

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**SHERRI L. SHUMATE,
Grievant,**

v.

Docket No. 2025-0677-RaIED

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

DECISION

Grievant, Sherri L. Shumate, is employed by Respondent, Raleigh County Board of Education. On May 20, 2025, Grievant filed this grievance against Respondent attaching a lengthy statement of grievance that is incorporated in full by reference. Grievant protested her two-day suspension for allegedly calling a student a “dumbass,” which she denied. Grievant asserted that, even if the allegations were proven, the statutory legal standard for suspension was not met and suspension was not warranted. Grievant further alleged she was denied due process. For relief, Grievant sought the following: “I request that any record of the suspension be removed from my record, back pay with interest for the two-day suspension already served, reinstate all seniority rights and benefits that were lost because of the suspension; or in the alternative, relief proportionate to the offense in light of my prior good service.”

The grievance was properly filed directly to level three pursuant to W. VA. CODE § 6C-2-4(a)(4). A level three hearing was held on August 13, 2025, and November 20, 2025, before the undersigned at the Grievance Board’s Charleston, West Virginia office. Grievant appeared in person and was represented by counsel, Kevin B. Burgess, Law Offices of Kevin Burke Burgess, Attorney at Law PLLC, and by representative, Brandon Tinney, Education West Virginia. Respondent appeared by Superintendent Dr. Serena

L. Starcher and was represented by counsel, George "Trey" B. Morrone III, Bowles Rice LLP. This matter became mature for decision on December 30, 2025, upon final receipt of the parties' written Proposed Findings of Fact and Conclusions of Law.

Synopsis

Grievant is employed by Respondent as a teacher and protests her two-day suspension from employment. Respondent proved the charges against Grievant by a preponderance of the evidence and proved that the disciplinary action taken was justified. Grievant failed to prove that her due process rights were violated. Accordingly, the 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 is employed by Respondent as a teacher at Park Middle School and has been so employed since August of 2013. Grievant was previously employed by Respondent as a substitute teacher beginning in 2011. Test. G.

2. Grievant has been employed as a professional educator for approximately forty years and was employed by Nicholas and Fayette counties prior to her employment with Respondent. Prior to the discipline at issue in this grievance, Grievant had never been disciplined. Test. G.

3. On March 27, 2025, during her fourth-period sixth-grade social studies class, Grievant called student D.D.¹ a "dumbass." Test. J.E., D.D., B.M. & A.B; R. Ex. 5.

¹ The initials of students will be used throughout this decision to preserve their privacy.

4. Respondent first became aware of the incident at lunch when Park Middle School Assistant Principal Meghan Houck heard three students, J.W., L.L., and J.E., in the cafeteria speaking loudly and animatedly. The three students reported to Ms. Houck that Grievant called a student a “dumbass.” Test. Houck & Harris.

5. Ms. Houck immediately removed the students to Principal Harris’s office, where the students repeated that Grievant had called D.D. a “dumbass” during fourth-period social studies class. Principal Harris then asked the students to make written statements. Test. Houck & Harris.

6. J.W. wrote, “I heard Ms. Shumate call D.D. a dumbass.” L.L. wrote, “I heard Miss Shumate say sit down dumbass to D.” J.E. wrote, “I heard Mrs. Shumate said are you a dumbass D.” R. Ex. 5.

7. Principal Harris thereafter immediately called student D.D. into his office and asked if something had happened in class that day. D.D. replied that Grievant had called him a “dumbass.” Principal Harris also asked D.D. to provide a written statement, which he did, stating, “Mrs. Shumate called me a dumbass today in class.” Test. Houck & Harris; R. Ex. 5.

8. Principal Harris next reported the alleged incident to his supervisor, Director of Secondary Schools Amber Hodges, who directed him to start an investigation. Director Hodges also notified Superintendent Starcher of the situation. Test. Hodges, Harris, Starcher.

9. At 1:40 p.m. on the same day, Director Hodges and Principal Harris met with Grievant to place her on paid administrative leave pending investigation. Grievant was summoned to the meeting by Assistant Principal Houck and was not informed of the

reason for the meeting. During the meeting, Grievant was only informed that she had been accused of “inappropriate classroom behavior.” Test. Hodges, Harris, Houck, G.

