

**THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD**

**SETH A. VAUGHN,  
Grievant,**

**v.**

**Docket No. 2026-0282-MerED**

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

**DECISION**

Grievant, Seth A. Vaughn, was employed by Respondent, Mercer County Board of Education. On November 1, 2025, Grievant filed this grievance against Respondent stating, "Grievant was terminated without factually establishing the listed notoriety/rational nexus regarding the exercise of free speech to disruption of school operation." For relief, Grievant seeks, "Reinstatement as teacher even if in another area the grievant holds certification in and backpay for month of suspension as hearing was 31 days after stated suspension w/o pay and grievant banned from seeing child school events without no trespass issued. Termination @ hearing 10/16/25. No documentation received as of this filing."

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 April 21 and 22, 2026, before the undersigned at the Grievance Board's Charleston, West Virginia office. Grievant appeared in person and was represented by his representative, Ashley Vaughn. Respondent appeared by Superintendent Edward Toman and was represented by counsel, Jason S. Long. This matter became mature for decision on June 1, 2026, upon final receipt of the parties' written Proposed Findings of Fact and Conclusions of Law.

## **Synopsis**

Grievant was employed as an itinerant music teacher at Oakvale Elementary and Princeton Middle School. During his off-duty hours, Grievant made a social media post on his personal Facebook account which appeared to condone violence. The post became the subject of significant notoriety when shared by other Facebook users. Respondent determined that Grievant's social media activity violated the employee code of conduct and terminated his employment. Grievant argued his social media post was protected by the First Amendment of the United States Constitution. Respondent proved that Grievant's post created notoriety and led to irreparable damage to his fitness for employment as an effective teacher. Therefore, Respondent proved there was a rational nexus between Grievant's conduct away from work and his job duties and there was significant untainted notoriety to support Grievant's dismissal. Although related to a matter of public concern, Respondent proved that Grievant's activity was not entitled to free speech protection and Respondent's interests in a safe and supportive learning environment outweigh Grievant's free speech interest. Grievant failed to prove that the notoriety was caused by Respondent. Therefore, Grievant failed to prove the dismissal was improper due to violation of his due process or First Amendment right of free speech. 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, Seth Vaughn, was employed by Respondent, Mercer County Board of Education ("BOE"), as an itinerant music teacher. He taught band at Oakvale

Elementary School each morning. For the remainder of the day, Grievant taught five periods of music and theater at Princeton Middle School ("PMS").

2. Grievant was an "excellent" and "phenomenal" teacher, a valued and successful member of the faculty at both schools. He always received satisfactory performance evaluations. Neither PMS nor Oakvale had previously received complaints regarding Grievant's classroom content. Rogers and Hodges testimony.

3. Charlie Kirk was a conservative political activist and media personality, who was fatally shot by a sniper on September 10, 2025. Reactions to his death sparked nationwide controversy.

4. On the evening of September 10, 2025, on his personal device and outside of school, Grievant posted a political cartoon of an elephant, wearing a blue suit with red tie reading a newspaper with the headline "Charlie Kirk Shooting," standing beside a donkey, wearing a blue suit with blue tie, saying "Is now a good time to discuss common sense gun control?" Above the cartoon, Grievant wrote, "Nah. At least our national obsession with fire arms took a real piece of shit and not an innocent child this time. More of this!" This original post and the later edits caused great concern for Respondent. R. Ex. 2 & 23.

5. Beginning on September 10, 2025, the post and screenshots of Grievant's original post and, later, the edited posts were shared and widely circulated through text messages, emails, and social media. R. Ex. 2 & 23.

6. Grievant published at least four additional social media posts related to the shooting of Charlie Kirk within hours of the subject post. One post is a picture of scales with the words "U.S.A." above. "Charlie Kirk" is written on the lower side of the scale and

“Hundreds of School Children” is written on the higher side of the scale. Another post is a photo or video clip showing Speaker Mike Johnson with the words below, “Screaming on the House Floor.” Above this, Grievant wrote, “We don’t do this for dead children, but by all means, let’s stop the world for this malignant man child.” Two other posts were less inflammatory—one with a photo of a man with “Oh no!” and one sharing a Youtube video, “Let it Die” (parody of “Let It Grow” from Dr. Seuss’s *The Lorax*). R. Ex. 23.

