go see Grievant, and she followed Grievant to his office. Respondent's Exhibit 1, page 10. Level IV Tape 1.

She stated Grievant shut the door to his office, and started asking her about the problems she was having at home. She stated as she was leaving, he put his arm around her and kissed her twice on her left cheek. She stated he then put his arm around her again, but on the other side, and kissed her on her right cheek two times. She then stated Grievant turned her head toward him and asked her to kiss him on the mouth, stating, "why don't you give me a kiss." She stated she pushed away from him and said, "[N]o way! Oh no!" She testified she then opened the door and walked out as Grievant said, "just think about it." She stated Grievant told her to "just be sure you kiss me before you get out of the eighth grade." Respondent's Exhibit 1, pages 10-11. She admitted Grievant had told her if she would just hang in there, be good, and do what her father asked, her father would probably lift his grounding of her. Id. at page 23.

S.H. stated she returned to the gymnasium, and Grievant followed her to the gymnasium in about five minutes. She first stated she was sitting on the bleachers when Grievant arrived, and later testified she was standing behind J.S., and Grievant came up to her. She said Grievant asked her if she was okay, and told her not to tell anyone what had happened, putting his finger to his lips. She stated she then starting telling her friend J.S. what had happened. Respondent's Exhibit 1, page 11;

Level IV hearing testimony.

J.S. testified at the Level IV hearing that S.H. was upset when she returned to the gymnasium, and had told her she had been in the teacher's lounge. She stated S.H. told her Grievant had kissed her on both cheeks, and that he had said something to her about kissing him before the end of theyear. J.S. stated S.H. went to talk to Grievant when he came into the gym after S.H. returned from Grievant's office. J.S. did not hear the conversation, however, she did observe Grievant put his finger to his lips in a "Shhh" action.

S.H. continued, stating that Grievant had gotten her out of art class that afternoon to apologize, and that he stated he understood if she never wanted to see him again. Respondent's Exhibit 1, page 12. S.H. did not tell her parents what had happened that day. Id. at pages 25 and 26. She stated Grievant gave her a letter the next morning during homeroom, and told her not to let anyone see it. Id. at page 13. Grievant admits he wrote this letter, placed into evidence as Exhibit 2 to Respondent's Exhibit 1, and that he gave it to S.H. the next morning during homeroom.

S.H. testified this was not the first time Grievant had kissed her. She stated that sometime prior to Christmas 1997, Grievant had put his arm around her shoulder, hugged her, and kissed her on the cheek, and that on another occasion he had put his arm around her, kissed her on the forehead, and told her she had not given him his Christmas present yet. She also related that after Christmas she was wearing a tee shirt which contained a list of sayings about blondes, and Grievant had whispered in her ear that one thing was missing from the list, "that you are sexy." Respondent's Exhibit 1, page 17.

S.H. had told both her parents about one or more of these instances when they occurred or near the time they occurred, and her parents had told her not to be alone with Grievant. Id. at pages 24, 26. Her parents decided not to report these instances because they knew it would be S.H.'s word against Grievant's. Grievant did not recall that he had kissed S.H. before, and no other witness testified about these events. Grievant's own witnesses stated they had never seen him kiss a student, but had often witnessed him putting his arm around a student's shoulder to give a hug. S.H. freely admitted that Grievant had been her favorite teacher, that she had told him a couple of times that she needed to speak with him, and that, "all this year he's been there for me." Respondent's Exhibit 1, page 21.

Grievant's version of events was that he saw S.H. in the hall on March 5, 1997, around 9:50 a.m.,

at which time she came and told him she was in trouble. He stated she told him her father was getting ready to send her to rehab, and she needed to talk to him. He stated he told her if she needed to talk to him, he would be in his office that afternoon. Grievant indicated in his testimony that other students had participated in this conversation, but no one was called to testify about this exchange.

S.H. denied that she had wanted to talk to Grievant about her father grounding her, or that she had told S.S. she wanted to talk to Grievant about this. Respondent's Exhibit 1, page 23. S.S. testified at the Level IV hearing that S.H. had told her she wanted to talk to Grievant about being grounded. K.P. testified at the Level IV hearing that S.H. had told her she had gone to Grievant to talk to him about her drug problem.

