# THE WEST VIRGINIA EDUCATION AND STATE EMPLOYEES GRIEVANCE BOARD

**NORMAN ALDERMAN,**

**Grievant,**

**v.** **Docket No. 06-38-142**

**POCAHONTAS COUNTY BOARD OF EDUCATION,**

**Respondent.**

## DECISION

Norman Alderman ("Grievant") filed this grievance at level four on May 2, 2006, following the termination of his employment with the Pocahontas County Board of Education ("Board"). A level four hearing was held in Elkins, West Virginia, on July 31, 2006. Grievant was represented at the hearing by counsel, Jason Huber, and Respondent was also represented by counsel, Gregory Bailey. This matter became mature for consideration upon receipt of the parties' fact/law proposals on September 6, 2006.

## Issues and Arguments

Grievant's termination resulted from his conduct during a hearing regarding his proposed transfer from a homebound teacher/central office position to a classroom teaching position, which hearing was held on March 21, 2006. The Board contends that Grievant's behavior at the meeting was insubordinate, grossly disrespectful, and disruptive to the effective operation of the Board's business. Grievant argues that he was exercisinghis right to freedom of speech, his conduct was protected by the West Virginia "Whistleblower" law, and that termination was too severe a penalty for his conduct.

The following facts have been proven by a preponderance of the evidence of record.

**Findings of Fact**

1. Grievant has been employed by the Board for 26 years as a classroom teacher. His most recent assignment was in the central office as a technology facilitator and homebound instructor. He has received favorable evaluations throughout his employment and had never previously been disciplined.

2. Grievant operates a website called the “E-Tater Forum,” which has a stated purpose of providing citizens with a forum for criticizing public officials and is “dedicated to the task of exposing dishonest [and] corrupt . . . public officials.” Resp. Ex. 1 at Level Four.

3. Grievant has a long history of being outspoken regarding issues that he believes constitute misuse of public funds or corruption on the part of elected officials.

4. Several years ago, Grievant sought the removal of a Board member who was illegally holding two public offices at the same time. A judicial panel was convened, and the Board member was removed from his position. That board member, Kenneth Vance, was later re-elected to the Board and is the current President.

5. At a Board meeting in 2002, Grievant brought recording equipment to videotape the meeting, but the Board refused to allow it. Grievant was escorted out of the meeting by law enforcement officers. Grievant filed a federal lawsuit against the Board, which was later settled. The terms of the settlement included the payment of monetarydamages by the Board, and the Board members were required to attend training regarding the First Amendment and open meetings law.

6. In the fall of 2005, Grievant raised concerns during a regular Board meeting regarding the possible misappropriation of funds ($2,500) which had been designated for the golf team. The Board listened to Grievant's concerns and forwarded information regarding the transaction to the State Board of Education, in order to determine if any improprieties had occurred. Grievant behaved respectfully during this meeting.

7. Alice Irvine, the Board's treasurer, had received the golf funds and written a check to the school for the $2500, to be distributed to the golf team. At the October Board meeting, to support his allegations of fraud, Grievant had produced documentation of a $2500 distribution which had been made in relation to a reading grant, which was unrelated and separate from the golf funds. No

impropriety regarding these funds was established.

8. In the spring of 2006, Pocahontas County schools suffered a projected loss of enrollment for the upcoming school year, resulting in the need for reduction in staff. Grievant was put on the proposed transfer list to be placed in a classroom teaching position.

9. After receiving notice of his proposed transfer, Grievant was given the opportunity to have a hearing before the Board regarding the transfer, which was scheduled for March 21, 2006.

10. On March 21, 2006, prior to that evening's Board's meeting, Grievant posted an entry on the E-Tater Forum, identifying the time and location of the meeting, along with the following comments:

> This is the night to expose the cockroaches. We'll be exposing Alice Irvine and Dr. Law [Superintendent] as nothing more or less than common thieves of public money. Vanreene has been asked to step aside because he is not legitimate board member. Likewise I have asked Grimes to step aside because he is living in the Central District and not the northern. His wife is in the northern, his mistress in the central.

