

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

KAREN MARIE DECKER,

Grievant,

v.

Docket No. 2025-0532-MrnED

MARION COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Grievant, Karen Decker, is employed by Respondent, Marion County Board of Education. On February 7, 2026, Respondent demoted Grievant from principal to teacher. On February 19, 2026, Grievant grieved her demotion and the termination of her contract as principal directly to level three in compliance with West Virginia Code § 6C-2-4(a)(4).

As relief, "Grievant seeks reinstatement to her position as Principal of Watson Elementary School and reimbursement of her attorneys' fees and expenses."

A level three hearing was held before the undersigned via videoconference on November 18, 2025; February 11, 2026; March 24, 2026; and May 13, 2026. Grievant appeared and was represented by Michael D. Crim, Esq. Respondent appeared by Superintendent Donna Heston and was represented by Kayla A. Cook, Esq., Bowles Rice LLP. This grievance matured for decision on July 13, 2026. Each party submitted written Proposed Findings of Fact and Conclusions of Law. Respondent made a late submission. Grievant objected. Grievant was given an opportunity to supplement but declined.

Synopsis

Respondent demoted Grievant to teacher and terminated her contract as principal after giving her multiple opportunities to improve performance. Over a three-year period,

Grievant received a “no confidence” vote from staff, multiple years of poor evaluations, two focus support plans, two letters of reprimand, three disciplinary suspensions, and a five-month corrective action plan, none of which were grieved. Grievant also received extensive coaching and mentorship. The letter of demotion cited these prior non-grieved events and more recent incidents that were properly grieved. The grieved incidents include testing irregularities and failure to timely respond to student safety. Respondent proved the occurrence of the grieved incidents which, in conjunction with the non-grieved events, prove that Grievant’s conduct was willful and non-correctable, justifying demotion. Thus, 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, Karen Decker, has been employed by Respondent, Marion County Board of Education, in administrative and teaching roles since 1999.

2. Grievant was the principal of Watson Elementary School from July 1, 2017, until February 18, 2025, under an annual employment contract¹ when she was demoted to a position as a second-grade teacher at a different school and her contract as principal terminated.

3. Donna Heston began as superintendent in the 2021-2022 school year.

4. Grievant’s annual evaluations as principal only started reflecting performance issues when Superintendent Heston arrived in the 2021-2022 school year.

¹Grievant entered a separate annual employment contract each year with Respondent while principal at Watson Elementary School. (G’s Exh 1).

5. Grievant's evaluation for the 2021-2022 school year reflected concerns with Grievant's leadership, collaboration/communication with staff, and professional conduct. This included Grievant's failure to finalize staff evaluations, timely complete administrative tasks such as reports, and account at times for being out of the facilities.

6. Grievant did not grieve her 2021-2022 evaluation.

7. On January 9, 2023, employees of Watson Elementary School sent Superintendent Heston a letter informing her that 36 of 49 employees voted "no confidence" in Grievant's leadership as principal.

8. On February 9, 2023, Superintendent Heston initiated a Focus Support Plan (FSP) pursuant to West Virginia Department of Education (WVDE) Policy 5310 and W. VA. CODE ST. R. §126-142-1 *et seq.* (R Exh 24).

9. The rule states that an FSP is a nine-week measure for the improvement and professional growth of an educator that "may commence only after a purposeful conversation between the educator and the evaluator, and when there is documented evidence indicating an area of concern based on one or more performance standards, and after at least one observation and conference is complete." (R Exh 10).

10. The rule also states:

At the conclusion of the nine week FSP, if evidence demonstrates that the standard has been met, then the plan is successfully completed. If evidence demonstrates that adequate progress has been made but the standard has not been met, the FSP will continue for a second nine-week period. In the event of inadequate progress on the standard related to the area of concern, an evaluation will be completed and a CAP (Corrective Action Plan) will be initiated.

11. The first FSP identified "Positive Learning Climate and Cohesive Culture - The school leader builds and sustains a safe and positive climate and cohesive culture"

as the area of concern. It provided 11 expectations for improvement which included timely following guidelines for behavioral referrals; communicating with staff in a timely, proactive, and effective manner; utilizing the School Leadership Team, Faculty Senate, and LSIC to improve school culture and climate; empowering others to perform their duties; clearly delineating roles and responsibilities to assistant principal, counselor, social worker; working together to conduct evaluations and walkthrough; completing walkthroughs weekly and providing timely feedback; communicating expectations in a clear and timely manner; following recommendations from Central Office staff and outside consultants; receiving the Superintendent's approval before leaving the building; and meeting deadlines for report and document requests from Central Office, WVDE, and other educational organizations.

12. This first FSP established a defined implementation period extending through April 28, 2023. The FSP necessitated multiple conferences between Superintendent Heston and Grievant, a midpoint observation, and a final observation before it could be determined if Grievant had met the identified performance status.

13. Grievant did not grieve this first FSP.

14. At the conclusion of the first FSP on April 28, 2023, Superintendent Heston implemented a second FSP to give Grievant another chance to improve rather than proceed directly to a Corrective Action Plan (CAP), after determining that Grievant had not met the identified performance standard. (R Exh 25).

15. The second FSP retained the same identified area of concern and the same expectations as the first FSP, with an implementation period extending through January 12, 2024, which was eight months in addition to the initial nine-week improvement period.