Grievant stated S.H. appeared at his door between 1:30 and 1:45 p.m., and was upset and distressed. Neither party called any witnesses to confirm or deny that Grievant had come to the gymnasium to get S.H. out of class. Grievant related that she told him her father was really mad, because he had found out she had smoked marijuana, and had some involvement with angel dust, and he was going to ground her for five years, and was making her life miserable. He stated she was afraid she would not be allowed to play softball. Grievant stated he encouraged her to talk to her father, but she said she could not talk to him, and he was very strict. Grievant stated she told him she was going to get out, and had some pills she could take, or she was going to run away. S.H. denies that she ever suggested she would kill herself or run away. Grievant stated he told her shewas a smart student, and a really sweet girl, she did not need to kill herself, and if she ran away, she could be running to a worse situation. Both Grievant and S.H. admit that Grievant told her to just do what her father said and be good, and he would ease up on her.

Grievant stated he told S.H. it was time to get back to class. He hugged her and kissed her on the cheek, and told her everything would be okay, to just hang in there. Grievant stated S.H. thanked him for listening to her and put her head on his shoulder. S.H. could not recall whether this occurred. Grievant stated he then said maybe before the end of school you can give me a big hug and kiss, and S.H. pulled away and said something like "no way!" Grievant said he then said "well, maybe you'll have to think about that one, huh." He denied that he turned S.H.'s head toward him, or that he had asked her if he could kiss her on the mouth, or that he tried to do so. He stated he had no sexual motive or intent. He related that S.H. seemed really down and he had wanted to make her feel better. He was concerned he had been misinterpreted.

Grievant explained he had followed S.H. to the gymnasium because he had forgotten to give her a note to get back into class, and went to talk to her teacher. He stated he asked S.H. if she was still upset, and she was. He denied putting his finger to his lips, or telling her to keep what had occurred quiet.

In assessing the credibility of witnesses,

> some factors to be considered . . . are the witness's: 1) demeanor; 2) opportunity or capacity to perceive and communicate; 3) reputation for honesty; 4) attitude toward the action; and 5) admission of untruthfulness. Harold J. Asher and William C. Jackson. Representing the Agency before the United States Merit Systems Protection Board 152-153 (1984). Additionally, the ALJ 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. Id.Burchell v. Bd. of Trustees, Marshall Univ., Docket No. 97-BOT-011 (Aug. 29, 1997).

If the undersigned had only the testimony of the witnesses to use in evaluating whether S.H. or Grievant was more credible, it would be a close call. S.H.'s credibility is called into question by the fact that on March 5 and 6, 1997, she was taking pain medication and muscle relaxers prescribed to her father, which she had stolen. Respondent's Exhibit 1, page 20. S.H.'s own description of the effect these pills had on her was that they made her tired, they changed her attitude, she was a different person, and:

> My sisters [sic], she got worried about me. Cause I just [kept] on being nuts. They just [were not] doing enough for [me]. Just kept on taking more and more and more.

Respondent's Exhibit 1, page 19. S.H. testified at Level IV, however, that she had taken only a few of her father's pills.

Also, S.H.'s version of what occurred when she returned to the gymnasium differs somewhat from that of the student called as a witness to the exchange between Grievant and S.H.; one student testified S.H. had told her she wanted to talk to Grievant about being grounded, while S.H. denied telling her she had wanted to talk to Grievant; and one student testified S.H. had told her she had gone to talk to Grievant about her drug problem. These are minor inconsistencies which call into question S.H.'s recollection of exactly what happened, but do not necessarily lead to a conclusion that she was lying, or exaggerating. The testimony that S.H. said she had gone to talk to Grievant can, in fact, be reconciled with S.H.'s testimony. She did go talk to Grievant about her problem. The point at issue is whether she went on her own, or at Grievant's request, and this student's testimony does not tell us that. Although S.H. immediately told J.S. what had happened, J.S. does not recall

specifically that S.H. told her Grievant had asked her to kiss him. It is also curious that S.H. did not tell her parents that evening that Grievant had kissed her several times, and had asked her to kiss him. Although S.H. did not explain this, it is not of great significance that she did not tell her parents, given that her parents had specifically told her not to be alone with Grievant, and she was already in serious trouble for her drug use.

One can easily imagine that S.H. exaggerated what had occurred in an effort to win sympathy from her father so he would ease the punishment he had imposed and to assure that he would let her play softball; or that she was affected by the medication she was taking and overreacted, or had difficulty separating fantasy from reality.

However, Grievant's credibility is also called into question. First, he denied placing his finger to his lips in the gymnasium when both S.H. and J.S. testified they saw him do this. This is not of great significance, because he would not necessarily remember this.