11. Because several employees were up for proposed transfer, the Board advised everyone at the beginning of the March 21 meeting that each person's presentation would be limited to twenty minutes.

12. Grievant videotaped his presentation to the Board during his transfer hearing, which was introduced at the level four hearing.

13. Throughout the transfer hearing, Grievant raised his voice repeatedly, sometimes shouting, and shook his finger toward whichever Board member or other individual he was addressing at that moment. Grievant's demeanor throughout the proceeding was angry, confrontational and aggressive.

14. Among the comments Grievant made during the transfer hearing were the following (but certainly does not include all comments made):

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> A several-minute challenge to counsel Greg Bailey's authority to represent the Board during the hearing, allegedly due to there being no contract with him approved by the Board. (See footnote 1)

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> Several minutes challenging the propriety of the meeting itself, seemingly due to some defect in the notice of hearing and the matters to be discussed. (See footnote 2)

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A very heated challenge to Board Member Grimes' authority to be present, due to his allegedly living in another district with hisalleged mistress. Grievant shouted and wagged his finger toward Mr. Grimes throughout this discussion. Grievant stated that Mr. Grimes “has no authority to sit at this table because he's an adulterer.” He also stated “People are mad about this. I'm mad about this, and I want that man off this table and I don't want him voting.”

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A challenge to Board Member VanReenen's authority, based upon his alleged membership on the Greenbrier Valley Soil Conservation District while also serving on the Board. Grievant stated “He is an imposter. He has no place at the table.”

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Another very angry discussion directed toward Alice Irvine and the Superintendent. Following are quotes from Grievant's attack:

“I want to talk about Alice Irvine here, and I want to talk about Dr. Law . . . and I'll say it to your face. You are a thief (shouting). You stole $2,500 of golf money intended for equipment and gave it to someone for gas.” (See footnote 3)

Later, Grievant stated “You've been trying to get me. Alice, you're not going to get me, because I'll have you removed. We'll get a removal petition against you if necessary because you have stolen and thieved and lied enough. You are on trial, my lady (again shouting).”

15. At no time during the transfer hearing did Grievant ever discuss county enrollment, the need for the transfer, his current position, or the proposal to transfer him to a classroom position.

16. Ms. Irvine has been asked repeatedly by citizens of the community whether she stole the $2500.

17. After the transfer hearing, Grievant published the following comments on the E-Tater

Forum:

> We did have an opportunity to expose Alice Irvine [sic] for what she really is! Alice is not used to people being truthful with her! She and Dr. Law took the kids golf money for equipment and gave it to Jimmy Cutlip for gas, food and mileage. SOMETIME'S [sic] WRONG.

Dr. Law is Alice's lapdog.

> We did get a chance to expose Emery Grimes and Tommy Vanreenen. . . . Both Emery and Glen [Ward?] (See footnote 4) are adulterers.

18. On April 10, 2006, Superintendent Law met with Grievant, along with Ms. Irvine and Roger Trusler, Director of Federal Programs. At this meeting, Grievant was presented with a letter from Superintendent Law, recommending his termination for insubordination as a result of his conduct and comments during the March 21, 2006, hearing, along with the comments on his website.

19. When presented with the termination recommendation, Grievant became extremely angry and “livid” and again accused Dr. Law of being a “cockroach” and a “thief.” He also called Dr. Law “the dumbest man I have ever seen.” Dr. Law's level four testimony.

20. A hearing regarding Grievant's proposed termination was conducted by the Board on April 25, 2006, and the termination was approved at the conclusion of the hearing.