16. Grievant did not grieve this second FSP.
17. During the second FSP, retired principal William Furgason was assigned to coach Grievant and provide instructional support throughout the implementation period.
18. Grievant continued to have issues with performance, leadership, and other areas of concern, as evidenced by her evaluation for the 2022-2023 school year.
19. The 2022-2023 evaluation noted instances where Grievant failed to clearly and timely communicate with staff or follow through with behavior intervention and develop a cohesive culture.
20. Grievant did not grieve her evaluation for 2022-2023.
21. On August 28, 2023, Kristin DeVaul, Supervisor of Secondary Curriculum and Instruction, emailed all Marion County principals reminding them that the signed appendices required by WVDE Policy 2340 were due no later than September 1, 2023. Grievant was the only principal not to submit these on time. Ms. DeVaul emailed Grievant a reminder again on September 15, 2023. (R's Exhs 31 & 32).
22. On March 11, 2024, Treasurer Scott Reider and Purchasing Coordinator Casey Spagnuolo transmitted the results of the 2022-2023 Annual Financial Examination for Watson Elementary to Grievant, advising that it had reportable findings and directing Grievant to submit a corrective action plan to address it within six months. The report found that Watson Elementary had not consistently maintained the required purchase order system, as orders had not been approved in writing before purchases were made. The report further explained that the Accounting Procedures Manual requires orders to be approved before purchases occur to ensure financial accountability, verify funds are available, and prevent unauthorized purchases. (R Exh 26).

23. In the spring of 2024, Grievant instructed teachers, without prior approval, to distribute materials from an outside agency regarding signs of child abuse.

24. On April 26, 2024, Superintendent Heston met with Grievant regarding this incident and that same day sent Grievant a letter memorializing the meeting. The letter directed Grievant not to distribute outside material without prior approval of Leo Skarzinski (Administrative Assistant for Curriculum, Instruction, and Facilities and Maintenance). (R Exh 7).

25. Grievant did not grieve the reprimand issued to her on April 26, 2024.

26. At the end of the 2023-2024 school year, Grievant failed to provide required progress notes for the 2023-2024 school year despite receiving multiple reminders. (R Exh 30).

27. In June 2024, Superintendent Heston found it necessary to direct Grievant multiple times to complete required employee evaluations before the deadline.

28. When Mr. Ferguson stepped down as mentor, retired principal Russelle DeVito was assigned to coach Grievant.

29. Nevertheless, Grievant continued to have issues with the same areas of concern such as leadership, collaboration with staff, and professional conduct, as evidenced by her evaluation for the 2023-2024 school year.

30. Issued on June 10, 2024, the 2023-2024 evaluation noted that Grievant continued with timeliness and deadline issues despite frequent reminders and that she sent home a flyer about child abuse that was not approved, failed to correct violations given in writing by the State Fire Marshall (which were still outstanding on his third visit

months later), and did not regularly check the mail, resulting in oversight of necessary correspondence. (R Exh 43).

31. Grievant did not grieve her evaluation for 2023-2024.

32. On July 24, 2024, Superintendent Heston issued Grievant a written reprimand for “lack of communication when scheduling interviews” regarding the Faculty Senate Hiring Committee. The letter cited policy requiring accommodation of travel needs of job applicants and faculty senate members and directed Grievant to complete training on the policy. (R Exh 28).

33. Grievant did not grieve the written reprimand of July 24, 2024.

34. On August 27, 2024, Ms. DeVaul emailed all principals regarding the West Virginia General Summative Assessment Timely Release Forms and instructed them that the completed forms were to be scanned and submitted by September 13, 2024. Ms. DeVaul emailed principals a reminder on September 11, 2024. Yet Grievant waited until September 18, 2024, to submit the forms. (R Exh 19).

35. On September 3, 2024, Superintendent Heston conducted a formal observation of Grievant at Watson Elementary and determined that a CAP was necessary under WVDE Policy 5310 due to Grievant’s ongoing deficiencies in the standards previously identified for improvement, including requested documentation.

36. On September 6, 2024, Superintendent Heston included these observations in a letter to Grievant. (R Exh 21).

37. On September 9, 2024, Superintendent Heston initiated a CAP pursuant Policy 5310, which lasted five months, through February 7, 2025. The CAP identified “Interpersonal and Collaborative Skills” and “Positive Learning Climate and Cohesive

Culture” as areas of unsatisfactory performance requiring immediate improvement. Monthly checkpoint meetings were scheduled with a final evaluation conference in February 2025. (R Exh 22).

38. Grievant did not grieve the CAP.

39. Administrative resources were provided to help Grievant successfully complete the CAP. Retired principal Ruselle DeVito was again assigned to provide ongoing coaching and support throughout the CAP period. Ms. DeVito met regularly with Grievant to review her progress, discuss concerns as they arose, and assist her in successfully completing the CAP. Ms. DeVito had served as a mentor to other principals and mentored Grievant for a year and a half, during which time Ms. DeVito was at Watson Elementary multiple days each week. Ms. DeVito regularly updated Superintendent Heston and Rockie DeLorenzo, Administrative Assistant for Human Resources, regarding Grievant’s performance as well as employee concerns. Despite Ms. DeVito’s efforts to personally assist Grievant, Grievant failed to improve. Ms. DeVito noted continuing deficiencies in following policies and procedures, timeliness of paperwork, lack of student discipline (including students wandering the halls during class), failure to respond when a student locked herself in a stall (despite having a key to unlock the stall) because Grievant was walking another student back to class, failure to communicate with faculty about student discipline, lack of required entry into WVEIS about student discipline, lack of supervision, failure to respond to purchase orders, and failure to prioritize important matters. (Ms. DeVito’s testimony).