10. Assistant Principal Houck escorted Grievant to her classroom to collect her belongings and then escorted her out of the building. Test. Houck.

11. Principal Harris and Assistant Principal Houck then immediately interviewed the other students in the class, except B.B., who had checked out of school early and was not interviewed until the following day. Principal Harris and Assistant Principal Houck divided up the 13 students in the class that had not yet been interviewed. Each interviewed the students on their list individually. Each interview lasted three to five minutes. Test. Harris & Houck.

12. In their interviews with the students, neither Principal Harris nor Assistant Principal Houck asked about the incident specifically. Each asked a general question. Test. Harris & Houck.

13. Students were asked if they wanted to write down a statement. Test. Harris & Houck.

14. Of the seventeen students present in the classroom during the incident, twelve gave written statements as follows:

B.B. wrote, “In Mrs. Shumate’s I did hear her say it dumbass but some say otherwise. Also I heard her say the N word and other people did too but might’ve heard wrong.”

A.B. wrote, “Today I heard Mrs. Shumate call D.D. a dumbass when she was yelling at him in class.”

A.C. wrote, "Today in 4th period social studies I heard Mrs. Shumate say to D.D. 'you are a dumb a*s.'"

D.D. wrote, "Mrs. Shumate called me a dumbass today in class."

J.E. wrote, "I heard Mrs. Shumate said: are you are a dumbass D."

J.F. wrote, "I think she meant to say don't ask but it sounded like she said something bad. I heard her say Dumb A word."

M.H. wrote, "Mrs. Shumate called D. a dumbass."

B.K. wrote, "She said dumbass to D."

L.L. wrote, "I heard Miss Shumate say 'sit down dumbass' to D."

B.M. wrote, "Mrs. Shumate called D. a dumbass because she asked him a question."

J.W. wrote, "I heard Ms. Shumate call D.D. a dumbass."

B.W. wrote, "I heard her say either 'don't ask' or 'dumbass.'"

R. Ex. 5.

15. Of the remaining five students who were present in the classroom, E.C. stated orally that it sounded like Grievant called D.D. a dumbass. However, E.C. would not write a statement. T.G. refused to talk about the incident and did not give a statement. H.M. said he didn't know what happened. D.W. said he didn't hear anything, and he acted uncomfortable talking about the incident. A fifth student, G.E., did not give a written statement but said Grievant only said, "don't ask questions." Test. Harris; R.

Ex. 4 & 5.

16. Grievant's classroom was not large, containing five rows of desks front to back. G. Ex. 8 & 10.

17. Grievant had moved D.D. and B.M. to desks nearest to her in front of the class and out of the rows of the other students to address behavioral issues. Test. G.; G. Ex. 8.

18. Students throughout the room heard the statement. R. Ex. 5; G. Ex. 8 & 11.

19. Neither Principal Harris nor Assistant Principal Houck interviewed Grievant. Test G., Harris, Houck.

20. On April 2, 2025, Principal Harris issued a report to Superintendent Starcher summarizing his findings and attaching the written statements of the students. Principal Harris concluded "The similarities in the statements present strong evidence to substantiate the complaint as being true." R. Ex. 4.

21. By letter of the same date, Superintendent Starcher notified Grievant that she would recommend that the county board of education ratify the paid administrative leave pending an investigation. She notified Grievant that the allegations included "you calling a student 'a dumbass' in class." The letter further notified Grievant that Superintendent Starcher would hold a conference with Grievant on April 7, 2025, and Grievant's right to a representative at that meeting. R. Ex. 6.

22. On April 7, 2025, Superintendent Starcher, Principal Harris, and Director of Human Resources Amy Semonco met with Grievant, her counsel, her union representative, and her attorney spouse. During the meeting, Dr. Starcher reviewed the report with Grievant, including the statements of what each student said. Dr. Starcher did not provide Grievant with a copy of the report. Test. Starcher & G.