7. Krissy Zickafoose, Principal of Princeton Senior High School (“PSHS”), learned of Grievant’s post on the evening of September 10, 2025. She saw the original post, which had already been shared multiple times, and noticed several shares on her Facebook news feed. She was alarmed by the post and concerned about the violence that may occur if anyone was looking for Grievant or his daughter who attends PSHS. In response to their voiced concerns, she advised Grievant’s daughter’s teachers to be vigilant and to keep an eye on her. Principal Zickafoose received no phone calls or emails to PSHS regarding Grievant. On Friday, September 12, a parent picking up his child asked whether Grievant taught there. She replied “no” and the parent left without incident. Zickafoose testimony.

8. Principal LaCosta Hodges of Oakvale Elementary School received a screenshot of Grievant’s post from a teacher on the evening of September 10, 2025. She became concerned for safety of the students and Grievant. The following morning, she advised her supervisor, Assistant Superintendent Ernie Adkins. Hodges testimony.

9. BOE’s Coordinator of Safety and Security, Sergeant Melissa Clemons, is a retired state trooper and current Safety Resource Officer (“SRO”) at PSHS. SRO Clemons was advised of Grievant’s post by classmates, coworkers, and members of the

public on the evening of September 10, 2025. She described the post as “volatile,” “promoting shootings,” and “condoning murder.” Thus, she believed there was a danger to staff and students of violence from Grievant’s presence. At the level three hearing, she stated that Grievant’s future presence in the school would rekindle anger and, likewise, that danger. Clemons testimony.

10. On the morning of September 11, 2025, Principal Hodges, Principal Tonya Roberts of Princeton Middle School (“PMS”), PMS Vice Principal (“VP”) Joey Riffe, and PMS VP Kurt Lester were attending an administrative meeting outside their respective schools. Hodges, Roberts, and Riffe testimony.

11. SRO Clemons addressed the administrators at the meeting on Thursday and warned of the possibility of copycat school shootings and the need to be generally alert, in response to a Colorado school shooting on the prior day. Clemons testimony.

12. During the administrative meeting of September 11, Krissy Zickafoose showed Grievant’s post to PMS Principal Roberts. Due to the “alarming language...encouraging violence,” Principal Roberts immediately consulted her supervisor, Assistant Superintendent, Rosemary Mitchell, who was also attending the administrative meeting. Together, they contacted Kristal Filipek, BOE Director of Human Resources. Zickafoose and Roberts testimony.

13. Principal Roberts shared the information regarding the post with VP Riffe and VP Lester. Upon return to the school later in the day, the leadership of PMS discussed Grievant’s post and contemplated the appropriate steps forward. Two staff members expressed fear of Grievant’s presence. The team feared a negative impact to the safety and environment at PMS, so they made a plan and agreed to arrive earlier than

normal on Friday, September 12, 2025. Principal Roberts would answer the phones. Roberts and Riffe testimony.

14. VP Riffe had concern that the post did not present “a safe supportive school,” and “could cause disruption to our school, Mr. Vaughn and everyone involved.” Later, he saw PMS and BOE were tagged in relation to the post. Riffe testimony.

15. Because he had known Grievant longer, Principal Roberts asked VP Riffe to discuss the post with Grievant on Thursday, September 11, 2025, between 7<sup>th</sup> and 8<sup>th</sup> class periods to avoid any disruption or draw attention. When speaking to Grievant, VP Riffe expressed his concern but did not explicitly ask Grievant to remove the post. Grievant appreciated the concern. VP Riffe felt certain that Grievant would remove it. Riffe, Roberts, and Grievant testimony.

16. Throughout the morning of Thursday, September 11, Oakvale’s Principal Hodges received screenshots of the post and comments on Grievant’s post from staff with questions and complaints. Upon returning to Oakvale in the afternoon, she addressed a couple of telephone calls that had been received. That evening, she continued to receive questions and complaints from staff. Hodges testimony.

17. After the administrators’ meeting, Superintendent Toman was advised by Assistant Superintendent Adkins of Grievant’s post. However, the night before, he became aware when he began to receive texts and phone calls from the community and concerned parents. Toman described the post as “celebrating assassination.” Although the requests for a press release started on Thursday, Superintendent Toman continued to reject the idea. Toman testimony.