40. On September 19, 2024, Superintendent Heston issued Grievant another written reprimand regarding the untimely submission of summer payroll, which was due on August 22, 2024, but not submitted until September 16, 2024. (R Exh 20).

41. Grievant did not grieve the written reprimand of September 19, 2024.

42. On September 30, 2024, Superintendent Heston issued Grievant a written notice of recommendation for a one-day suspension, after reviewing Grievant's untimely submission of the Timely Release Form in August and considering Grievant's prior disciplinary history. Respondent approved the recommendation. (R Exh 15).

43. Grievant did not grieve the one-day suspension.

44. On October 28, 2024, Superintendent Heston issued Grievant a written notice of recommendation for a three-day suspension for willful neglect of duty after Grievant failed to submit October 17th payroll or enter pre-K meals into Primero for August, September, and October. Respondent approved the recommendation. (R Exh 11).

45. Grievant did not grieve the three-day suspension.

46. On December 18, 2024, Superintendent Heston issued Grievant a written notice of recommendation for a five-day suspension after Grievant failed to make any bank deposits for November 2024 (when collections were \$1,533) in violation of WVDE Policy 1224.1, which required deposits at least weekly regardless of collection amount and whenever total collections on hand exceeded \$500. Respondent approved the recommendation. (R Exh 12).

47. Grievant did not grieve the five-day suspension.

48. The CAP continued with scheduled checkpoint conferences during September, October, November, and December of 2024, to review Grievant's progress,

identify continuing concerns, and provide guidance. The CAP concluded on February 7, 2025. After consulting with Ms. DeVito and Mr. DeLorenzo, Superintendent Heston determined that Grievant had not successfully completed the CAP because the deficiencies identified in the FSPs and evaluations remained unresolved.

49. Meanwhile, on January 31, 2025, a third-grade student with a history of violent behavior brought two large metallic Japanese martial arts weapons (sais)² to Watson Elementary during school at around 8:20 am. The sais were sticking out of the student's backpack as he entered the building at the start of school. Teacher Adam Linn saw the objects with a jacket draped over the backpack and a bloody clown mask in the student's hand. Mr. Linn was concerned due to the student's violent history and adult-sized body so followed the student to class and notified his teacher, Brianna Vincent, who happens to be dating Grievant's son.

50. Shortly thereafter, Ms. Vincent told Mr. Linn that she had retrieved the two sais and put them in her unlocked desk drawer. As principal, Grievant is specifically tasked with ensuring student safety. Ms. Vincent informed Grievant immediately. Within minutes, Mr. Linn observed Grievant at Ms. Vincent's desk looking down into the drawer at around 8:40 a.m. and later saw the weapons himself in the desk drawer. (Mr. Linn's testimony at 4:33:4, day 2 on February 11, 2026). Thereafter, the sais were left in the unlocked drawer for a few hours and, at times, left unattended when Ms. Vincent left the room. Mr. Linn saw the offending student in the classroom for a few hours after the sais were confiscated. A few hours later, Mr. Linn spoke with Ms. Vincent in the hall. Mr. Linn was concerned about the lack of urgency for dealing with weapons and that the student

²Sais are pointed and trident-like but lack sharp edges.

was still in the classroom. He realized there was no plan in place as he had assumed. Mr. Linn therefore talked to another teacher, Lisa Findo, about his concerns. Superintendent Heston was informed for the first time around 11:45 am when Ms. Findo called her. Within minutes, Mr. DeLorenzo arrived at the school at Heston's behest to deal with the situation where he encountered Grievant leaving the classroom with a bag containing the two sais. Mr. DeLorenzo was extremely upset that the weapons had been in the building unsecured for so long and asked Grievant why she was just now securing the sais. Grievant was very quiet and only said that the weapons were secured in Ms. Vincent's classroom. Mr. DeLorenzo replied that the desk was not locked and told Grievant she needed to contact law enforcement and the State Superintendent after she confirmed she had not done so as required by West Virginia Code §61-7-11a(b) and WVDE Policy 4373 which Grievant had been trained on. Ms. DeVito had previously coached Grievant extensively about student safety and dealing with this type of situation, including securing weapons and contacting law enforcement, the Superintendent, and parents.

51. Melissa DeWitt, Supervisor of Elementary Curriculum and Federal Programs, testified that she had no recollection of the weapons incident on January 31, 2025. Ms. Dewitt had previously been a principal and went to the Principal Leadership Academy with Grievant in 2012. Ms. Dewitt is currently supervised by Superintendent Heston.

52. That same month, during required testing, Grievant violated Policy 2340 when she disrupted student testing by making an announcement about a fire alarm test. Policy 2340 prohibits testing irregularities. Grievant served as the building test coordinator and was responsible for ensuring that statewide assessments were administered in

accordance with WVDE Policy 2340. When Ms. DeVito heard the announcement on the intercom, she went to the office and told Grievant it was improper. Ms. DeVito asked the fireman who had directed the alarm test if he could come back later to do it. He responded affirmatively and said two other schools had already rejected the alarm test because they were also conducting student testing. Like the other principals, Grievant had been trained to avoid all testing irregularities within her control because they can invalidate testing and result in loss of credentials. Respondent deemed the disruption a prohibited testing irregularity because it was unnecessary.

53. While Policy 2340 states that electronic devices must be turned off and stored out of view during requiring testing, it permits test examiners to use them to communicate with the building principal. However, Grievant inappropriately required staff to turn in their phones during testing, leaving them without any way to contact her in case of an emergency in violation of Policy 2340.