## Discussion

In disciplinary matters, the employer bears the burden of establishing the charges by a preponderance of the evidence. (See footnote 5) The grounds upon which a Board may suspend or dismiss any person in its employment are immorality, incompetency, cruelty, insubordination, intemperance, willful neglect of duty, unsatisfactory performance substantiated by an employee performance evaluation, or conviction on a felony charge. (See footnote 6)

The authority of a county board of education to discipline an employee must be based upon one or more of the causes listed in W. Va. Code § 18A-2-8, and must be exercised reasonably, not arbitrarily and capriciously. (See footnote 7) Generally, an action is considered arbitrary and capricious if the agency did not rely on criteria intended to be considered, explained or reached the decision in a manner contrary to the evidence before it, or reached a decision that was so implausible that it

cannot be ascribed to a difference of opinion. (See footnote 8) An action is recognized as arbitrary and capricious when "it is unreasonable, without consideration, and in disregard of facts and circumstances of the case." (See footnote 9) "While a searching inquiry into the facts is required to determine if an action was arbitrary andcapricious, the scope of review is narrow, and an administrative law judge may not simply substitute her judgment for that of a board of education." (See footnote 10)

The Board's stated justification for Grievant's termination was insubordination, as characterized by his “insolent” conduct, along with the disruptive nature of his behavior and its potential impact upon the Board's ability to conduct its affairs. 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." (See footnote 11) Although the cases are not clear as to what constitutes "wilfulness," they seem to suggest that for 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.” (See footnote 12)

There can be no question as to the fact that Grievant's conduct was insubordinate. At a hearing for the designated purpose of addressing his transfer, Grievant proceeded to ignore the issue at hand, instead choosing to launch venomous personal attacks upon various individuals present at the meeting. Although Grievant's counsel has repeatedly emphasized the fact that Grievant remained seated throughout the meeting, one does not have to be physically threatening to be insubordinate. Grievant knew the purpose of thehearing, but chose to behave inappropriately and disrespectfully, addressing matters that had nothing to do with his proposed transfer. Moreover, a viewing of the video recording of the hearing demonstrates conclusively that Grievant was quite angry, aggressive, confrontational and loud throughout the proceeding. Such conduct was unnecessary, inappropriate, and without question demonstrated an extreme “contempt for authority” that is a necessary element of insubordination. After being repeatedly told that he needed to refocus his comments to address the transfer issue, Grievant defiantly, willfully and angrily disobeyed those directives. (See footnote 13) His conduct constitutes insubordination.

As set forth above, Grievant has argued that his conduct at the hearing was protected by his right to freedom of speech and by the whistle-blower law. "[P]ublic employees are to be protected from firings, demotions and other adverse employment consequences resulting from the exercise of their

free speech rights." (See footnote 14) However, this right is not absolute, and an employer's "interest in the efficient and orderly operation of its affairs must be balanced with the public employees' right to free speech . . . ." (See footnote 15) Three general restrictions on a public employee's right to free speech have been identified by the courts. For this speech to be protected, it "must be made with regard to a matter of public concern" and statements made "'with the knowledge [that they]. . . were false or withreckless disregard to whether [they were]. . . false or not' are not protected." (See footnote 16) Third, statements "about persons with whom [the speaker has] close personal contact which would disrupt 'discipline. . . or harmony among co-workers' or destroy 'personal loyalty and confidence' may not be protected." (See footnote 17)

The burden of proof is on a grievant to demonstrate by a preponderance of the evidence that his conduct is constitutionally protected, and that this conduct was "a substantial factor" in the employer's decision to discipline him. (See footnote 18) However, "[t]he fact that the government may have considered an employee's protected speech or conduct in reaching an adverse decision does not necessarily render that decision constitutionally infirm." (See footnote 19) In making that decision, the key is "to consider the employee's job performance in its entirety." (See footnote 20) As observed by one court:

> [An employer] has a right to expect [an employee] to follow instructions and to work cooperatively and harmoniously with the head of the department. If one cannot or does not, if one undertakes to seize the authority and prerogatives of the department head, he does not immunize himself against loss of his position simply because his noncooperation and aggressive conduct are verbalized. (See footnote 21)

