

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

LOIS SPENCER,

Grievant,

v.

Docket No. 2023-0221-MnIED

MINERAL COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Grievant, Lois Spencer, was employed by Respondent, Mineral County Board of Education, when dismissed. On September 15, 2022, Grievant filed this grievance against Respondent, stating in part:

The Mineral County Board of Education violated the provisions of W.Va. Code section 18A-2-8, the whistleblower provisions of W.Va. Code 6C-2-1, and the age discrimination provisions of 6C-2-2 and the W.Va. Human Rights Act.

As relief, "Grievant requests that the Grievance Board reverse her termination, reinstate her as principal of Keyser High School, and award back pay for the time in which Grievant was suspended without pay and/or discharged."

Grievant filed directly to level three of the grievance process.¹ A level three hearing was held before the undersigned at the Grievance Board's Westover office on May 10 & 11, 2023. Grievant appeared in person and was represented by Scott E. McClure, McClure Goad, PLLC. Respondent appeared by Assistant Superintendent Kelli Wilson and was represented by counsel, Kimberly Croyle, Bowles Rice, LLP. This matter

¹West Virginia Code § 6C-2-4(a)(4) permits a grievant to proceed directly to level three of the grievance process when the grievance deals with the discharge of the grievant.

became mature for decision on July 12, 2023. Each party submitted written proposed findings of fact and conclusions of law (PFFCL).

Synopsis

Grievant was employed by Respondent as a principal when dismissed for insubordination and willful neglect of duty. Respondent alleges Grievant harassed former Assistant Principal Connor and current Assistant Principal Droppleman with rumors of affairs, demeaned them and others, and lied to investigators about her behavior. Grievant denies many of the allegations but asserts her conduct is correctable. Ironically, Grievant contends Respondent previously addressed the Ms. Connor allegations through an evaluation. Thus, Grievant was on notice that her behavior was unacceptable when she later engaged in similar conduct. Respondent proved that Grievant engaged in willful neglect of duty and insubordination when she lied to investigators and harassed multiple employees. Grievant's conduct was not correctable. Dismissal was justified. Accordingly, this grievance is DENIED.

The following Findings of Fact are based upon a complete and thorough review of the record created in this grievance:

Findings of Fact

1. Grievant was employed by Respondent as the principal of Keyser High School (KHS) from May 15, 2018, until her dismissal on August 12, 2022.
2. The Employee Code of Conduct, found in West Virginia Department of Education Policy 5902 and Mineral County Schools Policy 3210, mandates that all employees:

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.

(Respondent's Exhibit 1, page 31).

3. State Board of Education Policy 4373, titled "Anti-Harassment and Violence," was enacted to "maintain an education and work environment that is free from all forms of unlawful harassment and violence." (Grievant's Exhibit 2).

4. The policy defines "harassment," in relevant part, as "any threatening, insulting, or dehumanizing gesture, use of technology, or written, verbal or physical conduct directed against a student or school employee that ... C. has the effect of substantially disrupting the orderly operation of a school."

5. The policy states that "sexual harassment" may include "speculations about a person's sexual activities or sexual history..."

6. Torria (TJ) Connor was selected as assistant principal of KHS around the same time Grievant was selected as principal in spring 2018.

7. Throughout Ms. Connor's tenure as assistant principal of KHS, Grievant repeatedly harassed Ms. Connor by identifying random people as her boyfriend, by attempting to humiliate her in front of colleagues, and by stating that she was having an affair with Superintendent Ravenscroft. Grievant did so in front of and to others with the effect of undermining Ms. Connor's authority. (Ms. Connor's testimony).

8. Grievant stated that her former Assistant Principal Connor was having an affair with Superintendent Ravenscroft on separate occasions to Ms. Connor herself, Secretary Guy, Assistant Superintendent Kelli Wilson, KHS Guidance Counselor Luke Denne, Kelly Haines (Director of Curriculum and Instruction for Secondary Schools), and current Assistant Principal Christine Droppleman. (Testimony of Ms. Connor, Ms. Guy, Ms. Wilson, Ms. Droppleman, Ms. Haines, & Mr. Denne).

9. Grievant confided to her former Assistant Principal Connor that KHS School Counselor Luke Denne and his wife, KHS Teacher Kiersten Denne, were having marital problems and that other employees were having affairs. (Ms. Connor's testimony).

10. Grievant told Mr. Denne that Assistant Principal Droppleman and Resource Officer Rumer were inseparable. Grievant confided to Mr. Denne her concern about affairs between other employees. (Mr. Denne's testimony).

11. During this period, current Assistant Principal Christine Droppleman was a counselor at KHS and got along with Grievant. Grievant confided to her that former Assistant Principal Connor and the Superintendent were having an affair because they were always together. (Ms. Droppleman's testimony).

12. The situation got so bad that Ms. Connor transferred to another position by the end of the 2020-2021 school year. (Ms. Connor's testimony).

13. On June 14, 2021, Grievant was evaluated for the 2020-2021 school year by Director of Curriculum and Instruction for Secondary Schools Haines. The evaluation touched on Grievant's inappropriate behavior towards her then Assistant Principal Connor. (Respondent's Exhibits 11-12).

14. Ms. Haines had performed at least the three prior annual performance evaluations of Grievant and issued Grievant "accomplished" ratings in all evaluation categories. (Respondent's Exhibits 11-12, Grievant's Exhibits 7-11).

15. However, the 2020-2021 evaluation dropped Grievant to "emerging" in both Element 1.1 (The school leader demonstrates effective and professional interpersonal and collaborative skills) and Element 4.1 (The school leader builds and sustains a safe and positive climate and cohesive culture). (Respondent's Exhibit 12).