54. On February 4, 2025, WVDE generated a Student Response Alert indicating a Watson Elementary student's written assessment response contained words denoting either emotional distress, suicide, abuse and neglect, bullying, violence, substance abuse, inappropriate sexual content, or criminal activity. Ms. DeVaul promptly notified Grievant and directed her to meet with the student by the end of the day, address the concern, and report the actions taken by email so a response could be given to WVDE. Grievant did not do so by February 5, 2025, thus failing to comply with the directive, WVDE Policy 4373 & 2515, and West Virginia Code §18A-5-1a. These required the school administrator to promptly address matters affecting student health, safety, and welfare.

55. On February 7, 2025, Superintendent Heston sent Grievant a letter of intent to recommend her demotion at Respondent's meeting on February 18, 2025. Superintendent Heston could have gone with termination of employment but believed Grievant had a good heart and wanted her to be able to work.

56. The letter gave the following basis for the recommendation:

It has been less than a month since the [Board] approved your suspension without pay for [5] days ... for conduct that constitutes willful neglect of duty and, unfortunately, I have once again received information that you are continuing to neglect the duties and responsibilities expected of you as the Principal of Watson Elementary.

As the Principal of Watson Elementary, pursuant to West Virginia Code §18A-2-9 and West Virginia Board of Education Policy 5000 (§126-126-4 (4.6)), you are tasked with the administrative and instructional supervisory responsibility for the planning, management, operation and evaluation of the total educational program of the school. Your continued failure to meet deadlines and comply with directives and policies required by Marion County Schools and the West Virginia Board of Education jeopardize the learning environment and the health, safety, and welfare of students, and the professional work climate at Watson Elementary. The number and severity of the deficiencies that have continued to be identified raise serious concerns regarding your willingness and ability to meet the responsibilities of your position.

... I will recommend ... that you be demoted ... and be reassigned as a classroom teacher ... Should the Board approve your demotion, you will be considered an automatic applicant for all posted classroom teacher vacancies ... until you secure such a job

Today, you and I met to discuss the reasons for the recommendation of demotion, and you were provided an opportunity to respond. As we discussed, the specific reasons I am requesting your demotion are as follows:

1. On January 29, 2025, I was informed that during State Benchmark Testing, you failed to ensure that the testing environment remained free from distractions and

disruptions when you made an announcement regarding fire alarm testing. Per [WVDE] Policy 2340, all school personnel including administrators, must maintain the integrity and security of the testing process. Policy 2340 specifically notes that a fire alarm, even those that are unexpected, disrupt the testing environment and create a testing irregularity.

2. On January 29, 2025, I was informed that you attempted to take the electronic devices from staff members and store them in a locked location during state testing. Policy 2340 provides that no electronic devices may be used during state testing, but it does not require you to hold and secure such devices. Pursuant to Policy 2340, test examiners are permitted to use their electronic device to communicate directly with a building principal if there is an immediate issues or emergencies ...
3. On January 31, 2025, you failed to appropriately and/or timely respond after you were informed by a teacher that a third-grade student had brought a deadly weapon to school, in violation of Policy 4373 (Expected Behavior in Safe and Supportive Schools) and [W. VA. CODE] §18A-5-1(a) *et. seq.* After learning that the student had an 18-inch sai in his backpack, you failed to immediately take the necessary and reasonable steps to protect the students, staff, and others pending the completion of an investigation. Not only did you fail to confiscate the deadly weapon, and allow it to remain unsecured in the classroom for several hours, you permitted the student to remain in class, and failed to notify the Superintendent or any other Central Office administrators, law enforcement, and the student's guardian(s).
4. On February 4, 2025, you failed to appropriately and timely respond to a West Virginia Assessment Student Response Alert in violation of ... Policy 4373 (Expected Behavior in Safe and Supportive Schools), Policy 2515 (Assuring the Quality of Education: Regulations for Education Programs) and West Virginia Code §18A-5-1(s) *et seq.* You were informed that [WVDE] alerted that during the scoring process, a student's writing was flagged because it contained words or phrases that indicate possible matters of concern, including, but not limited to, emotional problems, potential suicide, suspected abuse or neglect, bullying, potential violence, substance abuse, inappropriate sexual content, and/or crimes. You were specifically directed by Kristin DeVaul, Supervisor of Secondary Curriculum and Instruction[,] to address the

student prior to the end of the school day and communicate via email with Ms. DeVaul the actions taken, so that the information could be submitted to [WVDE]. You failed to comply with the directives and deadlines imposed by the [WVDE] and Ms. DeVaul. As of 4:00 p.m. on February 5, 2025, you had yet to submit a response regarding the actions taken to address the student alert/concern.

5. You failed to successfully complete the corrective action plan dated September 9, 2024, which required you to demonstrate adequate progress to address the areas of unsatisfactory performance by February 7, 2025.
6. Your continued failure to meet timelines and repeated, intentional refusal to comply with directives implemented by me, other Central Office administrators, or policies.
7. You have failed to properly respond to and report student discipline as required by Policy 4373.
 - a. I was informed that there are students with multiple discipline reports, some of which have never been addressed and some of which that have not been reported in WVEIS.
 - b. You were directed to submit disciplinary reports and actions to all staff weekly, yet have failed to do so consistently. On January 29, 2025, you were observed printing disciplinary reports to give to teachers that were more than two weeks late.
8. You failed to timely and appropriately prepare and communicate the agenda for the December 23, 2024 Professional Learning Day.... You did not timely or effectively communicate the agenda with staff and adjusted the agenda several times making it difficult for staff to adequately prepare. Moreover, due to your failure to appropriately coordinate/schedule the meeting, the Faculty Senate Committee was unable to meet for the required two-hour block of time required by [W. VA CODE] §18-5A-5.