In the instant case, the undersigned cannot find that Grievant's conduct constituted protected speech. The evidence in this case establishes that Grievant did, in fact, makehis comments without consideration of the fact that they may or may not be false. As to Ms. Irvine, the issue of the golf money had been appropriately raised by Grievant at a previous Board meeting, and a proper investigation had been conducted. For Grievant to appear at his transfer hearing, shaking his finger in Ms. Irvin's face and shouting that she was a “thief” and “liar” showed a total disregard for the underlying truth of his statements, let alone his obvious contempt of authority. Moreover, Grievant's allegations against Mr. Grimes were, as Respondent has noted, completely irrelevant to matters of “public concern.” While the issue of Mr. Grimes' residency is certainly relevant to his ability to properly serve on the Board, angry accusations of adultery and a mistress are quite personal and

appeared to have no proper foundation, if any. (See footnote 22)

In addition, the undersigned finds that, in this instance, the Board's need to properly conduct its affairs far outweighs Grievant's right to make personal and potentially unfounded, damaging accusations against individual Board members and other Board employees. As Respondent has argued, if every citizen of Pocahontas County believes he or she can appear at any Board meeting and angrily shout personal accusations against all parties present, the Board would have extreme difficulty conducting its assigned business of running a school system. Also, as Ms. Irvine testified, she has been publicly embarrassed and her professional reputation compromised as a result of Grievant's tirade, having the potential for a tremendously negative impact upon her ability to perform her job duties. Grievant's “verbalization” of his overly aggressive conduct cannot excuse his misbehavior. A "'whistle-blower' means a person who witnesses or has evidence of wrongdoing or waste while employed with a public body, and who makes a good faith report of, or testifies to, the wrongdoing or waste, verbally or in writing, to one of the employee's superiors, to an agent of the employer or to an appropriate authority." (See footnote 23) Information helpful in clarifying this definition is:

> "Wrongdoing" means a violation which is not of a merely technical or minimal nature of a federal or state statute or regulation, of a political subdivision ordinance or regulation or of a code of conduct or ethics designed to protect the interest of the public or the employer. (See footnote 24)
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> "Waste" means an employer or employee's conduct or omissions which result in substantial abuse, misuse, destruction or loss of funds or resources belonging to or derived from federal, state or political subdivision sources. (See footnote 25)
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> "Good faith report" means a report of conduct defined in this article as wrongdoing or waste which is made without malice or consideration of personal benefit and which the person making the report has reasonable cause to believe is true. (See footnote 26)
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> "Appropriate authority" means a federal, state, county or municipal government body, agency or organization having jurisdiction over criminal law enforcement, regulatory violations, professional conduct or ethics, or waste; or a member, officer, agent, representative or supervisory employee of the body, agency or organization. The term includes, but is not limited to, the office of the attorney general, the office of the state auditor, the commission on special investigations, the Legislature and committees of the Legislature having the power and duty to investigate criminal

> lawenforcement, regulatory violations, professional conduct or ethics, or waste. (See footnote 27)

Additionally, W. Va. Code § 6C-1-3 indicates that discriminatory and retaliatory actions against whistle-blowers are prohibited, and states:

> (a) No employer may discharge, threaten or otherwise discriminate or retaliate against an employee by changing the employee's compensation, terms, conditions, location or privileges of employment because the employee, acting on his own volition, or a person acting on behalf of or under the direction of the employee, makes a good faith report or is about to report, verbally or in writing, to the employer or appropriate authority an instance of wrongdoing or waste.
>
> (b) No employer may discharge, threaten or otherwise discriminate or retaliate against an employee by changing the employee's compensation, terms, conditions, location or privileges of employment because the employee is requested or subpoenaed by an appropriate authority to participate in an investigation, hearing or inquiry held by an appropriate authority or in a court action.