16. Grievant told Ms. Haines she did not do anything wrong and was furious over the rating. Grievant threatened to retaliate against former Assistant Principal Conner by lowering Ms. Conner's evaluation ratings if Grievant received an "emerging" on her evaluation due to her relationship with subordinates. (Ms. Haines' testimony).

17. Despite counseling by Ms. Haines and the drop in her evaluation ratings, Grievant maintains that she did nothing wrong and that "she was only joking" when she said things to and about former Assistant Principal Conner.

18. Following former Assistant Principal Connor's departure, Ms. Droppleman became the assistant principal of KHS starting with the 2021-2022 school year.

19. Grievant's inappropriate behavior did not stop once Ms. Connor left. Despite being directed by Ms. Haines to be professional and foster a positive work environment, Grievant began making similar comments to and about Assistant Principal Droppleman during the 2021-2022 school year.

20. Grievant would frequently refer to Assistant Principal Droppleman as a "Paugh from Elk Garden," implying she lacked intellect.

21. In her role overseeing discipline, Assistant Principal Droppleman worked with KHS Resource Officer Doug Rumer.

22. Grievant wanted to replace Officer Rumer because, unlike his predecessor, Officer Rumer refused to be a disciplinarian or to perform other tasks outside his job duties. School Resource Officers are employees of the Sheriff, and their primary purpose is crime prevention. (Safety Coordinator John Wilson's testimony).

23. Grievant began openly stating that Officer Rumer and Assistant Principal Droppleman were having an "affair." (Secretary Melissa Guy's testimony at position 5:04:37)

24. In conversations with Assistant Principal Droppleman, Grievant referred to Officer Rumer as Assistant Principal Droppleman's "hubby" and "boyfriend." (Ms. Droppleman's testimony).

25. Later during the COVID-19 pandemic, Grievant's allergies were aggravated when Secretary Guy began decontaminating the office obsessively with cleaning chemicals. Grievant told Ms. Guy that she could get Ms. Guy a janitor position if she liked to clean so much.

26. Secretary Guy tried saying something to Grievant but Grievant berated her, listing mistakes Ms. Guy had made over the prior four years. Ms. Guy asked Grievant if she was done talking. (Ms. Guy's testimony).

27. Secretary Guy and Grievant then stopped talking or interacting.

28. Things got so bad that the secretaries and Officer Rumer considered going elsewhere. (Faculty Senate President Michael Stagger's testimony).

29. Grievant, once again, stated that she "was joking" about finding Ms. Guy a job as a janitor and that the breakdown in the office climate was not her fault, but the secretaries' fault.

30. Mr. John Droppleman, Director of Support Services, testified that later that same school year someone at KHS told him that Grievant was spreading a rumor that his wife, Assistant Principal Droppleman, was having an affair with Officer Rumer. Mr. Droppleman refused to identify the individual during his testimony or the investigation into the matter. (Mr. Droppleman's testimony).

31. On May 20, 2022, Officer Rumer patted Assistant Principal Droppleman on her back after graduation practice. Grievant later told Ms. Droppleman that she saw Officer Rumer touch her back. (Ms. Droppleman's testimony, Respondent's Exhibit 3).

32. On May 29, 2022, there was a medical emergency in the bleachers at the start of graduation. Officer Rumer responded to the incident before Assistant Principal Droppleman walked over to the bleachers to see what was happening. The next day at the weekly administrative meeting, Grievant openly stated that Officer Rumer only responded to the medical emergency because Ms. Droppleman was there first. (Testimony of Ms. Droppleman & Mr. Staggers, Respondent's Exhibit 3).

33. Grievant told Assistant Principal Droppleman to start “being mean” to Officer Rumer so that they could “get rid of him.” Ms. Droppleman applied for another job due to the stress. (Ms. Droppleman’s testimony, Respondent’s Exhibit 3).

34. On June 3, 2022, Grievant called Mineral County Schools Safety Coordinator John Wilson (husband of Assistant Superintendent Kelli Wilson) about her concerns that Ms. Droppleman and Officer Rumer were having an affair. Grievant did not file a written complaint but did discuss her concerns with him. (Mr. Wilson’s testimony).

35. Principals and Central Office Administrators frequently contact Mr. Wilson to investigate issues of concern. Grievant contacted Mr. Wilson because she was friendly with him, frequently talked to him, and had safety concerns about how Mr. Droppleman might react when he found out about the affair. (Mr. Wilson’s testimony).

36. Grievant told Mr. Wilson she was going to speak to Sheriff Ellifritz about Officer Rumer. Mr. Wilson told Grievant that as the Sheriff liaison he would talk to the Sheriff.

37. Nevertheless, Grievant met with the Sheriff. Assistant Principal Droppleman and some of the secretaries were present at this meeting with the Sheriff. Grievant told the Sheriff her concerns about Officer Rumer’s job performance. (Grievant’s testimony).

38. Grievant did not mention any affair to the Sheriff.

39. On June 16, 2022, Ms. Haines evaluated Grievant for 2021-2022. The evaluation did not reference any of the above-mentioned allegations against Grievant subsequent to those involving former Assistant Principal Connor, as Ms. Haines was unaware of these allegations. The “emerging” ratings from 2021 were upgraded to “accomplished.” (Ms. Haines’ testimony, Respondent’s Exhibit 12).

40. On June 16, 2022, Mr. Wilson met Mr. Droppleman and led him to believe he was being interviewed in conjunction with a complaint filed by Grievant. Mr. Droppleman told Mr. Wilson that he had known about the rumor of his wife's affair for the past three weeks. (Respondent Exhibit 2).

41. On June 21, 2022, Mr. Droppleman filed a formal complaint against Grievant with Superintendent Ravenscroft, alleging that Grievant made inappropriate comments about his wife and Office Rumer. (Respondent's Exhibit 2).