57. The letter went on to cite other reasons considered:

As I explained during our meeting, this is not the first time you have been confronted about not performing your duties and the consequences that could ensue [sic]. On January 9, 2023, the staff of Watson Elementary School provided me with the results and a written letter documenting a vote of no confidence that had been made against you. On February 9, 2023, you were placed on a focus support plan that identified

your inability to “build and sustain a safe and positive climate and cohesive culture” as an identified area of concern. The focus support plan identified eleven (11) expectations for change, which included:

1. Follow Policy 4373, the WV Safe School Act and the Marion County Guideline for Consequences of Inappropriate Behaviors in a timely manner for all behavior referrals.
2. Communicate with staff in a timely, proactive and effective manner.
3. Shared Leadership-Utilize the School Leadership Team, Faculty Senate, and LSIC to improve the culture and climate of the school.
4. Shared Leadership-Empower the Assistant Principal, Counselor, Staff, and School Leadership Team to perform their assigned duties and monitor the Strategic Plan to make decisions.
5. Clearly delineate roles and responsibilities to Assistant Principal, Counselor, and Social Worker.
6. Work together as an Administrative Team to conduct Evaluations and Walkthroughs.
7. Complete Walkthroughs on a weekly basis for all staff and provide timely and reflective feedback.
8. Communicate the school expectations in a clear, concise, timely, and proactive manner.
9. Follow through on all recommendations from County Office Staff and Outside Consultants.
10. Receive prior approval from the Superintendent anytime you are out of the building.
11. Meet deadlines for all reports and documents requested from Central Office, WVDE, and other Educational Organizations.

After you were unable to demonstrate that adequate progress had been made to meet the standards set forth in the focus support plan, a second focus support plan was issued April 28, 2023, with the same identified area(s) of concern and expectations for change. In September of 2024, I conducted an observation of you at Watson Elementary and gave you an “Unsatisfactory” rating in two areas:

- Standard 1: Interpersonal and Collaborative Skills: The school leader demonstrate effective and professional interpersonal and collaborative skills.
- Standard 4: Positive Learning Climate and Cohesive Culture: The school leader builds and sustains a safe and positive climate and cohesive culture.

On your 2023-2024 evaluation, you received a “Below Standard” rating for Standard 11: Professional Conduct: Element 11.1 Policy and Procedure regarding failing to meet timeliness, deadlines despite reminders and return visits. Following a conference held on September 9, 2024, you were placed on a corrective action plan. Element 1.1 Interpersonal and Collaborative Skills and Element 4.1 Positive Learning Climate and Cohesive Culture were identified as the area(s) of unsatisfactory performance and the standards to be addressed. ... Unfortunately, ... it is evident that you have not demonstrated adequate progress to address the areas of unsatisfactory performance. In fact, since your corrective action plan has been in place, you have been suspended, without pay, on three separate occasions for willful neglect of duty:

- You were suspended ... for failing to timely submit Timely Release forms, despite receiving email reminders, verbal reprimands, and letters of reprimand.
- You were suspended ... for failing to submit ... payroll and ... enter meals into Primero for ... August, September, and October.
- You were suspended ... for failing to timely deposit school funds as required by State Board of Education Policy 1224.1. You did not make any bank deposits for the entire month ...

58. The letter summarized the basis for demotion as follows:

The deficiencies in your performance have been repeatedly brought to your attention through conversations with me, verbal reprimands, written reprimands, unsatisfactory evaluations, coaching/instructional support, focus support plans, a corrective action plan, and most recently three separate suspensions without pay. I have previously forewarned you verbally and in written correspondence, that if you engaged in any similar conduct in the future, you likely would be subject to more stringent disciplinary action affecting your contract of employment, up to and including suspension and termination of your contract.

Despite all of the efforts to assist you in successfully fulfilling your duties, you have continued to exhibit unsatisfactory performance, and have willfully neglected your duties and responsibilities as principal of Watson Elementary. This pattern of behavior is incredibly concerning to me and will not

be tolerated. Policies of the State Board of Education require principals to maintain a safe school for students. They also require principals to behave with integrity, exhibit professional behavior by showing positive examples of communication and punctuality, and immediately intervene in any student Code of Conduct violation. As the principal, I must be able to rely on you to supervise the management and operation of Watson Elementary and respond appropriately to incidents that jeopardize the welfare of students and the learning environment—but unfortunately, I cannot. I am unwilling to risk harm to any student by allowing you to continue to serve as a building administrator.

59. On February 18, 2025, Respondent held an evidentiary hearing and enacted the recommended demotion. Grievant was present at the hearing.

Discussion

The grievant bears the burden of proof in a grievance that does not involve a disciplinary matter and must prove his grievance by a preponderance of the evidence. W. VA. CODE ST. R. § 156-1-3 (2018). The burden of proof in disciplinary matters rests with the employer to prove by a preponderance of the evidence that the disciplinary action taken was justified. W. VA. CODE ST. R. § 156-1-3 (2018). “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 employer has not met its burden. *Id.*

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). The causes are:

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 Human Services 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. ...