An employer may not retaliate against a whistle-blower, and any such act would be seen as an act of reprisal. (See footnote 28) "An employee alleging a violation of this article must show by a preponderance of the evidence that, prior to the alleged reprisal, the employee had reported or was about to report in good faith, verbally or in writing, an instance of wrongdoing or waste to the employer or an appropriate authority." (See footnote 29) Finally, "[i]t shall be a defense to an action under this section if the defendant proves by a preponderance of the evidence that the action complained of occurred for separate and legitimate reasons, which are not merely pretexts." (See footnote 30) In this case, the basic element of a “good faith report” is missing. One could hardly describe Grievant's statements as being “without malice” or without regard to “personal benefit.” Moreover, as set forth above, Grievant's allegations were made with reckless disregard of their underlying truth and the dangerous consequences of such statements. The video recording of the hearing clearly demonstrates that Grievant's demeanor exhibited nothing but malice for the Board members, its counsel, and Ms. Irvine, and his attempt to deflect the focus of the meeting to the alleged wrongdoing of others could be interpreted as being directed toward benefitting his personal situation. Grievant's conduct is not protected under the whistle-blower provisions.

Grievant has also argued that, in light of his numerous years of employment and excellent record, termination was too severe a punishment for his actions. 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. (See footnote 31) "Considerable deference is afforded the employer's assessment of the seriousness of the employee's conduct and the prospects for rehabilitation." (See footnote 32)

"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 employeragainst other employees guilty of similar offenses; and the clarity with which the employee was advised of prohibitions against the conduct involved." (See footnote 33) Granted, Grievant has a long, productive work history and has made many positive contributions, as the Board has acknowledged. However, the personal and venomous nature of his attacks, along with the aggression and anger with which they were delivered, cannot be ignored. Respondent has noted a concern with Grievant's future ability to properly interact with students, given his angry tirade, along with the impact which his conduct has had upon the Board's ability to conduct business now and in the future. Given the Board's discretion in such matters, the undersigned cannot find mitigation to be appropriate in this case.

The following conclusions of law support this Decision.

**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. An employee of a county board of education may be suspended or dismissed only 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. If the disciplinary action is taken for unsatisfactory performance, it must follow an employee performance evaluation. W. Va. Code § 18A-2-8. 3. "The authority of a county board of education to discipline an employee must be based upon one or more of the causes listed in W.

Va. Code §18A-2-8, as amended, and must be exercised reasonably, not arbitrarily or capriciously. *Bell v. Kanawha County Bd. of Educ.*, Docket No. 91-20-005 (Apr. 16, 1991). *See Beverlin v. Bd. of Educ.*, 158 W. Va. 1067, 216 S.E.2d 554 (1975)." *Graham v. Putnam County Bd. of Educ.*, Docket No. 99-40-206 (Sep. 30, 1999).

4. 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." *Santer v. Kanawha County Bd. of Educ.*, Docket No. 03-20-092 (June 30, 2003); *Butts v. Higher Educ. Interim Governing Bd.,* 212 W. Va. 209, 569 S.E.2d 456 (2002). *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).

5. "[P]ublic employees are to be protected from firings, demotions and other adverse employment consequences resulting from the exercise of their free speech rights." However, this right is not absolute, and an employer's "interest in the efficient and orderly operation of its affairs must be balanced with the public employees' right to free speech . . . ." *Orr v. Crowder*, 315 S.E.2d 593 (W. Va. 1983)(citing *Pickering v. Bd. of Educ*., 391 U.S. 563 (1968)).

6. The burden of proof is on a grievant to demonstrate by a preponderance of the evidence that his conduct is constitutionally protected. *Orr* at 62 (citing *Mt. Healthy City Bd. of Educ. v. Doyle*, 429 U.S. 274 (1977)). 7. An employer may not retaliate against a whistle-blower, and any such act would be seen as an act of reprisal. "An employee alleging a violation of [the whistle- blower law] must show by a preponderance of the evidence that, prior to the alleged reprisal, the employee . . . had reported or was about to report in good faith, verbally or in writing, an instance of wrongdoing or waste to the employer or an appropriate authority." W. Va. Code § 6C-1-4.

8. 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).

9. Respondent has proven by a preponderance of the evidence that Grievant was insubordinate, as contemplated by the provisions of W. Va. Code § 18A-2-8.