42. The only indication therein about Mr. Droppleman's direct knowledge of any of the allegations against Grievant is as follows:

On Tuesday, June 7, 2022, I was at KHS ... When I went to Christine's office, she and Officer Rumer were talking. I greeted them both and then went to the secretary's area and greeted [Grievant]. I asked [Grievant] how she was doing and she stated "Oh I'm fine. I'm just over here by myself." She then produced a sheepish smile and nodded and looking [sic] toward Christine's office. I understood the inference, but did not react.

43. This was the extent of Mr. Droppleman's direct knowledge of the allegations against Grievant. (Mr. Droppleman's testimony).

44. On June 27, 2022, Ms. Droppleman filed with Mr. Wilson a letter in "response to the complaint filed by [Grievant]." (Respondent's Exhibit 3).

45. Superintendent Ravenscroft instructed Mr. Wilson by phone to conduct an investigation into the allegations against Grievant. (Superintendent Ravenscroft's testimony).

46. On June 30, 2022, Superintendent Troy Ravenscroft sent Grievant a letter placing her on paid administrative leave pending the outcome of an investigation into allegations of harassment and hostile work environment. (Respondent's Exhibit 1, pg. 1).

47. The letter alleges that Grievant made “disparaging comments regarding... administrators in the presence of others, initiated rumors of inappropriate sexual relationships between employees of Mineral County Schools” and created “an environment that is uncomfortable and difficult for others to work in.”

48. On July 28, 2022, Grievant was interviewed by Mr. Wilson and Mr. Staley concerning the complaints filed by the Dropplemans. Grievant denied telling anyone that Assistant Principal Droppleman and Officer Rumer were having an inappropriate relationship. (Respondent's Exhibit 4).

49. Safety Coordinator Wilson prepared a report addressed to Superintendent Ravenscroft, dated July 28, 2022. The report detailed Grievant's history of engaging in inappropriate behavior. The report concluded that Grievant's behavior:

. . . was unwanted and caused Mr. and Mrs. Droppleman discomfort, humiliation, marital problems, and mental stress. . . Though [Grievant] denied having made any accusations about Mrs. Droppleman and PRO Rumer having an inappropriate relationship, overwhelming testimony has proven Mrs. Droppleman was under significant duress stemming from [Grievant's] offensive jokes, slurs, intimidation, ridicule and mockery. All of these things interfered with Mrs. Droppleman's work performance, ability to carry out her prescribed duties as the assistant principal of KHS, her marriage and her quality of life . . . simple standards to which all employees have the rights. Testimony further revealed that Mrs. Droppleman, along with three other KHS office staff members, were actively seeking other employment during the 2021-2022 school year because they could no longer handle the stress of working in the KHS main office.

(Respondent's Exhibit 1, pg. 3).

50. Mr. Wilson's report specifies:

[Grievant] had already informed Mr. Droppleman of her suspicions regarding Mrs. Droppleman's affair prior to informing Mr. Wilson of her suspicions. However, when Mr.

Wilson asked if she had told anyone about these suspicions, Grievant said an emphatic “No.” [Grievant] was not being forthright at that moment for testimonies prove she had already told Mr. Droppleman and several others of the alleged affair....

At the time [Grievant] told Mr. Wilson she feared what Mr. Droppleman might do should he become aware of the “affair,” she had already told Mr. Droppleman personally of her suspicions. [Grievant] was not being forthright at the moment. When asked during her interview, [Grievant] denied having told Mr. Droppleman about an affair between Mrs. Droppleman and PRO Rumer

Note that seven of the eleven witnesses interviewed confirm having personally witnessed Mrs. Spencer stating her beliefs that Mrs. Droppleman and PRO Rumer were having an affair and/or having made jokes to that effect. [Grievant’s] remarks included jokes, insinuations, and outright statements that the two were having an extra-marital affair, were intimately involved, were too “emotionally connected”, and were “inseparable.” Thought [sic] she denied ever having made them, [Grievant] made these comments in front of employees, students, and employees from outside agencies. ...

51. Safety Coordinator Wilson concluded that Grievant harassed complainants and created a difficult, uncomfortable, and hostile working environment for them and others over an extended period.

52. Because he was a subject of one of Grievant’s rumors, Superintendent Ravenscroft assigned Assistant Superintendent Wilson the task of reviewing Mr. Wilson’s report, meeting with Grievant, and determining if Grievant should be disciplined and the nature of that discipline.

53. On August 5, 2022, Assistant Superintendent Wilson met with Grievant and her representative to review Mr. Wilson’s report and to determine whether discipline should be imposed. Assistant Superintendent Wilson asked Grievant to respond to the

allegations. Grievant denied all allegations. (Respondent's Exhibit 5, Ms. Wilson's testimony).

54. During her decades as an educator and administrator, Grievant has never been disciplined. Nor has Grievant received a corrective action plan or improvement period.

55. On August 17, 2022, Assistant Superintendent Wilson provided Grievant an intent to terminate letter placing Grievant on "immediate suspension without pay" and promising to "recommend that the Mineral County Board of Education terminate your employment" for insubordination, willful neglect of duty, violating the Employee Code of Conduct, and creating a hostile work environment. (Respondent's Exhibit 1, page 16).

56. The letter alleges Grievant engaged in willful neglect of duty and insubordination by spreading rumors of an affair between former Assistant Principal Connor and Superintendent Raverscroft; spreading rumors of an affair between Assistant Principal Droppleman and Officer Rumer; spreading rumors of Counselor Denne's marital problems; having communication problems with Secretary Guy; belittling Assistant Principal Droppleman, former Assistant Principal Connor, Officer Rumer, and Secretary Guy; ignoring Safety Coordinator Wilson's directive to not talk to the Sheriff about Officer Rumer; and lying to investigators in denying she talked about inappropriate relationships.