W. VA. CODE § 18A-2-8(a).

A county board of education has 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. A county board shall complete an investigation of an employee that involves evidence that the employee may have engaged in conduct that jeopardizes the health, safety, or welfare of students despite the employee's resignation from employment prior to completion of the investigation.

W. VA. CODE § 18A-2-8(d).

Respondent originally determined at the start of the multi-year improvement process that Grievant's performance was unsatisfactory rather than willful neglect of duty, thus accepting the burden of determining whether Grievant's conduct was correctable.

[A] board must follow the § 5300(6)(a) procedures if the circumstances forming the basis for suspension or discharge are "correctable." The factor triggering the application of the evaluation procedure and correction period is "correctable" conduct. What is "correctable" conduct does not lend itself to an exact definition but must, in view of the nature of the conduct examined in *Trimboli [v. Board of Education of the*

County of Wayne, 163 W.Va. 1, 254 S.E.2d 561 (1979)], and in *Rogers [v. Board of Education]*, 125 W.Va. 579, 25 S.E.2d 537 (1943)], be understood to mean an offense or conduct which affects professional competency.

Mason County Bd. of Educ. v. State Superintendent of Sch., 165 W. Va. 732, 739; 274 S.E.2d 435 (1980). The provisions of Policy 5300 have since been codified in West Virginia Code § 18A-2-12a, which provides:

(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 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. . . .

Concerning what constitutes correctable conduct, the Court in *Mason County Bd. of Educ.* noted that:

[I]t is not the label given to conduct which determines whether § 5300(6)(a) procedures must be followed but whether the conduct forming the basis of dismissal involves professional incompetency and whether it directly and substantially affects the morals, safety, and health of the system in a permanent, non-correctable manner.

Respondent demoted Grievant to teacher and terminated her contract as principal, after determining that years of unsatisfactory performance was no longer correctable and had morphed into willful neglect of duty and insubordination. Respondent reasoned that it had given Grievant multiple opportunities to improve her performance and correct her conduct. In its demotion letter to Grievant, Respondent cited a “no confidence” vote from

school employees, three years of evaluations, two focus support plans (FSP), two letters of reprimand, three disciplinary suspensions, extensive coaching and mentorship, and a five-month corrective action plan (CAP) meant as the final chance to assist in improving her performance and correcting her conduct. None of these prior actions had ever been grieved.

The demotion letter also cites incidents that were timely grieved. These include Grievant's failure to improve in conjunction with the CAP, printing disciplinary reports late, failing to timely prepare an agenda for a meeting, confiscating teachers' phones during testing, interrupting student testing with an unnecessary announcement, and (most importantly) failing to timely respond to two student safety incidents.

Grievant contends that the demotion letter lists just eight specifically identified incidents. These occurred just before the demotion. Yet, the letter includes much more in citing Grievant's entire disciplinary history and assistance provided to her to improve over the prior three years, as previously covered. Grievant now attempts to challenge all prior incidents. However, Grievant never grieved any of the priors leading up to the most recent incidents.³ The 15-day statute of limitations to do so had long passed by the time she filed the current grievance. Thus, these prior incidents must be accepted as true. These

³"If an employee does not grieve specific disciplinary incidents, he cannot place the merits of such discipline in issue in a subsequent grievance proceeding. *Jones v. W. Va. Dept. of Health & Human Resources*, Docket No. 96-HHR-371 (Oct. 30, 1996); *See Stamper v. W. Va. Dept. of Health & Human Resources*, Docket No. 95-HHR-144 (Mar. 20, 1996); *Womack v. Dept. of Admin.*, Docket No. 93-ADMN-430 (Mar. 30, 1994). In such cases, the information contained in prior disciplinary documentation must be accepted as true. *See Perdue v. Dept. of Health & Human Resources*, Docket No. 93-HHR-050 (Feb. 4, 1994)." *Aglinsky v. Bd. of Trustees*, Docket No. 97-BOT-256 (Oct. 27, 1997), *aff'd*, Monongalia Cnty. Cir. Ct. Docket No. 97-C-AP-96 (Dec. 7, 1999), *appeal refused*, W.Va. Sup Ct. App. Docket No. 001096 (July 6, 2000).

incidents show that Grievant was aware of the performance standards expected of her when Respondent decided to terminate her contract as principal and demote her, and demonstrate willful neglect of duty and insubordination, particularly in conjunction with the CAP that was meant to provide Grievant one last opportunity to correct her conduct and improve performance.

Grievant contests one of the recent incidents and contends that others either did not violate any rule or that she did not have the requisite willfulness. The contested recent incident is that Grievant did not properly respond when a student brought weapons to school. Ms. Vincent confiscated the weapons from her student by 8:30 a.m. and contends she never told Grievant about the weapons. Respondent contends that Grievant knew about the weapons when she went to Ms. Vincent's classroom at 8:40 a.m. at Ms. Vincent's beckoning. Grievant contends that even though she was in the classroom at 8:40 a.m., she did not know about the weapons until she secured them from the classroom after 11:00 a.m. However, Mr. Linn testified that when he walked by the classroom at 8:40 a.m., he saw Grievant looking down at the desk drawer where the uncontested evidence shows the weapons were located.

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 factor is necessarily relevant to every credibility determination. In this situation, the relevant factors include bias, demeanor, attitude towards the action, and plausibility.

Mr. Linn had the least to gain from his testimony. While he did vote against Grievant in the “no confidence” vote, he did not have any bias against Grievant, as she had in fact helped him over the years. His demeanor was earnest and he did not waiver under cross examination. Mr. Linn seemed genuinely concerned about student safety and his proactive actions on the day of the incident reflect as much. Mr. Linn was credible.