23. Grievant denied the allegation, stating she did not use such language in class or her personal life. She stated she would not comment on a student's perceived lack of intelligence because she has relatives with limited cognitive abilities. She stated she believed D.D. had made the allegation because of his behavioral issues in her class. When informed that D.D. had not made the allegation, Grievant stated that it was a tough class and that half of the class runs around like a "posse." Test. Starcher & G.; R. Ex. 1.

24. At the end of the conference, Superintendent Starcher suspended Grievant for two days without pay beginning April 8, 2025. Test. Starcher.

25. In making her decision, Superintendent Starcher, was persuaded by the consistency of the statements that Grievant had called D.D. a "dumbass." Superintendent Starcher determined that suspension was warranted because the incident violated the code of conduct and Respondent's policy, on which Grievant had received annual training. In determining the length of suspension, Dr. Starcher imposed a lesser penalty of a two-day suspension rather than a three to five day suspension because Grievant, a long-term employee, had no prior disciplinary history. Test. Starcher.

26. Superintendent Starcher memorialized the suspension by letter dated April 10, 2025. Dr. Starcher found that Grievant called D.D. a dumbass, in violation of six provisions of section 4.2 of State Board Policy 5902, the Employee Code of Conduct and two provisions of section 2 of Raleigh County Board Policy C.1.2, Staff-Student Relations. The letter notified Grievant that Dr. Starcher would ask the Board to ratify the suspension at the May 13, 2025, meeting and that Grievant had the right to request a hearing before the Board. R. Ex. 1.

27. Section 4.2 of State Board Policy 5902, the Employee Code of Conduct requires, in relevant part:

All West Virginia school employees shall:

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.

...

4.2.5. 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.

R. Ex. 3

28. Raleigh County Board Policy C.1.2, Staff-Student Relations requires, in relevant part:

In order to develop positive staff-student relations, all employees are expected to:

Section 2.3. Refrain from the following:

a. Using ridicule, sarcasm, foul language, or any other demeaning speech directed at any student(s).

...

d. Calling pupils disparaging names or so speaking of them to others.

R. Ex. 2.

29. Grievant did not request a hearing before the Board and the Board ratified the suspension on May 13, 2025. Grievant was notified of the ratification by letter dated May 14, 2025. R. Ex. 9 & 10.

30. Grievant and Principal Harris have an extended family connection in that Principal Harris is married to Grievant's adopted cousin, the daughter of her uncle, David Perry. Test. G. & Shumate.

31. In 2019, Grievant's mother passed away, leaving Grievant and her brother, Scott Johnson, as heirs to the estate. Test. G. & Shumate.

32. Grievant had a conflict over the estate with her brother, who was the executor of the estate. Test. G. & Shumate.

33. In 2020 and 2021, Grievant was involved in litigation against her brother regarding the estate. Neither Principal Harris nor his wife were parties to the litigation. Test. G. & Shumate.

34. Principal Harris's family is in possession of some items of personal property from the estate, which Grievant believes is improper, although Grievant has not directly confronted Dr. Harris regarding his family's possession of the personal property and Mr. Harris denies knowledge of this property. Test. Grievant & Harris.

35. On March 10, 2021, Principal Harris placed Grievant on a Focused Support Plan for the first time in her career. On May 25, 2021, Principal Harris completed Grievant's annual evaluation rating her as "Emerging" in Teaching, "Meets Standard" in

Professional Conduct, and “Accomplished” in the remaining five standards. Test. G.; G. Ex. 1 & 2.

36. In response to the evaluation, Grievant’s former union representative, John Rogers, met with Respondent’s Director of Human Resources, Anthony Jones, and worked out an informal agreement that Assistant Principal Mark Martin would evaluate Grievant rather than Principal Harris. Test. Rogers.

37. Principal Harris assigned the duty to complete Grievant’s evaluations to Assistant Principal Martin, stating that it was due to a conflict of interest due to the family relation. Test. Martin.

38. Grievant had been on a 504 plan to accommodate her disability since 2020. In August of 2021, Dr. Harris reassigned Grievant to a different classroom on the second floor, which she believed violated her 504 plan. Test. G. & Shumate; R. Ex. 13.