57. Regarding Grievant's harassing behavior towards Assistant Principal Droppleman, the letter states:

On multiple occasions, you publicly humiliated Ms. Droppleman, making fun of her for having been raised in the town of Elk Garden and for having the family name Paugh. Both facts are locally known to be the subject of jokes in some circles. ... These kinds of comments contributed towards an environment of hostility and a climate that was very

uncomfortable for Ms. Droppleman to work in. When asked about these slights, you acknowledged having made them, but indicated that, “they were just jokes, I didn’t know they bothered her.” ...

58. The letter further states:

Not only did you contact Ms. Droppleman’s husband regarding this alleged affair, but you contacted Sheriff Ellifritz with your accusations, and embarrassed and humiliated Ms. Droppleman by making these false accusations in front of many others. Your remarks included jokes, insinuations, and outright statements that the two were having an extramarital affair, were intimately involved, were too “emotionally connected,” and were “inseparable.” ... You made these comments in front of Mr. and Ms. Droppleman and others in staff and administrator meetings, in the office, in the halls, in the cafeteria, and in various other locations throughout the school.

59. As for Safety Coordinator Wilson, the letter states:

When you contacted John Wilson, the safety coordinator, on June 3, 2022, to accuse Ms. Droppleman and PRO Rumer of having an extramarital affair, you were asked what facts or proof you had to substantiate your allegation. Having stated none, you were told, specifically, to not repeat the rumor. In addition, you were asked to whom you had spoken regarding these accusations and you responded no one. Both statements proved untrue, as you contacted Sheriff Ellifritz after having been specifically told not to

60. Regarding Grievant’s conduct towards Resource Officer Rumer, the letter states:

You actively sought to have PRO Rumer removed from KHS approximately one year prior to these events. The investigation revealed that you frequently vocalized your dislike for PRO Rumer and on many occasions approached Safety Coordinator Mr. Wilson asking to have PRO Rumer “replaced,” “removed,” or “terminated.” You spoke badly of PRO Rumer, his job performance, and his character, and often treated anyone who worked well with PRO Rumer badly because you expected everyone to “be mean to him.”

61. Regarding Grievant's conduct towards Secretary Guy, the letter states:

You again initiated conflict in February 2022 when you ordered DHS office secretary, Melissa Guy, to stop cleaning and sanitizing the office area. You decided that Ms. Guy would no longer clean anything because you felt she cleaned too much. You told Ms. Guy, "If you like cleaning so much, I can probably get you a janitor's job Missy." You admitted you made this comment. Ms. Guy was badly hurt by this comment and sought resolution through MCS board office administrators. ... It was not until MCS board office administration intervened and ordered you to accept a reasonable accommodation allowing Ms. Guy to continue sanitizing her workspace that you reduced the level of harassment toward Ms. Guy. After the conflict with Ms. Guy, however, you began treating both office secretaries "differently," "poorly," and "refused to talk to [them]." ...

62. Regarding Grievant's pattern of behavior, the letter states:

It is clear that this behavior has been typical of the way in which you address your subordinates. ... Beginning almost immediately upon her assignment as assistant principal at Keyser High School, Ms. Connor began being tormented with jokes, jabs, and rumors of extramarital affairs by you. One of the first jobs Ms. Connor had to handle was coordinating a large contractor job where S&S Electric was replacing all lights with new LED lighting. Because Ms. Connor was point person for the project, she often dealt with contractors. Very quickly you began "making inappropriate comments about [Ms. Connor] and the guys working for S&S." You would say things like "is that your man for today," or "is that the one" and "which one of these are you getting today." Ms. Connor tried to ignore or "laugh off" your comments at first but admitted that it quickly became difficult. To make matters worse, you made these inappropriate and unprofessional comments in front of other staff members. Like Ms. Droppleman, Ms. Connor was subordinate to you and on probation. ... Again, you admitted to making the aforementioned jokes at Ms. Connor's expense but again stated, "They were jokes, and I didn't think they bothered her" ... Immediately upon his arrival, you started a rumor that Ms. Connor and Mr. Ravenscroft were having an extramarital affair. ... [Y]ou also publicly joked that Ms. Connor was having inappropriate relationships with multiple students' parent – a claim you denied. When Ms. Connor would meet with certain student's parents, you would make

inappropriate comments and remarks about Ms. Connor's "boyfriend" being here to see her. These events were constant and ongoing. Ms. Connor reported you not only told everyone she (Ms. Connor) was having an affair with Superintendent Ravenscroft, but also that you would come back from the Board Office spreading rumors about county administrators who were having affairs ... including rumors that you fabricated and spread that KHS School Counselor Luke Denne and his wife KHS Teacher Kiersten Denne having marital problems.

63. As for Grievant's response to the investigation, the letter states:

When interviewed, you stated that you never made any accusations that PRO Rumer and Ms. Droppleman were having an extramarital affair. Not only is this untrue based upon the statements of everyone else interviewed, but you, yourself, told Mr. Wilson that they were having an extramarital affair.

In addition to not being truthful, you failed to maintain an environment free from harassment and intimidation, as required by the employee code of conduct. The investigation revealed that this is a pattern of behavior for you.

64. The letter concluded that "when questioned about these accusations, you were not truthful in your responses;" "[y]our defiant actions, as described above, violate the Employee Code of Conduct and rise to the level of, at least, willful neglect of duty and insubordination;" and "[y]our behavior, publicly attacking your employees and spreading rumors in an effort to humiliate them, undermines the Board's ability to maintain the necessary trust and confidence of its employees and the public."

