

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**TRAVIS WELLS,
Grievant,**

v.

Docket No. 2023-0143-MonED

**MONONGALIA COUNTY BOARD OF EDUCATION,
Respondent.**

DECISION

Grievant, Travis Wells, filed this action on August 19, 2022, directly to level three, claiming wrongful termination from employment by the Monongalia County Board of Education. Grievant seeks reinstatement with back pay and interest and all related benefits. A level three evidentiary hearing was conducted before the undersigned on December 5, 2022, at the Westover office of the Public Employees Grievance Board. Grievant appeared in person and by his counsel, Kirk Auvil, The Employment Law Center PLLC. Respondent appeared by its counsel, Jennifer S. Caradine, Legal Counsel, Monongalia County Board of Education. This matter became mature for consideration upon receipt of the parties' proposals on February 1, 2023.

Synopsis

Grievant was employed by Respondent as a science teacher at University High School until his termination on August 9, 2022. Grievant was terminated because his conduct was unprofessional and in violation of the Employee Code of Conduct. Respondent also alleged that Grievant's conduct jeopardized the health, safety, and welfare of students. Respondent has met its burden of proof that the termination of Grievant's contract was justified by the undisputed facts of this case resulting in a clear violation of the Employee Code of Conduct. The record demonstrated that Grievant's

conduct was not correctable and that he was not entitled to a second improvement plan. Accordingly, this grievance is denied.

The following Findings of Fact are based on the record of this case.

Findings of Fact

1. Grievant was employed by Respondent as a science teacher at University High School from August 2012 until his termination on August 9, 2022.

2. University High School's administration seeks to enforce a "zero tolerance" policy toward students loitering in the halls during class times. Students determined to be in the halls without a hall pass during class periods are turned in for in-school suspension.

3. On June 2, 2022, during his Professional Learning Community ("PLC") period, Grievant was conducting a hall sweep, as directed by University High School administration. Staff conducted hall sweeps at the start of their PLC periods to be sure students were where they should be after the class period started.

4. June 2, 2022 was also the first day that weapons detectors were used at University High School; all students passed through the weapons detectors as they entered the school.

5. During the June 2 hall sweep, Grievant was outside of a second-floor boys' restroom near Grievant's classroom. While Grievant was standing outside of the restroom, a student approached Grievant and handed him a textbook. Shortly after arriving around the restroom, Grievant entered the restroom and then walked out a few seconds later. As soon as he walked out of the restroom, Grievant picked up the textbook

that was handed to him earlier and slammed it loudly on a filing cabinet. Grievant then picked up the book and left the area of the restroom.

6. While Grievant was in the restroom, a student told him to get out of the restroom and that he was going to pay for his actions. By his own admission, Grievant was on edge at that point.

7. A few minutes later, Grievant was in the first-floor hallway adjacent to the main office. Grievant was pacing, and looked at his watch, monitoring the hallways and seemed to be looking for something or someone specifically. While Grievant was in the area, an administrator passed him, along with several employees and students.

8. Grievant did not interact with anyone in the area until he entered a hallway and was seen coming back to the lobby area with the student he stated disrespected him in the restroom. Grievant acknowledged that he took a photo of the student with his cell phone when he approached him in the hallway. The student appeared to be calmly walking in the hall, but Grievant said he became verbally abusive.

9. Grievant was motioning in the direction of the office. The student turned away and began walking down another hallway. Grievant was animated as he walked backwards down the hall, pointing to the student and talking toward the video camera. Several employees were seen walking in the direction of Grievant and the student. None seemed to be alarmed and none were running.

10. After the Grievant and the student entered the cafeteria area, the student spoke toward Grievant and walked toward Grievant. Grievant indicated that the student was aggressive toward him, yet Grievant continued to pursue and harass the student. Grievant felt that the situation could potentially escalate into an ALICE situation because

there could have been a gun on the student.¹ The record did not support such a conclusion.

11. As Grievant and the student passed another student standing outside of a restroom, Grievant stomped and waived his fist in the air and began to engage with the second student. After University High School Principal Greene interceded with the first student, Grievant shouted “where’s your class” to the second student. Grievant was clearly agitated. The second student was in the hallway with the permission of Principal Greene.