Second, he testified at Level IV that he was no closer to S.H. than he was to any other student, and that she had given him no indication that she was close to him. This testimony is incredible. Grievant placed into evidence a Christmas card he had received from S.H. and A.D., referring to themselves as his favorite students, which by his admission was one of only a very few Christmas cards he had received from his students; a baby picture S.H. had given him which has written on the back, "your favorite student in the 8th grade. S.H.;" (See footnote 5) and a valentine which he believed was from S.H. Finally, it is the letter Grievant wrote to S.H., and delivered to her on March 6, 1997, which leads the undersigned to the conclusion that it is more likely than not that S.H.'s story is closer to what happened than Grievant's, and proves the charge of immorality. The envelope says, "FOR YOUR eyes ONLY!!" The "e's" in the word "eyes" have been made into eyes with eyelashes. The letter is hand printed as follows:

S.,

> Just a few lines to say again how sorry I am. I don't have words enough to let you know how bad I feel about this. I had no right to ask you wha[t] (See footnote 6) I asked you. It was out of line, out of place, and just plain wrong!! Especially since what you have just been thru. I'm very, very sorry! Please forgive me. We have been friends all this year and I hope we can stay friends. If not, I have only myself to blame.
>
> S., you [sic] a very sweet girl. By far the sweetest girl at MMS. Maybe your sweetness made me ask you that question or maybe I'm just an "old guy" trying to be

young. Whichever the case, I feel I have hurt you deeply. I never ever wanted you to be afraid of me or uncomfortable around me. I don't want you to think of me like some other teacher we both know. I'[m] not like that at all. I don't want anyone to do anything that they are no[t] comfortable with or feel right about doing. We have kidded each other all this year and maybe this might be a little to[o] serious. However, I still would like to have that kiss, but if you don't want to that's O[K]. Even if you never spoke to me again, I would understand. I ble[w] it and I'm sorry. I hope you can find it in your heart to forgive me. I meant it when I told you that I really do care about you. Maybe I care too much but I'm still . . . (ellipsis in original)

Your Friend!!

P.S. I hope you don't let anyone see this letter or tell anyone what happened, for my sake. I Guess I don't have [to] tell you what [would] happen to me if you did!!

You are 2 sweet

<u>+ 2 be</u>

4 Gotten

A. Friend

P.P.S

Remember when you would say I was the best te[a]cher you had, I told you I was'nt [sic]. Now you see why!! I'm terrible. If you want to write back, you can. If not, that's o.k.

A. Friend

Exhibit 2 to Respondent's Exhibit 1.

The undersigned is unable to reconcile this letter's content with Grievant's testimony; and Grievant's explanation of the letter was not convincing. Grievant explained the letter by relating that his daughter had taken an overdose of pills, and he had been told at that time that anything can push someone who is suicidal over the edge. He stated he was worried and concerned about S.H., and wrote her the letter that night to apologize for suggesting the hug and kiss, and for a statement he felt was misinterpreted. He stated he was afraid he had hurt her feelings, and was worried about S.H.'s stability. Grievant stated he could see how the letter could be misinterpreted, and that he had put on

the letter for her not to tell anyone because he knew the letter could be misconstrued, and it was between them.

Clearly, Grievant should not have asked S.H. if she would give him a kiss. Only Grievant knows what his intentions were, but he has admitted his actions were wrong. The undersigned concludes that Respondent has proven it is more likely than not that Grievant asked S.H. to kiss him on the mouth. Grievant's approach of a 13 year old student was immoral. See Shaffer v. Preston County Bd. of Educ., Docket Nos. 94-39-1127/95-39-030 (Aug. 25, 1995); Edwards v. McDowell County Bd. of Educ., Docket No. 93-33-138 (July 13, 1994); and Hank v. Wetzel County Bd. of Educ., Docket No. 93-52-469 (Mar. 30, 1994). Finally, in assessing the penalty imposed, "[w]hether to mitigate the punishment imposed by the employer depends on a finding that the penalty was clearly excessive in light of the employee's past work record and the clarity of existing rules or prohibitions regarding the situation in question and any mitigating circumstances, all of which must be determined on a case by case basis." McVay v. Wood County Bd. of Educ., Docket No. 95-54-041 (May 18, 1995) (citations omitted).

Grievant presented evidence that another teacher in MBOE had not been disciplined at all when the father of a student accused the teacher of having sex with his daughter. Superintendent Conn explained that he was presented with no evidence to support the father's allegation, and the teacher denied the charge. He stated he did not conduct an investigation because he turned it over to the state police and the prosecuting attorney, and was told if the student was 16 or older, and the sex was consensual, a charge of rape could not be brought. Mr. Conn explained this case was different because the letter, admittedly written by Grievant, supported the allegation.