39. Grievant’s husband, who is an attorney, contacted Respondent’s HR Director Jones, requesting ADA accommodations and alleging harassment by Principal Harris, but did not state that the harassment related to the estate dispute. Test. Shumate; G. Ex. 4.

Discussion

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. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993). 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 an employee 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, 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) (2024).

Grievant denies the allegation and asserts the discipline was the result of a fatally flawed process due to Principal Harris's conflict of interest. Grievant asserts the suspension was not justified because it did not follow progressive discipline. She alleges violation of her right to due process. Respondent asserts Grievant's misconduct

constituted insubordination and that suspension of Grievant's employment was justified for her misconduct. Respondent asserts Grievant was given due process.

As the written statements of the students have been offered as evidence, a hearsay analysis must be made. "Hearsay includes any statement made outside the present proceeding which is offered as evidence of the truth of the matter asserted." BLACK'S LAW DICTIONARY 722 (6th ed. 1990). "Hearsay evidence is generally admissible in grievance proceedings. The issue is one of weight rather than admissibility. This reflects a legislative recognition that the parties in grievance proceedings, particularly grievants and their representatives, are generally not lawyers and are not familiar with the technical rules of evidence or with formal legal proceedings." *Gunnells v. Logan County Bd. of Educ.*, Docket No. 97-23-055 (Dec. 9, 1997).

The Grievance Board has applied the following factors in assessing hearsay testimony: 1) the availability of persons with first-hand knowledge to testify at the hearings; 2) whether the declarants' out of court statements were in writing, signed, or in affidavit form; 3) the agency's explanation for failing to obtain signed or sworn statements; 4) whether the declarants were disinterested witnesses to the events, and whether the statements were routinely made; 5) the consistency of the declarants' accounts with other information, other witnesses, other statements, and the statement itself; 6) whether collaboration for these statements can be found in agency records; 7) the absence of contradictory evidence; and 8) the credibility of the declarants when they made their statements. *Id.*; *Sinsel v. Harrison County Bd. of Educ.*, Docket No. 96-17-219 (Dec. 31, 1996); *Seddon v. W. Va. Dep't of Health/Kanawha-Charleston Health Dep't*, Docket No. 90-H-115 (June 8, 1990).

Respondent offered the testimony of four of the students who made written statements. All of the students signed their statements, rather than signing affidavits, which is the normal procedure for an investigation involving children of their age. Principal Harris and Assistant Principal Houck testified to the credibility of the statements made by the students. It is reasonable not to bring in all twelve students to testify as this would be unduly disruptive to the students' learning. Although there has been an insinuation that the students made up the allegation, it does not appear that the students had an interest in the matter. Therefore, the written statements are entitled to some weight.

As Grievant denies the allegation, credibility assessment is necessary. 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).

Twelve students made written statements and four of those students, J.E., D.D., B.M., and A.B testified during the level three hearing. Grievant insinuates that the students conspired and fabricated the allegation. Grievant asserts that the students' statements are too different to be considered credible. Grievant also provided the testimony of long-term substitute Gene Neighbors that he overheard students saying they were going to "tell on Ms. Shumate."

It is true that there is variation in the statements. The majority of the class made written statements that the word "dumbass" was used. Eleven of the written statements state that Grievant said the word "dumbass," eight of which state that D.D. was called a "dumbass." Only one written statement said that Grievant said either "don't ask" or "dumbass," while one other student who chose not to make a written statement also said that Grievant said, "don't ask." While the majority of the statements agree that Grievant called D.D. a "dumbass," several stated that the direct quote was "you are a dumbass" while another stated that Grievant said "sit down dumbass."