12. Principal Greene directed the Grievant to move away from his confrontation with the students and had concern with Grievant’s lack of self-regulation.

13. Grievant unnecessarily escalated both of the students and by doing so, Grievant created the potential for an unsafe and unhealthy environment. The students had to be taken home and away from the school following the interaction with Grievant.

14. Earlier in the day Grievant indicated that he saw two students acting sketchy and they stashed a backpack in a locker. Grievant did not follow those students. Grievant called for an administrator and Assistant Principal Teddy Stewart handled the situation. Assistant Principal Stewart assured Grievant that he was not aware of any students trying to bypass the weapons detectors. Adam Henkins, Director of Safe and Supportive Schools, Athletics, and Title IX indicated that he was on site that day for the trial run of the weapons detectors. He went on to explain that the only issue he encountered was

¹ALICE is the active shooter preparedness training that Respondent uses for all personnel and students annually. ALICE is an acronym for Alert, Lockdown, Inform, Counter, Evacuate.

when one student walked quickly through the detector without stopping, but he was able to pull the student aside and conduct the proper procedure.

15. The June 2, 2022, incident was not the first incident in which Grievant impacted the learning environment of students. In 2018, Grievant received a three-day suspension following a similar incident in which Grievant's self-regulation had to be addressed. Grievant completed a Focus Support Plan in January of 2019 for classroom management, lesson planning, and concern for emotional support.. Grievant successfully completed the plan.

16. In the fall of 2020, Grievant made false and reckless statements regarding COVID data reporting and the Board of Education's role in COVID data. Respondent suspended Grievant for two days for his violation of the Employee Code of Conduct.²

17. For the two school years prior to Grievant's termination, University High School received numerous parent and counselor requests to change schedules to be out of Grievant's class. The requests were due to Grievant's negative treatment toward students or the need for a more positive learning environment.

18. During the 2021-2022 school year, after Grievant had multiple discipline referrals before September of 2021, Principal Green and Assistant Principal Stewart met with Grievant to offer him assistance in his classroom. Grievant refused.

² Grievant stated: "Schools aren't reporting outbreak data. Government officials from the top all the way down to BOE and county commissions are meeting behind closed doors to 'scrub' the data. (Potentially in violation of WV open meeting laws.) They claim discussing health data is private, however that is supposed to apply to private personal health information, not to public health data."

19. In March of 2022, Grievant stated to other faculty members that it was hard to get students interested in anything because they are too busy drug-dealing. Grievant referred to the students in the restroom as “Future Pharmacists of America.”

20. Principal Greene gave Grievant a letter admonishing him for his handling of the situation with the students, stating that she had referred the incident to Superintendent Campbell for review.

21. On July 1, 2022, Superintendent Campbell sent Grievant a letter alleging that he committed misconduct in his handling of the June 2 incident and requesting his attendance at University High School on July 14, 2022, to discuss the incident.

22. Grievant attended the meeting and discussed the matter with the Superintendent. Thereafter, the Superintendent drafted a letter recommending that the Grievant be terminated from employment.

23. On July 28, 2022, Superintendent Campbell suspended the Grievant without pay until the Respondent held its board meeting on August 8, 2022, to determine how its members would vote on the recommended termination.

24. On August 9, 2022, after hearing, Respondent’s board members voted to terminate the Grievant.

Discussion

As this grievance involves a disciplinary matter, the Respondent bears the burden of establishing the charges against the Grievant by a preponderance of the evidence. *Nicholson v. Logan County Bd. of Educ.*, Docket No. 95-23-129 (Oct. 18, 1995); *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 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 determines the weight of the testimony.” *Petry v. Kanawha County Bd. of Educ.*, Docket No. 96-20-380 (Mar. 18, 1997). 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 & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

Grievant was terminated because his conduct was unprofessional and in violation of the Employee Code of Conduct. Respondent also alleged that Grievant’s conduct on June 2, 2022, jeopardized the health, safety, and welfare of students. Specifically, the Code of Conduct codified in the State Board of Education’s Legislative Rule requires all 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.