10. Grievant has failed to establish that his conduct was protected speech, that he was entitled

to the protections of the whistle-blower provisions, or that his punishment should be mitigated.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County, or to the Circuit Court of Pocahontas 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 VirginiaEducation 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.

**Date: September 22, 2006**

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**DENISE M. SPATAFORE**

**Administrative Law Judge**

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Footnote: 1

*No actual evidence to support this allegation is contained in the record.*

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Footnote: 2

*However, it should be noted that Grievant and the others present knew without any question that Grievant's transfer was a topic of discussion for this meeting.*

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Footnote: 3

*Again, no actual evidence supporting this allegation is contained in the record. On the contrary, it would appear that Grievant was mistaken regarding this alleged misappropriation.*

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Footnote: 4

*This individual's name has been brought up by Grievant in relation to his adulterous accusations against Mr. Grimes. It would appear that Mr. Ward was also a Board employee who was accused of some sort of sexual misconduct, but the exact issue is unclear from the evidence available.*

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Footnote: 5

*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).*

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Footnote: 6

*W. Va. Code § 18A-2-8.*

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Footnote: 7

*Bell v. Kanawha County Bd. of Educ., Docket No. 91-20-005 (Apr. 16, 1991).*

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Footnote: 8

*Trimboli v. Dep't of Health and Human Res., Docket No. 93-HHR-322 (June 27, 1997).*

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Footnote: 9

*State ex rel. Eads v. Duncil, 196 W. Va. 604, 474 S.E.2d 534 (1996).*

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Footnote: 10

*Blake v. Kanawha County Bd. of Educ., Docket No. 01-20-470 (Oct. 29, 2001).*

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Footnote: 11

*Butts v. Higher Educ. Interim Governing Bd., 569 S.E.2d 456 (W. Va. 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).*

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Footnote: 12

*Butts, supra; Smith v. Parkways Economic Dev. and Tourism Auth., 05-PEDTA- 166 (Aug. 26, 2005).*

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Footnote: 13

*It should also be noted that, based upon his numerous years of experience challenging the Board and its actions, Grievant knew that a transfer hearing was not the appropriate venue for launching these types of attacks against Board members and employees.*

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Footnote: 14

*Orr v. Crowder, 315 S.E.2d 593 (W. Va. 1983)(citing Pickering v. Bd. of Educ., 391 U.S. 563 (1968)).*

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Footnote: 15

*Orr at 601.*

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Footnote: 16

*Id. at 602 (citing Pickering at 569).*

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Footnote: 17

*Id.*

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Footnote: 18

*Orr at 62 (citing Mt. Healthy City Bd. of Educ. v. Doyle, 429 U.S. 274 (1977)).*

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Footnote: 19

*Mazaleski v. Trensdell, 562 F.2d 701, 715 (D. C. Cir. 1977).*

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Footnote: 20

*Id.*

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Footnote: 21

*Mazaleski at 360-61. See also English v. Powell, 592 F.2d 727 (4th Cir. 1979).*

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Footnote: 22

*The basis of Grievant's adultery allegation has never been explained.*

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Footnote: 23

*W. Va. Code § 6C-1-2(g).*

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Footnote: 24

*W. Va. Code § 6C-1-2(h).*

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Footnote: 25

*W. Va. Code § 6C-1-2(f).*

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Footnote: 26

*W. Va. Code.§ 6C-1-2(d).*

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Footnote: 27

*W. Va. Code § 6C-1-2(a).*

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Footnote: 28

*W. Va. Code § 6C-1-3.*

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Footnote: 29

*W. Va. Code § 6C-1-4.*

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Footnote: 30

*Id.*

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Footnote: 31

*Conner v. Barbour County Bd. of Educ., Docket No. 94-01-394 (Jan. 31, 1995).*

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Footnote: 32

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

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Footnote: 33

*Phillips v. Summers County Bd. of Educ., Docket No. 93-45-105 (Mar. 31, 1994).*