Each student that testified appeared to understand the serious nature of the proceeding and conducted themselves appropriately. J.E., in particular, was polite and well-spoken for his age, which seemed to indicate particular intelligence. J.E. is not close with D.D. and appeared to have no motive to lie. His testimony was plausible and was consistent with his written statement. He appeared genuine when he explained that he had reported the incident because it was "the right thing to do." B.M. was also very polite but he answered "I don't remember" to many of the questions asked about the specifics of the day of the incident. It is unclear if B.M. was being evasive or if he simply did not remember. B.M. did appear to have some trouble with memory because he

misremembered that Assistant Principal Martin was present, when Assistant Principal Martin was not present because he had already retired. Poor memory could also be indicated because of the length of time between the incident and the testimony and also B.M.'s lack of engagement in class. B.M. also stated that his written statement was incorrect because Grievant called D.D. a dumbass after D.D. asked her a question, not after Grievant asked D.D. a question. B.M. is also friends with D.D.

A.B. testified by telephone and an incident occurred during her testimony during which voices could be heard over the telephone. During the hearing, there was concern that other people might be in the room with A.B. that had not been identified and could be influencing her testimony or breaching the confidentiality of the proceeding. Upon further review, it appears the voices were due to an overzealous conference phone picking up sound from outside of the room. The loud talking and laughter are not indicative of attempts to coach the student testifying. Further, regarding the confidentiality of the proceedings, the same indicates that the people who were outside the room were not listening to the testimony but were rather simply having a loud conversation outside of the room. While irregular, ultimately this issue does not impact the credibility of A.B.'s testimony. A.B. was the only student that described Grievant as yelling at D.D., although J.E. testified that Grievant was angry and loud. She provided additional detail around the statement that was different than what the other students described.

D.D.'s demeanor was earnest and not nervous. His answers to questions were not evasive and appeared genuine. He was certain that Grievant used the word "dumbass." D.D. did testify that he believed he had been moved to the front of the class

unfairly, which could give him a motive to lie, but he was not one of the original reporters and his testimony is supported by the other students.

All four students described being surprised and/or shocked. All admitted to talking to other students about the incident. All reiterated in their testimony that Grievant called D.D. a “dumbass.” As for the differences in their testimony, such differences are understandable given the age of the students, the passage of time, and the sudden and surprising nature of the incident.

That the students talked amongst themselves after class and waited until lunch to talk to Assistant Principal Houck would be normal behavior for sixth grade students and does not indicate intent to fabricate a story. Mr. Neighbor’s statement that he overheard students saying they were going to “tell on Mrs. Shumate” also does not prove any intention of the students to make a false accusation. While it can be argued that D.D. would have motivation to lie to get back at Grievant for disciplining him, D.D. was not the student who made the report. While D.D. and B.M. are close friends, which might give B.M. motivation to lie, he and J.E. are only associated through the baseball team and there appears to be no particular friendship with A.B. The students were credible.

Assistant Principal Houck was credible. Ms. Houck was new to the school and had no alleged bias or interest. Ms. Houck had some difficulty remembering the names of students, but this was understandable given that she had only been at the school for one month before the incident. Her testimony regarding what was said and the process thereafter was sufficiently detailed and certain. Her testimony was consistent with Principal Harris’s testimony.

While there is some suspicion regarding Principal Harris's denial that he was aware of the lawsuit and his assertion that he simply decided to stop evaluating Grievant on his own, there is no evidence that he attempted to influence the students or lie about what they told him. The initial disclosure by the children was to Assistant Principal Houck and the initial interviews were conducted by Principal Harris and Assistant Principal Houck together. Additionally, the two split the other interviews and there was no appreciable difference between the statements of the children interviewed by Principal Harris versus Assistant Principal Houck. The statements are clearly written and signed by the students. Therefore, Principal Harris's testimony regarding what the students reported is credible.

Superintendent Starcher was credible. Her demeanor was calm and professional. She was certain and detailed in her answers to questions. There is no indication of any bias or interest beyond defending her decision. It is clear that she took the matter seriously and carefully reviewed the evidence in making her decision. There is no evidence that Dr. Starcher was improperly influenced by Principal Harris's opinion. Dr. Starcher credibly testified that she made her determination based on the statements of the students made during the investigation, Grievant's statements during the conference, and her own review of the circumstances.