65. Respondent determined that Grievant's conduct was not correctable.

66. State Board of Education Policy 4373 provides, in relevant part, the following reporting requirements:

Any Board employee who directly observes unlawful harassment is obligated, in accordance with this policy, to report such observations to the Compliance Officer(s) within

two (2) days. Teachers, administrators, and other school officials who have or receive notice that an employee has or may have been the victim of harassment prohibited under this policy shall immediately report the alleged harassment to the appropriate school official

(Grievant's Exhibit 2).

67. None of the witnesses testifying at the level three hearing reported Grievant's harassing behavior to the appropriate school official prior to being questioned during the ensuing investigation.

68. On September 12, 2022, the Mineral County Board of Education voted to terminate Grievant's employment contract.

Discussion

The grievant bears the burden of proof in a grievance that does not involve a disciplinary matter and must prove her grievance by a preponderance of the evidence. W. VA. CODE ST. R. § 156-1-3 (2018). In disciplinary matters, the burden of proof rests with the employer to prove that the action taken was justified, and the employer must prove the charges against an employee by a preponderance of the evidence. W. VA. CODE ST. R. § 156-1-3. "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." *Leichliter v. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993), *aff'd*, Pleasants Cnty. Cir. Ct. Civil Action No. 93-APC-1 (Dec. 2, 1994). Where the evidence equally supports both sides, the burden has not been met. *Id.*

Grievant was dismissed for insubordination and willful neglect of duty in harassing employees, lying to investigators, and refusing orders from a central office administrator after being counselled against similar behavior during her evaluation. The authority of a

county board of education to suspend or terminate an employee's contract must be based on one or more of the causes listed in West Virginia Code § 18A-2-8 and must be exercised reasonably, not arbitrarily or capriciously. Syl. Pt. 2, *Parham v. Raleigh County Bd. of Educ.*, 192 W. Va. 540, 453 S.E.2d 374 (1994); Syl. Pt. 3, *Beverlin v. Bd. of Educ.*, 158 W. Va. 1067, 216 S.E.2d 554 (1975); *Bell v. Kanawha County Bd. of Educ.*, Docket No. 91-20-005 (Apr. 16, 1991). West Virginia Code § 18A-2-8(a) provides that "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, 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 misdemeanor or a guilty plea or a plea of nolo contendere to a misdemeanor charge that has a rational nexus between the conduct and performance of the employee's job, the conviction of a felony or a guilty plea or a plea of nolo contendere to a felony charge. ..."

Respondent contends that Grievant had previously been counseled about the impropriety of her conduct by Ms. Haines in conjunction with Grievant's 2021 evaluation and that Grievant therefore knew her duties and simply elected not to perform them when she subsequently engaged in similar conduct. Grievant denies many of the allegations but argues that the alleged conduct is correctable performance. Grievant argues that because Respondent already dealt with the allegations regarding Ms. Connor through Grievant's annual evaluation, it cannot use the same incidents to now discipline her. Grievant alleges discrimination in that Respondent failed to discipline any of the witnesses

who testified to and therefore knew of Grievant's alleged harassment. Grievant also grieved violations of the Human Rights Act and whistleblower laws.²

Grievant admitted to some of the allegations against her but denied others. Regarding the Ms. Connor allegations, Grievant testified that she never said her former assistant principal was having an affair, but did tease her about contractors, identify parents as her boyfriends, and tell Ms. Haines that Ms. Connor and the Superintendent were "flirting." Regarding the Ms. Droppleman and Officer Rumer allegations, Grievant testified that she never said they were having an affair or called him her "hubby," but did say they were "spending too much time together," call her "a Paugh from Elk Garden," say Officer Rumer would not have responded to a medical emergency if Ms. Droppleman was not present, and did not deny trying to get rid of him. As for the Dennes, Grievant testified she never said they had marital problems. Regarding meeting the Sheriff, Grievant testified that Mr. Wilson never told her not to go but simply said he would talk to the Sheriff instead. She contends that the presence of Assistant Principal Droppleman and some of the secretaries at the meeting with the Sheriff affirms no affair was discussed. As for lying to investigators and her superiors, Grievant testified she did not tell either Mr. Wilson or Ms. Wilson that Connor or anyone else was having an affair.

²Regardless of jurisdiction concerns, Grievant did not present evidence of her remaining claims of violation of the Human Rights Act and whistleblower laws. The Grievance Board has long held that elements or allegations of a grievance which are raised, but not pursued or developed, will be considered abandoned. *Thomas v. Logan County B. of Educ.*, Docket No. 2017-1082-CONS (Oct. 17, 2017); *Wimmer v. Braxton County Bd. of Educ.*, Docket No. 2008-1497-BraED (Aug. 14, 2008); *Church v. McDowell County Bd. of Educ.*, Docket No. 33-87-214 (Nov. 30, 1987). Grievant has abandoned these claims in not providing any evidence thereof or even mentioning them during the level three hearing or in her PFFCL.

Regarding Ms. Guy, Grievant did not deny taking issue with her cleaning and admitted saying, “I can probably get you a janitor’s job.”

Grievant agrees that the allegations related to Ms. Connor were previously dealt with in the 2021 evaluation. Thus, Grievant was on notice that this sort of conduct was not acceptable. Grievant’s admissions are sufficient to prove that Grievant acted in contravention of the directives received during her evaluation and that her conduct was insubordination and willful neglect of duty. Nevertheless, the contested allegations will be analyzed. The evidence in support of these allegations is as follows. Former Assistant Principal Connor, Secretary Guy, Assistant Superintendent Wilson, Safety Coordinator Wilson, Assistant Principal Droppleman, Ms. Haines, & Mr. Denne all testified to hearing Grievant say Ms. Connor and Superintendent Ravenscroft were having an affair. Ms. Connor testified that Grievant gossiped to her about the Dennes’ marital problems. Ms. Guy and Mr. Wilson testified that Grievant told them that Ms. Droppleman was having an affair with Officer Rumer. Ms. Droppleman testified that Grievant called Officer Rumer her “hubby.” Ms. Guy testified to the communication problems she had with Grievant in relation to her COVID cleaning. Mr. Wilson testified that he told Grievant not to talk to the Sheriff and not to mention the alleged affair to him. As these allegations are contested, credibility assessments must be made.