Ms. Vincent had motive to back Grievant, as she is dating her son. Ms. Vincent was not bashful in her disapproval of Grievant’s demotion and her view of the extent that staff undermined Grievant, even viewing the reporting of the weapons by teachers to central office as indicative of the way teachers went over Grievant’s head during her tenure as principal rather than seeing it as an appropriate response to unsecured weapons. Ms. Vincent’s testimony also had plausibility issues. Ms. Vincent testified that between 8:30 a.m. and 8:40 a.m. she called Grievant and told Grievant to come when she could because a student had “something” and was initially concerned. Yet, when Grievant immediately came to her classroom, Ms. Vincent testified she told Grievant that

the “something” was secure in her desk drawer and was no longer of concern, so never said anything to Grievant to make her think the “something” were weapons or dangerous. Ms. Vincent implausibly testified that she did not open the drawer to show Grievant the weapons (even though they were right in front of them) because she did not know what the “something” was and did not know it was dangerous.

It defies credulity that Ms. Vincent would not ask Grievant if she knew what the objects were or that Grievant would not ask to see for herself the objects for which she had interrupted her meeting to come address. Ms. Vincent testified that Grievant said she would be back later to talk to the student even though Grievant would have had no idea what the “something” was she was apparently concerned enough to come back and talk to the student about if she did not see it or know that it was dangerous. It also seems highly unlikely, given her responsibility as principal, that Grievant either did not see, did not ask to see, or was not told about the weapons when she rushed to the classroom to make a safety determination and decide for herself on how to proceed with her duties. Ironically, if Ms. Vincent’s version is true, it would make Grievant appear more derelict in her duties as principal, her foremost duty being to ensure student safety. It seems unlikely that Ms. Vincent knew that her testimony, if it is to be believed, would make Grievant look worse in having Grievant rush to her classroom to make a safety determination without looking to see what the “something” she had been called to deal with was, or if it was dangerous, and if it was truly secure. It seems implausible that Grievant would not have shown any concern or at least curiosity to see the “something” for herself after rushing to the classroom and now that the “something” was inches away, albeit concealed in an

unlocked drawer. It also is improbable that Grievant would have been alright with not knowing what it was she was going to talk to the student about later that day.

Grievant has the most to gain from her denial. It is also implausible that Grievant left her meeting with Ms. DeWitt to immediately go to the classroom without seeing or asking to see the objects she had rushed to address. This is especially so, given her position as the one ultimately tasked with keeping the school safe. Interestingly, if it was apparent to Grievant while testifying that her total abdication of judgment to Ms. Vincent on something as crucial as school safety would look worse on her, perhaps her denial would be credible in being against her own interest. Yet, there is no indication that Grievant had this insight either before or during her testimony.

Thus, it is more likely than not that Grievant either saw the weapons in the desk draw at 8:30 a.m. or at least knew about them at that time. Grievant failed to promptly secure the weapons or contact authorities as required by State Code and WVDE Policy 4373. Grievant had previously been coached extensively by Ms. DeVito about student safety and dealing with this type of situation, including not only securing weapons but contacting law enforcement, the Superintendent, and parents.

That same month, during required testing, as her CAP was nearing its conclusion, Grievant violated Policy 2340 when she disrupted testing by making an announcement about a fire alarm test. Grievant also confiscated teachers' phones. Grievant served as the building test coordinator and was responsible for ensuring that statewide assessments were administered in accordance with WVDE Policy 2340. Policy 2340 prohibits state testing irregularities. When Ms. DeVito heard Grievant's announcement on the intercom, she went to the office and told Grievant it was improper. Like the other

principals, Grievant had been trained to avoid all testing irregularities within her control because they can invalidate testing and result in loss of credentials. While Policy 2340 states that electronic devices must be turned off and stored out of view during testing, it permits test examiners to use them to communicate with the building principal. In taking the phones, Grievant improperly deprived teachers of any way to contact her in case of an emergency in violation of Policy 2340.

Within days of the first student safety incident, WVDE generated a Student Response Alert indicating a Watson Elementary student's written assessment response contained words denoting either emotional distress, suicide, abuse and neglect, bullying, violence, substance abuse, inappropriate sexual content, or criminal activity. Grievant was promptly notified and directed to meet with the student by the end of the day, address the concern, and report the actions taken by email so a response could be given to WVDE. Grievant did not do as directed and thus failed to comply with WVDE Policy 4373 & 2515 and West Virginia Code §18A-5-1a. These required Grievant as school administrator to promptly address matters affecting student health, safety, and welfare.

Grievant does not appear to contest the other recent incidents but argues they do not violate laws or policies. The evidence shows otherwise. There does not seem to be any ambiguity to the violations. If there is ambiguity, Respondent is entitled to deference. "‘Interpretations of statutes by bodies charged with their administration are given great weight unless clearly erroneous.’ Syl. pt. 4, *Security National Bank & Trust Company v. First W. Va. Bancorp, Inc.*, 166 W.Va. 775, 277 S.E.2d 613 (W. Va. 1981)." *Smith v. Bd. of Educ.*, Syl. Pt. 3, 176 W. Va. 65, 66, 341 S.E.2d 685, 686 (1985).