Grievant's demeanor was appropriate although she was somewhat evasive and reactive during cross examination. Grievant has been consistent in her statements and denial of the allegation. However, Grievant's denial is not enough to overcome the weight of the evidence of the reasonably consistent written statements and credible testimony of the students. It is unlikely that almost the entire class fabricated this incident to the extent

of repeating the allegation to administration and writing statements while four of their number also then testified falsely. It is possible that Grievant said “don’t ask” rather than “dumbass” and then the students, in talking amongst themselves, convinced each other that she said “dumbass.” However, the burden of proof is simply more likely than not and the evidence shows it is more likely than not that Grievant called D.D. a “dumbass.”

Respondent asserts that Grievant’s misconduct constituted 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 “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).

The code of conduct for West Virginia school employees is contained in the legislative rules of the State Board of Education, which states that employees shall:

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.

W.VA. CODE ST. R. § 126-162-4.2 (2002).

Although Grievant denies the allegation, the weight of the evidence proves it is more likely than not that she did as alleged. As discussed above, the statements of the students were credible. There is no evidence that Principal Harris encouraged the students to make up the allegation. The statements were reasonably similar. Respondent proved by a preponderance of the evidence that Grievant called D.D. a “dumbass.” The Code of Conduct and Respondent’s policy clearly prohibit demeaning and humiliating a student by calling them a “dumbass” in front of their class. Grievant does not dispute that she was aware of the policy and admits that such would be a

violation of the policy; she simply denies she said it. This violation of policy constitutes insubordination.

Grievant asserts Respondent failed to follow progressive discipline and that suspension of employment was not justified. The statute permits Respondent to suspend an employee for insubordination. Calling a student a “dumbass” is a serious violation of policy. It is appropriate to skip lesser forms of discipline for a serious violation. Although it is true that Grievant had never before received discipline, Superintendent Starcher took that into account in determining the punishment. Dr. Starcher would typically issue a three-to-five-day suspension for such a violation but reduced it to a two-day suspension in recognition that this was Grievant’s first offense. Suspension of employment for two days is reasonable and justified in this instance.

Grievant asserts her due process rights were violated. “The Due Process Clause, Article III, Section 10 of the West Virginia Constitution, requires procedural safeguards against State action which affects a liberty or property interest.” Syl. Pt. 1, *Waite v. Civil Serv. Comm’n*, 161 W. Va. 154, 241 S.E.2d 164 (1977), *overruled in part on other grounds by W. Va. Dep’t of Educ. v. McGraw*, 239 W. Va. 192, 201, 800 S.E.2d 230, 239 (2017). “‘The constitutional guarantee of procedural due process requires ‘some kind of hearing’ prior to the discharge of an employee who has a constitutionally protected property interest in his employment.’ *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 [84 L. Ed. 2d 494, 105 S. Ct. 1487] (1985).” Syl. Pt. 3, *Fraley v. Civil Service Commission*, 177 W.Va. 729, 356 S.E.2d 483 (1987). “The pretermination hearing does not need to be elaborate or constitute a full evidentiary hearing. The essential due process requirements, notice and an opportunity to respond, are met if the tenured civil service

employee is given 'oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story' prior to termination." *Id. at 732*, 356 S.E.2d at 486. Due process is also required for a non-minimal suspension of employment, affecting only the extent of the procedural protection required. *Waite*, 161 W. Va. at 162, 241 S.E.2d at 169.

Grievant alleges she did not receive due process because of alleged failures during the investigation, including Principal Harris's involvement, the failure to interview Grievant, and her removal from the building before the investigation was complete. Due process only requires notice and an opportunity to respond prior to the imposition of discipline, both of which Grievant received. During the April 7, 2025, meeting, Grievant was notified of the allegations against her and the contents of the report and statements of the students and she was given an opportunity to respond. The meeting fully met the requirements of due process.

To the extent that Grievant argues Principal Harris's involvement otherwise invalidates the disciplinary action taken, there is no support for such an assertion absent evidence that his involvement tainted the result. First, there was no official agreement prohibiting Principal Harris from exercising his authority as Grievant's principal. The informal agreement was only that Dr. Harris would not evaluate Grievant at that time, and that was an agreement made without Dr. Harris's involvement.