In situations where “the existence or nonexistence of certain material facts hinges on witness credibility, detailed findings of fact and explicit credibility determinations are required.” *Jones v. W. Va. Dep’t of Health & Human Res.*, Docket No. 96-HHR-371 (Oct. 30, 1996); *Young v. Div. of Natural Res.*, Docket No. 2009-0540-DOC (Nov. 13, 2009); *See also Clarke v. W. Va. Bd. of Regents*, 166 W. Va. 702, 279 S.E.2d 169 (1981). 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 & 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). Not every credibility factor is necessarily relevant to every credibility determination.

Regarding former Assistant Principal Connor, Secretary Guy, Assistant Superintendent Wilson, Assistant Principal Droppleman, Ms. Haines, and Mr. Denne, the relevant factors are motive, consistency, and demeanor. These witnesses were consistent in the statements they made during the investigation and in their testimony. Ms. Droppleman's written complaint was consistent with her other statements. All had an appropriate demeanor. All were assertive and direct in their testimony. Some of these witnesses could have been biased against Grievant and had motive to lie. Mr. Denne and Ms. Droppleman would have understandably been upset at Grievant after being told Grievant spread rumors about them. Yet, Ms. Droppleman testified against interest that she had never heard Grievant accuse her of having an affair with Officer Rumer. While Ms. Guy had motive to lie due to communication problems she experienced with Grievant, she was upfront in testifying against interest that she got an attitude with Grievant and asked her, "Are you done yet?" Ms. Connor had motive against Grievant given their

contentious history together which resulted in Ms. Connor leaving for another job. Yet, Ms. Connor never filed a complaint or initiated any action against Grievant, choosing instead to simply move on from any drama. These witnesses were credible.

Regarding Safety Coordinator Wilson, the relevant factors are interest, consistency, capacity to perceive, the existence or nonexistence of any fact he testified to, and plausibility. While Mr. Wilson was Grievant's friend and go to person, lacking apparent bias against her, he did make confusing statements. For instance, Mr. Wilson testified and wrote in his report that Mr. Droppleman informed him that Grievant said Ms. Droppleman and Officer Rumer were having an affair. Yet, Mr. Droppleman testified that Grievant never told him Ms. Droppleman and Officer Rumer were having an affair, but that he surmised Grievant meant they were having an affair when she nodded towards their office once when he visited. Mr. Droppleman was consistent in this rendition in both his testimony and his written complaint. Thus, it seems likely that Mr. Droppleman would have given this same rendition to Mr. Wilson. On the other hand, Mr. Wilson's testimony that Grievant said she knew they were having an affair because they "starred longingly into each other's eyes" and that Grievant told him she was concerned about how Mr. Droppleman might react are details that lend credibility to his testimony. It also seems likely that Grievant mentioned the affair to Mr. Wilson as a last-ditch effort to get rid of Officer Rumer since Grievant's prior attempts were fruitless.

Regarding Grievant, the relevant factors are interest, demeanor, consistency, capacity to perceive, the existence or nonexistence of any fact she testified to, and plausibility. Grievant's obvious interest is getting her job back. Grievant's actions were motivated in part to get Officer Rumer to quit or have him removed for the improprieties

she voiced. Once the normal and proper channels for removal proved ineffective, Grievant chose a more subversive approach. Grievant testified that she never used the word “affair” but that she said Ms. Connor and the Superintendent were “flirting.” Yet at least six credible witnesses testified that they heard Grievant say they were having an “affair.” Grievant testified that she only told Mr. Wilson that Ms. Droppleman and Officer Rumer were “hanging out too much” rather than having an “affair.” Grievant was evasive and at a loss for words during cross examination. She implausibly testified that she told Mr. Wilson she did not have proof that they were hanging out, as opposed to proof of an affair. However, there was plenty of proof that Ms. Droppleman and Officer Rumer were hanging out because their jobs entailed working with each other, but no proof of an affair. Thus, Grievant was not credible.

As for the allegation that Mr. Wilson told Grievant not to talk to the Sheriff or discuss the Officer Rumer affair allegations with him, Grievant testified that Assistant Principal Droppleman and the office secretaries were at the meeting with the Sheriff. It is unlikely that Grievant would have mentioned the affair in Ms. Droppleman’s presence, as Ms. Droppleman testified that she has never heard Grievant accuse her of having an affair. Respondent did not refute that Ms. Droppleman and the secretaries were present at the meeting and did not question them about it. Given this and other inconsistencies, Respondent did not prove that Grievant understood or should have understood Mr. Wilson’s statement regarding his speaking with the Sheriff as a directive that she not talk with the Sheriff.

However, the evidence does show that Grievant spread rumors of an affair between former Assistant Principal Connor and Superintendent Ravenscroft and

harassed Ms. Conner by saying various men that came by the office were her boyfriends. Ms. Haines then performed an evaluation of Grievant, notified her that her conduct was unacceptable, and counseled her to improve it. The evidence shows that Grievant thereafter continued the same behavior by spreading rumors of an affair between Assistant Principal Droppleman and Officer Rumer, spreading rumors of the Dennes' marital problems, harassing coworkers and subordinates, including Assistant Principal Droppleman, Officer Rumer, and Secretary Guy, and lying to Safety Coordinator Wilson and Assistant Superintendent Wilson in denying that she had vocalized allegations of inappropriate relationships.