WEST VIRGINIA CODE ST. R. § 126-162-4,

An employee of a county board of education may be suspended or dismissed for immorality, incompetency, cruelty, insubordination, intemperance, willful neglect of duty, unsatisfactory performance, a finding of abuse by the Department of Health and Human Resources in accordance with §49-1-1 *et seq.* of this code, the conviction of a felony or a guilty plea or a plea of *nolo contendere* to a felony charge. W. VA. CODE § 18A-2-8. “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).

Respondent is charged with the “duty and authority to provide a safe and secure environment in which students may learn and prosper; therefore, it may take necessary steps to suspend or dismiss any person in its employment at any time should the health, safety, or welfare of students be jeopardized or the learning environment of other students has been impacted.” W. VA. CODE § 18A-2-8a(d).

In the instant case, based on the totality of the circumstances, the record established by a preponderance of the evidence that Grievant impacted the learning environment of students. Grievant escalated two students who were otherwise calm prior

to their interaction with Grievant. The students had to be taken home and away from the school environment following their interaction with Grievant. No student should be subjected to a teacher's inability to self-regulate, as occurred here and in Grievant's classroom in 2018.

Grievant's actions on June 2, 2022, as well as the social media post in 2020, and the student interaction in 2018 are all violations of the Employee Code of Conduct and jeopardized the learning environment of other students. From a review of the video clips, it is apparent that early in the day of June 2, 2022, Grievant, when faced with a potentially dangerous situation of students stashing a backpack in a locker, called for the assistance of an administrator. Grievant did not pursue and harass the students, as he did with the situation at issue. Grievant aggressively stomped at and held up his fist at one of the students who was merely standing in the hallway before shouting at him "where's your class."

The videos show that Grievant was trying to intimidate the second student by stomping at him and shaking his fist. In escalating the students, Grievant was not contributing, cooperating, or participating in creating an environment in which all students are accepted and provided the opportunity to achieve at the highest levels in all areas of development. Neither student was able to return to class following the incident. Grievant created an environment of harassment and intimidation. Grievant has had specific one-on-one training in self-regulation. Grievant knew what was expected of him but chose to follow unacceptable conduct. Grievant has demonstrated a pattern of negative treatment toward students, which culminated in the escalation of two students on June 2, 2022.

Grievant's behavior in the instant case can be characterized as willful neglect of duty. Willful neglect of duty may be defined as an employee's intentional and inexcusable failure to perform a work-related responsibility. *Russell v. Kanawha County Bd. of Educ.*, Docket No. 2016-0447-KanED (Mar. 21, 2016). The term "willful" ordinarily imports a knowing and intentional act, as distinguished from a negligent act. *Crum v. Logan County Bd. of Educ.*, Docket No. 2015-1197-CONS (Oct. 19, 2015).

Grievant does not dispute his actions on June 2, 2022, but argues that his actions should have been noted in an evaluation consultation, followed by a corrective action plan. Grievant argues that his conduct was correctable and that the penalty was too severe. This argument has no merit. Grievant cites the Supreme Court of Appeals holding that "where the underlying complaints regarding a teacher's conduct relate to his or her performance . . . the effect of West Virginia Board of Education Policy is to require an initial inquiry into whether that conduct is correctable." *Maxey v. McDowell County Bd. of Educ.*, 212 W. Va. 688, 575 S.E.2d 278 (2002).

The record established that Grievant was given an opportunity to correct his conduct in 2018 and demonstrated on June 2, 2022, that it was not correctable. Additionally, the Supreme Court of Appeals has noted that in determining whether conduct is correctable, the reviewing court must decide "whether it directly and substantially affects the morals, safety, and health of the system in a permanent, non-correctable manner." *Mason County Board of Education v. State Superintendent of Schools*, 274 S.E.2d 435 (1980). The Grievance Board has ruled in situations where an employee's conduct was initially correctable and the employee acts similarly thereafter, the employee's actions show a willful neglect of duties. *Dalton v. Monongalia County Bd.*

of Educ., Docket No. 2010-1607-MonED (Nov. 23, 2010). The Grievance Board has found that where an employee's conduct was not in accordance with the broad language of the Employee Code of Conduct, "by failing to promote a safe and positive learning environment, and failing to be a good adult role model," the inappropriate conduct constituted insubordination. *Wells v. Upshur County Bd. of Educ.*, Docket No. 2009-1714-UpsED (May 6, 2011).