The distinction between this case and the accusation that a teacher had sex with a student, is that in this case MBOE had the smoking gun handed to it in the form of Grievant's letter to S.H. MBOE did not really "investigate" either case.

Teachers may become very close to the students they see every day. However, teachers must always exercise restraint, and control their emotions, as they are the adults, acting in place of the parents. When a teacher demonstrates a lack of control in any situation with a student, it is a matter of concern. When a teacher can no longer control his feelings of affection for a 13 year old, even when the teacher cares for all his students and it is the only time this has ever occurred, it is time for that teacher to move to another profession. "A teacher must have the respect and trust of school

administrators, parents, and the students to satisfactorily perform his duties." Graziani v.Monongalia County Bd. of Educ., Docket No. 92-30-082 (Nov. 19, 1992). The penalty imposed by MBOE was not clearly excessive.

The following Conclusions of Law support the Decision reached.

Conclusions of Law

1. The employer bears the burden of proving the charges in a disciplinary proceeding by a preponderance of the evidence. Hoover v. Lewis County Bd. of Educ., Docket No. 93-21-427 (Feb. 24, 1994).

2. Pursuant to W. Va. Code § 18A-2-8, school service personnel may be suspended or dismissed at any time for immorality, incompetency, cruelty, insubordination, intemperance, willful neglect of duty, unsatisfactory performance, a felony conviction, entry of a guilty plea or a plea of nolo contendere to a felony charge. The authority of a board of education to dismiss an employee must be exercised reasonably, and not arbitrarily and capriciously. Beverlin v. Bd. of Educ., 158 W. Va. 1067, 216 S.E.2d 554 (1975).

3. "`Immorality' is defined as `conduct not in conformity with accepted principles of right and wrong behavior; contrary to the moral code of the community; wicked; especially, not in conformity with the acceptable standards of proper sexual behavior.' Golden v. Bd. of Educ. of County of Harrison, 285 S.E.2d 665 (W. Va. 1981)." Hayes v. Kanawha County Bd. of Educ., Docket No. 94-20-1143 (June 28, 1995).

4. Respondent has proven the charges against Grievant by a preponderance of the evidence, and that Grievant's conduct constitutes "immorality" within the meaning of W. Va. Code § 18A-2-8. 5. "Whether to mitigate the punishment imposed by the employer depends on a finding that the penalty was clearly excessive in light of the employee's past work record and the clarity of existing rules or prohibitions regarding the situation in question and any mitigating circumstances, all of which must be determined on a case by case basis." McVay v. Wood County Bd. of Educ., Docket No. 95-54-041 (May 18, 1995) (citations omitted).

6. Grievant's dismissal for immorality was not clearly excessive.

7. "Where an act of misconduct is asserted in a notice of dismissal, it should be identified by date, specific or approximate, unless the characteristics are so singular that there is no reasonable

doubt when it occurred. If an act of misconduct involves persons or property, these must be identified to the extent that the accused employee will have no reasonable doubt as to their identity." Syl. Pt. 2, Clarke v. W. Va. Bd. of Regents, 279 S.E.2d 169 (W. Va. 1981), citing Syl. pts. 4 and 5 of Snyder v. Civil Serv. Comm'n, 238 S.E.2d 842 (W. Va. 1977).

8. Grievant received adequate notice of the charges against him.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Mingo County and 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. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

BRENDA L. GOULD

Administrative Law Judge

Dated: March 10, 1998

Footnote: 1

The transcript of this hearing was admitted into evidence as Respondent's Exhibit 1.

Footnote: 2

After a continuance for good cause, a Level IV hearing was conducted on July 2, 1997, at which time Grievant's counsel requested that the results of a polygraph examination be admitted into evidence. The parties were required to brief this issue, and Grievant was allowed to attempt to lay the foundation for the admission of this evidence, and to present the results of the polygraph examination should the foundation be determined sufficient to support the admission of this evidence, at a second hearing held November 12, 1997. This case became mature for decision on February 11, 1998, upon receipt of Grievant's post-hearing argument. Respondent declined to submit written argument.

Footnote: 3

As is the Grievance Board's practice, the alleged victim will be referred to only by her initials, as will the students who testified.

Footnote: 4

Grievant is black, while S.H. is white. This fact has not been considered by the undersigned, and is of no consequence to the outcome of this grievance.

Footnote: 5

Grievant routinely asks the students in his eighth grade West Virginia History class to bring a photograph for him. Whether Grievant requested this particular photograph was also disputed.

Footnote: 6

The copy of the letter placed into evidence had a small portion of the right side omitted, so that one letter was missing from some words, and this letter has been added to these words.