As for Dr. Harris's impact on the suspension of Grievant's employment, Superintendent Starcher credibly testified that she made her determination based on the statements of the students and Grievant and her own review of the circumstances. There is no evidence that Principal Harris coached the students, influenced their statements, or

influenced Dr. Starcher's decision. Therefore, Dr. Harris's involvement does not invalidate the suspension of Grievant's employment.

The following Conclusions of Law support the decision reached.

Conclusions of Law

1. 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. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993). 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 an employee 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, 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) (2024).

3. . "Hearsay includes any statement made outside the present proceeding which is offered as evidence of the truth of the matter asserted." Black's Law Dictionary

722 (6th ed. 1990). “Hearsay evidence is generally admissible in grievance proceedings. The issue is one of weight rather than admissibility. This reflects a legislative recognition that the parties in grievance proceedings, particularly grievants and their representatives, are generally not lawyers and are not familiar with the technical rules of evidence or with formal legal proceedings.” *Gunnells v. Logan County Bd. of Educ.*, Docket No. 97-23-055 (Dec. 9, 1997).

4. The Grievance Board has applied the following factors in assessing hearsay testimony: 1) the availability of persons with first-hand knowledge to testify at the hearings; 2) whether the declarants' out of court statements were in writing, signed, or in affidavit form; 3) the agency's explanation for failing to obtain signed or sworn statements; 4) whether the declarants were disinterested witnesses to the events, and whether the statements were routinely made; 5) the consistency of the declarants' accounts with other information, other witnesses, other statements, and the statement itself; 6) whether collaboration for these statements can be found in agency records; 7) the absence of contradictory evidence; and 8) the credibility of the declarants when they made their statements. *Id.*; *Sinsel v. Harrison County Bd. of Educ.*, Docket No. 96-17-219 (Dec. 31, 1996); *Seddon v. W. Va. Dep't of Health/Kanawha-Charleston Health Dep't*, Docket No. 90-H-115 (June 8, 1990).

5. 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).

6. The code of conduct for West Virginia school employees is contained in the legislative rules of the State Board of Education, which states that employees shall:

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.

W.VA. CODE ST. R. § 126-162-4.2 (2002).

7. “The Due Process Clause, Article III, Section 10 of the West Virginia Constitution, requires procedural safeguards against State action which affects a liberty or property interest.” Syl. Pt. 1, *Waite v. Civil Serv. Comm'n*, 161 W. Va. 154, 241 S.E.2d 164 (1977), *overruled in part on other grounds by W. Va. Dep't of Educ. v. McGraw*, 239 W. Va. 192, 201, 800 S.E.2d 230, 239 (2017). “A State civil service classified employee has a property interest arising out of the statutory entitlement to continued uninterrupted employment.” *Id.* at Syl. Pt. 4. “The constitutional guarantee of procedural due process requires “some kind of hearing’ prior to the discharge of an employee who has a constitutionally protected property interest in his employment.’ *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 [84 L. Ed. 2d 494, 105 S. Ct. 1487] (1985).” Syl. Pt. 3, *Fraley v. Civil Service Commission*, 177 W.Va. 729, 356 S.E.2d 483 (1987). “The pretermination hearing does not need to be elaborate or constitute a full evidentiary hearing. The essential due process requirements, notice and an opportunity to respond, are met if the tenured civil service employee is given ‘oral or written notice of the charges against him, an explanation of the employer’s evidence, and an opportunity to present his side of the story’ prior to termination.” *Id.* at 732, 356 S.E.2d at 486. Due process is also required for a non-minimal suspension of employment, affecting only the extent of the procedural protection required. *Waite*, 161 W. Va. at 162, 241 S.E.2d at 169.

8. Respondent proved the charges against Grievant by a preponderance of the evidence and proved that the disciplinary action taken was justified.

9. Grievant failed to prove that her due process rights were violated.

Accordingly, the 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) (2024). 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: February 17, 2026

Billie Thacker Catlett
Chief Administrative Law Judge