This proven conduct violates the Employee Code of Conduct and constitutes willful neglect of duty and insubordination. Insubordination "at least includes, and perhaps requires, a wilful disobedience of, or refusal to obey, a reasonable and valid rule, regulation, or order issued by the school board or by an administrative superior. . . This, in effect, indicates that for 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 v. Higher Educ. Interim Governing Bd./Shepherd Coll.*, 212 W. Va. 209, 212, 569 S.E.2d 456, 459 (2002) (*per curiam*). [F]or a refusal to obey to be "willful," 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." *Id.*, 212 W. Va. at 213, 569 S.E.2d at 460. This Grievance Board has previously recognized that insubordination "encompasses more than an explicit order and subsequent refusal to carry it out. It may also involve a flagrant or willful disregard for

implied directions of an employer." *Sexton v. Marshall Univ.*, Docket No. BOR2-88-029-4 (May 25, 1988), *aff'd*, *Sexton v. Marshall University*, 182 W. Va. 294, 387 S.E.2d 529 (1989).

Willful neglect of duty "encompasses something more serious than 'incompetence,' which is another ground for teacher discipline ... The term 'willful' ordinarily imports a knowing and intentional act, as distinguished from a negligent act." *Bd. of Educ. of the County of Gilmer v. Chaddock*, 183 W.Va. 638, 640, 398 S.E.2d 120, 122 (1990). The West Virginia Supreme Court of Appeals has declined to make a comprehensive definition of "willful neglect of duty," instead finding that "[a] continuing course of lesser infractions may well, when viewed in the aggregate, be sufficient." *Fox v. Bd. of Educ. of Doddridge County*, 160 W.Va. 668, 672, 236 S.E.2d 243, 246 (1977).

"[T]he factor which distinguishes willful neglect of duty and insubordination from unsatisfactory performance is that the employee knows [his] responsibilities, and is competent to perform them, but elects not to complete them. When an employee's performance is unacceptable because [he] does not know the standard to be met, or what is required to meet the standards, and [his] behavior can be corrected, the behavior is unsatisfactory performance. *Bierer v. Jefferson County Bd. of Educ.*, Docket No. 01-19-595 (May 17, 2002)." *Waggoner v. Cabell County Bd. of Educ.*, Docket No. 2008-1570-CabED (Oct. 31, 2008).

The Employee Code of Conduct, found in West Virginia Department of Education Policy 5902 and Mineral County Schools Policy 3210, mandates that all employees:

4.2.1. Exhibit professional behavior by showing positive examples of ...communication, Language

4.2.3. Maintain a safe and healthy environment, free from harassment, intimidation, bullying, ... and free from bias and discrimination.

4.2.4. Create a culture of caring through understanding and support.

The State Board of Education Policy 4373 defines “harassment,” in relevant part, as “any threatening, insulting, or dehumanizing gesture, use of technology, or written, verbal or physical conduct directed against a student or school employee that ... C. has the effect of substantially disrupting the orderly operation of a school.”

Grievant violated the Employee Code of Conduct in harassing employees by insulting and belittling them with the effect of substantially disrupting the orderly conduct of KHS. This disruption manifested when Grievant’s conduct caused former Assistant Principal Connor to transfer and current Assistant Principal Droppleman and some of the secretaries to actively seek new jobs. Grievant engaged in a smear campaign to disrupt Officer Rumer from performing his duties after he declined to perform duties extraneous to his position. Grievant had a duty to set a positive example of communication free from harassment. Grievant’s conduct was willful neglect of duty and insubordination in that Grievant refused to abide by Ms. Haines’ counsel to refrain from the sort of harassing conduct she had previously exhibited towards her former assistant principal, Ms. Connor. Grievant thereafter repeated the same conduct when she harassed Assistant Principal Droppleman, Officer Rumer, and Secretary Guy. Grievant was told her behavior was unacceptable but refused to acknowledge she did anything wrong and even threatened to give Ms. Connor a bad evaluation if Ms. Haines gave Grievant a bad rating on her evaluation. Grievant then doubled down on her refusal by lying to the administrators investigating her.

Thus, Respondent proved by a preponderance of the evidence that Grievant was insubordinate and in willful neglect of her duty when she refused to tell the truth to investigators, spread rumors of affairs, and harassed employees and coworkers despite being on notice that such behavior was unacceptable. Grievant willfully neglected her duty to foster an accepting work environment free from harassment and bullying.

Before dismissing Grievant, Respondent was required to determine whether Grievant's conduct was correctable, regardless of the label it applied to the conduct. West Virginia Code § 18A-2-8(b) states that "[a] charge of unsatisfactory performance shall not be made except as the result of an employee performance evaluation pursuant to §18A-2-12 of this code. ...". The West Virginia Supreme Court has 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." *Maxey v. McDowell County Bd. of Educ.*, 212 W. Va. 668, 575 S.E.2d 278 (2002). West Virginia Code § 18A-2-12a states:

(6) All school personnel are entitled to know how well they are fulfilling their responsibilities and should be offered the opportunity of open and honest evaluations of their performance on a regular basis and in accordance with the provisions of section twelve [§ 18A-2-12] of this article. All school personnel are entitled to opportunities to improve their job performance prior to the termination or transfer of their services. Decisions concerning the promotion, demotion, transfer or termination of employment of school personnel, other than those for lack of need or governed by specific statutory provisions unrelated to performance, should be based upon the evaluations, and not upon factors extraneous thereto. All school personnel are entitled to due process in matters affecting their employment, transfer, demotion or promotion.

Concerning what constitutes "correctable" conduct, the Court noted that "it is not the label given to conduct which determines whether § 5300(6)(a) procedures must be followed but whether the conduct complained of involves professional incompetency and whether it directly and substantially affects the morals, safety, and health of the system in a permanent, non-correctable manner." *Mason County Bd. of Educ. v. State Superintendent of Sch.*, 165 W. Va. 732, 274 S.E.2d 435 (1980). "A board must follow the § 5300(6)(a) procedures if the circumstances forming the basis for suspension or discharge are 'correctable.'" *Mason County Bd. of Educ., supra*.