Further, Respondent poignantly asserted that it does not need to rely on or prove every incident for which Grievant was cited to justify Grievant's demotion and its determination that Grievant's conduct was non-correctable. On this point, Respondent proved the most crucial incidents, which entailed jeopardizing student safety, and showed these infractions were serious violations. Further, these violations were at the core of Grievant's leadership and communication shortcomings for which she had been mentored by Ms. DeVito, disciplined, evaluated, and given FSPs and ultimately a CAP, leaving no doubt that her performance issues were not correctable.

Respondent showed that Grievant failed to improve in conjunction with the CAP when she submitted disciplinary reports late, failed to timely prepare an agenda for a meeting, confiscated teachers' phones during testing, interrupted student testing with an unnecessary announcement, did not properly respond to a student weapon incident, and did not do a safety assessment after a student's writing raised concern.

Respondent provided Grievant every opportunity to improve her performance. When Grievant failed to make the necessary improvements after three years of efforts to assist her in doing so, her behavior became insubordination and willful neglect of duty. "[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).

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 "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." *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).

Grievant contends that Respondent acted in an arbitrary and capricious manner in demoting her. An action is recognized as arbitrary and capricious when "it is unreasonable, without consideration, and in disregard of facts and circumstances of the case." *State ex rel. Eads v. Duncil*, 196 W. Va. 604, 474 S.E.2d 534 (1996) (*citing Arlington Hosp. v. Schweiker*, 547 F. Supp. 670 (E.D. Va. 1982)). "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 *Bedford County Memorial Hosp. v. Health and Human Serv.*, 769 F.2d 1017 (4th Cir. 1985); *Yokum v. W. Va. Schools for the Deaf and the Blind*, Docket No. 96-DOE-081 (Oct. 16, 1996).” *Trimboli v. Dep’t of Health and Human Res.*, Docket No. 93-HHR-322 (June 27, 1997). Respondent gave Grievant every opportunity to improve her performance by providing evaluations, suspensions, written reprimands, FSPs, a five-month long CAP, and lengthy mentorship. When the CAP and mentorship did not improve Grievant’s performance, Respondent acted reasonably in demoting her instead of terminating her employment.

Grievant also alleges discrimination in that teachers were not disciplined for their failure to address student safety incidents. Grievant has the burden of proof. “Discrimination” for purposes of the grievance process has a very specific definition and “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). As the principal and administrator of Watson Elementary, Grievant was not similarly situated to any teacher. Thus, Grievant failed to prove discrimination.

Respondent showed that it was more likely than not that Grievant engaged in the violations that were alleged to have occurred near the end of her CAP. These, in conjunction with the prior non-grieved events, prove by a preponderance of the evidence that Grievant engaged in insubordination and willful neglect of duty, meaning her conduct

was not correctable and her dismissal was justified. Accordingly, the grievance is DENIED.

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 his grievance by a preponderance of the evidence. W. VA. CODE ST. R. § 156-1-3 (2018). The burden of proof in disciplinary matters rests with the employer to prove by a preponderance of the evidence that the disciplinary action taken was justified. W. VA. CODE ST. R. § 156-1-3 (2018). “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 employer has not met its burden. *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). The causes are:

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 Human Services 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. ...

W. VA. CODE § 18A-2-8(a).

A county board of education has 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. A county board shall complete an investigation of an employee that involves evidence that the employee may have engaged in conduct that jeopardizes the health, safety, or welfare of students despite the employee's resignation from employment prior to completion of the investigation.

W. VA. CODE § 18A-2-8(d).

3.

[A] board must follow the § 5300(6)(a) procedures if the circumstances forming the basis for suspension or discharge are "correctable." The factor triggering the application of the evaluation procedure and correction period is "correctable" conduct. What is "correctable" conduct does not lend itself to an exact definition but must, in view of the nature of the conduct examined in *Trimboli* [v. Board of Education of the County of Wayne, 163 W.Va. 1, 254 S.E.2d 561 (1979)], and in *Rogers* [v. Board of Education, 125 W.Va. 579, 25 S.E.2d 537 (1943)], be understood to mean an offense or conduct which affects professional competency.

Mason County Bd. of Educ. v. State Superintendent of Sch., 165 W. Va. 732, 739; 274

S.E.2d 435 (1980). The provisions of Policy 5300 have since been codified in West

Virginia Code § 18A-2-12a, which provides:

(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 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. . . .

4. 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*).

5. 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).

6. "[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).

7. Respondent proved by a preponderance of the evidence that Grievant was given every opportunity to reverse her unsatisfactory performance, amounting to insubordination and willful neglect of duty, and that her conduct was not correctible, justifying her demotion and termination of her contract as principal.

8. "Discrimination" for purposes of the grievance process has a very specific definition and "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).

9. Grievant failed to prove discrimination by a preponderance of the evidence. Accordingly, this grievance is DENIED.

"The decision of the administrative law judge is final upon the parties and is enforceable in the circuit court situated in the judicial district in which the grievant is employed." W. VA. CODE § 6C-2-5(a) (2024). "An appeal of the decision of the administrative law judge shall be to the Intermediate Court of Appeals in accordance with §51-11-4(b)(4) of this code and the Rules of Appellate Procedure." W. VA. CODE § 6C-2-5(b). Neither the West Virginia Public Employees Grievance Board nor any of its Administrative Law Judges is a party to such an appeal and should not be named as a party to the appeal. However, the appealing party must serve a copy of the petition upon the Grievance Board by registered or certified mail. W. VA. CODE § 29A-5-4(b) (2024).

DATE: August 19, 2026

Joshua S. Fraenkel
Administrative Law Judge