Respondent argues that Grievant's conduct jeopardized the welfare of students. The record supports a finding that Grievant's actions on June 2, 2022, as well as the social media post in 2020, and the inappropriate student interaction in 2018 were all violations of the Employee Code of Conduct and jeopardized the learning environment of students. As stated above, Grievant was previously given a corrective action plan to address the very same conduct. Accordingly, the undersigned concludes that Grievant's conduct was not correctable, and the Respondent was entitled to take disciplinary action against the Grievant without first offering yet another improvement plan.

The following Conclusions of Law support the decision reached.

Conclusions of Law

1. As this grievance involves a disciplinary matter, the Respondent bears the burden of establishing the charges against the Grievant by a preponderance of the evidence. *Nicholson v. Logan County Bd. of Educ.*, Docket No. 95-23-129 (Oct. 18, 1995); *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 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 determines the weight of the testimony.” *Petry v. Kanawha County Bd. of Educ.*, Docket No. 96-20-380 (Mar. 18, 1997). 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 & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

2. An employee of a county board of education may be suspended or dismissed for immorality, incompetency, cruelty, insubordination, intemperance, willful neglect of duty, unsatisfactory performance, a finding of abuse by the Department of Health and Human Resources in accordance with §49-1-1 *et seq.* of this code, the conviction of a felony or a guilty plea or a plea of nolo contendere to a felony charge. W. VA. CODE § 18A-2-8. “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).

3. The Grievance Board has ruled in situations where an employee’s conduct was initially correctable and the employee acts similarly thereafter, the employee’s actions show a willful neglect of duties. *Dalton v. Monongalia County Bd. of Educ.*, Docket No. 2010-1607-MonED (Nov. 23, 2010).

4. “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. Respondent is charged with the “duty and authority to provide a safe and secure environment in which students may learn and prosper; therefore, it may take necessary steps to suspend or dismiss any person in its employment at any time should the health, safety, or welfare of students be jeopardized or the learning environment of other students has been impacted.” W. VA. CODE § 18A-2-8a(d).

5. Respondent has met its burden of proof that the termination of Grievant’s contract was justified by the undisputed facts of June 2, 2022, resulting in a clear violation of the Employee Code of Conduct, and a willful neglect of duty.

6. The West Virginia Supreme Court of Appeals in *Maxey v. McDowell County Bd. of Educ.*, 212 W. Va. 688, 575 S.E.2d 278 (2002) held that “where the underlying complaints regarding a teacher’s conduct relate to his or her performance . . . the effect of West Virginia Board of Education Policy is to require an initial inquiry into whether that conduct is correctable.”

7. The West Virginia Supreme Court of Appeals has also noted that the reviewing court must decide “whether it directly and substantially affects the morals, safety, and health of the system in a permanent, non-correctable manner.” *Mason County Board of Education v. State Superintendent of Schools*, 274 S.E.2d 435 (1980).

8. Grievant has demonstrated that his conduct on June 2, 2022, was not correctable and that he was not entitled to a second improvement plan given the record of this case.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Intermediate Court of Appeals.³ Any such appeal must be filed within thirty (30) days of receipt of this Dismissal Order. W. VA. CODE § 6C-2-5. Neither the West Virginia Public Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be named as a party to the appeal. However, the appealing party is required to serve a copy of the appeal petition upon the Grievance Board by registered or certified mail. W. VA. CODE § 29A-5-4(b).

Date: March 14, 2023

Ronald L. Reece
Administrative Law Judge

³On April 8, 2021, Senate Bill 275 was enacted, creating the Intermediate Court of Appeals. The act conferred jurisdiction to the Intermediate Court of Appeals over “[f]inal judgments, orders, or decisions of an agency or an administrative law judge entered after June 30, 2022, heretofore appealable to the Circuit Court of Kanawha County pursuant to §29A-5-4 or any other provision of this code[.]” W. VA. CODE § 51-11-4(b)(4). The West Virginia Public Employees Grievance Procedure provides that an appeal of a Grievance Board decision be made to the Circuit Court of Kanawha County. W. VA. CODE § 6C-2-5. Although Senate Bill 275 did not specifically amend W. VA. CODE § 6C-2-5, it appears an appeal of a decision of the Public Employees Grievance Board now lies with the Intermediate Court of Appeals.