Prior to her 2021 evaluation, Grievant had engaged in similar conduct against former Assistant Principal Connor, saying various men were her boyfriends and accusing her of having an affair. In evaluating Grievant in 2021, Ms. Haines counseled Grievant that her conduct towards Ms. Connor was unacceptable. At the time of her evaluation, Grievant was not willing to accept that her behavior was unacceptable and threatened to retaliate against Ms. Connor if she was given an "emerging" rating for her conduct toward Ms. Connor. Grievant was on notice through her 2021 evaluation that the same conduct she would later engage in against Assistant Principal Droppleman was unacceptable. Yet Grievant continued to engage in the same conduct she had been admonished against.

In arguing that the allegations related to Ms. Connor were previously dealt with in the 2021 evaluation, and that Grievant could not later be disciplined for them, Grievant implies double jeopardy. "Although there is no 'double jeopardy' rule for disciplinary actions, there is a fundamental unfairness and unreasonableness apparent when an employee is disciplined twice for the same misconduct." *Paxton v. Bureau of Senior Services*, Docket No. 2010-1035-BSS (June 30, 2010).

Evaluations and subsequent Improvement Plans are not viewed as disciplinary actions, as the goal is to correct unsatisfactory performance. *Baker v. Fayette County Bd. of Educ.*, Docket No. 94-10-427 (Jan. 24, 1995). “A review of past evaluations and disciplinary action can establish an employee has been properly put on notice of performance deficiencies, and their continuing pattern of non-compliant behavior proves that the conduct is not correctable. *Bierer v. Jefferson County Bd. of Educ.*, Docket No. 01-19-595 (May 17, 2002).” *McCloud v. Mingo County Bd. of Educ.*, Docket No. Docket No. 2016-1006-MinED (May 23, 2016). In conjunction with her annual evaluation, Ms. Haines counselled Grievant against her conduct towards Ms. Connor. Grievant did not heed this advice but engaged in identical behavior against the new Assistant Principal, Ms. Droppleman, and other employees and coworkers. Respondent justifiably determined that Grievant’s conduct relating to harassing behavior was a continuing pattern of non-complaint behavior and that it was not correctible.

As for discrimination, Grievant claims Respondent did not discipline witnesses who admittedly knew about her harassing behavior when they failed to report it. Discrimination for purposes of the grievance process has a very specific definition. “‘Discrimination’ means any differences in the treatment of similarly situated employees, unless the differences are related to the actual job responsibilities of the employees or are agreed to in writing by the employees.” W. VA. CODE § 6C-2-2(d). Grievant did not show she was similarly situated to or treated differently than other employees, as she was the only one who engaged in harassing behavior. Ironically, Grievant was treated the same as the employees who failed to report her in that she was not punished for failing to report her own harassing behavior. Thus, Grievant failed to prove discrimination.

The following Conclusions of Law support the decision reached.

Conclusions of Law

1. The grievant bears the burden of proof in a grievance that does not involve a disciplinary matter and must prove her grievance by a preponderance of the evidence. W. VA. CODE ST. R. § 156-1-3 (2018). In disciplinary matters, the burden of proof rests with the employer to prove that the action taken was justified, and the employer must prove the charges against an employee by a preponderance of the evidence. W. VA. CODE ST. R. § 156-1-3. "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." *Leichliter v. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993), *aff'd*, Pleasants Cnty. Cir. Ct. Civil Action No. 93-APC-1 (Dec. 2, 1994). Where the evidence equally supports both sides, the burden has not been met. *Id.*

2. The authority of a county board of education to suspend or terminate an employee's contract must be based on one or more of the causes listed in West Virginia Code § 18A-2-8 and must be exercised reasonably, not arbitrarily or capriciously. Syl. Pt. 2, *Parham v. Raleigh County Bd. of Educ.*, 192 W. Va. 540, 453 S.E.2d 374 (1994); Syl. Pt. 3, *Beverlin v. Bd. of Educ.*, 158 W. Va. 1067, 216 S.E.2d 554 (1975); *Bell v. Kanawha County Bd. of Educ.*, Docket No. 91-20-005 (Apr. 16, 1991).

3. West Virginia Code § 18A-2-8(a) provides that "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, 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

misdemeanor or a guilty plea or a plea of nolo contendere to a misdemeanor charge that has a rational nexus between the conduct and performance of the employee's job, the conviction of a felony or a guilty plea or a plea of nolo contendere to a felony charge. ..."

4. Respondent proved by a preponderance of the evidence that Grievant engaged in willful neglect of duty and insubordination.

5. West Virginia Code § 18A-2-8(b) states that "[a] charge of unsatisfactory performance shall not be made except as the result of an employee performance evaluation pursuant to §18A-2-12 of this code. ..." The West Virginia Supreme Court has 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." *Maxey v. McDowell County Bd. of Educ.*, 212 W. Va. 668, 575 S.E.2d 278 (2002). West Virginia Code § 18A-2-12a states:

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6. Respondent proved by a preponderance of evidence that Grievant engaged in conduct that was willful and non-correctible, justifying her dismissal.

7. "'Discrimination' means any differences in the treatment of similarly situated employees, unless the differences are related to the actual job responsibilities of the employees or are agreed to in writing by the employees." W. VA. CODE § 6C-2-2(d).

8. Grievant failed to prove by a preponderance of evidence that Respondent discriminated against her.

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 decision. W. VA. CODE § 6C-2-5. Neither the West Virginia Public Employees Grievance Board nor any of its

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 West Virginia 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.

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: August 18, 2023

Joshua S. Fraenkel
Administrative Law Judge