18. Grievant did edit the original post on Thursday evening to add: “Edit: Nah. – facetious response to the cartoon I shared, because we all know we won’t have that discussion. At least our national obsession with fire arms took a real piece of shit and not an innocent child this time. – Objective statement of fact. Charlie Kirk was a feculent pantload of hate that loudly cheered the kind of political violence that ended his life. No one should die from gun violence in this country. Full. Stop. More of this! – “This” being the call for more common sense gun control. You know, like in the meme. If you think even for a second that I, of \*all\* people am calling for more death, you don’t know me at all.” Now, the post twice includes, “More of this!” R. Ex. 2; Grievant testimony.

19. Principal Roberts unsuccessfully called Grievant at 7:18 p.m. on September 11, 2025. Grievant responded by text and a text conversation began. After seeing the edited post, Principal Roberts specifically asked Grievant, “Will you please take down the posts that reference Kirk in anyway?” Grievant replied, “I went back and edited it to make sure my point was crystal clear. There was never a call for violence, but I went back to make sure it couldn’t be misinterpreted.” R. Ex. 3; Roberts and Grievant testimony.

20. During that text conversation, Grievant claims that his post encouraged gun control and emphasized the safety of students. He also expressed his moral conviction regarding his social media post, his free speech, and his refusal to succumb to the opposition to his position. R. Ex. 3; Roberts and Grievant testimony.

21. After he realized the extensive spread of his post, Grievant removed the subject post entirely on the evening of September 11, 2025. R. Ex. 1; Grievant testimony.

22. In the level three hearing, Grievant implausibly asserted that he still does not understand how anyone could interpret his statements as inciting violence or celebrating death. R. Ex. 3; Roberts and Grievant testimony.

23. During the conversation on the evening of September 11, Grievant advised Principal Roberts that he would not work on Friday, September 12, 2025. Then, Grievant was placed on administrative leave and has not returned to either school. Roberts, Hodges, and Grievant testimony.

24. On the day and evening of Thursday, September 11, 2025, the educational environments of PMS and Oakvale were disrupted and distracted by the effects of Grievant's post, which consumed staff time and energy.

25. On the evening of September 11, 2025, KB<sup>1</sup> placed her comment on Grievant's original post, asking "Are you condoning murder?" Shortly after, Grievant replied, "[KB] I'm saying I'm not losing any sleep for this evil sack of shit. Read what he had to say about dead school children. His death was an unpleasant necessity for the preservation of our 2<sup>nd</sup> amendment rights." R. Ex. 2.

26. The negative comments continued on his original post through the next day, and Grievant added a second comment under the first, "PS : Everyone is welcome to disembark at the next station because 1) Things are just going to get more uncomfortable for you as we go on 2) If this surprises [sic] you, you shouldn't really have been on my list to start with. Buh bye." R. Ex. 2.

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<sup>1</sup> Grievant did not allege sharing or comments by Respondent's employees. Thus, names of individuals who commented or shared Grievant's posts are immaterial and unnecessary; thus, initials will be used.

27. Grievant's edited post was shared by Facebook user, SS, with the words, "Local Teacher." At one point, there were 91 reactions, 99 comments, and 16 shares of SS's post.<sup>1</sup> R. Ex. 2.

28. The PMS Facebook account was tagged in some of the shares of Grievant's post.

29. On Friday, September 12, 2025, classes were held at PMS and Oakvale Elementary. The staff of Oakvale and PMS feared violence and protesting parents and community at the campuses on September 12, 2025. Fortunately, this fear did not materialize. However, the atmosphere on both campuses was tense. Several students were kept home. Phones were ringing and emails were coming from parents and members of the community. Roberts, Hodges, and Riffe testimony.

30. There was no visible presence of law enforcement at any Mercer County Public School property on September 12, 2025, due to a conscious decision by Respondent to avoid increasing the anxiety and notoriety of the situation. However, law enforcement was aware of the potential need. Clemmons, Hodges, Toman, and Roberts testimony.

31. On the morning of Friday, September 12, 2025, Principal Roberts and SRO Beasley were stationed outside PMS early as a security measure.

32. On Friday, September 12, 2025, the entire instructional day was disrupted, the safe learning environment was impaired, and the culture of PMS was changed. Some parents requested removal of their child from Grievant's classes. Staff, parents, and teachers were texting and emailing one another. Students were talking about Grievant's post in the hallways and classrooms. Roberts and Riffe testimony.

33. On Friday, September 12, 2025, classes were held at Oakvale Elementary School; however, the instructional day was disrupted and the safe learning environment was impaired. Because responses to Grievant's post were so angry, the Oakvale staff met children and parents at the door. Normally, three staff members attended the door, then students went to their respective classrooms. On this day, all staff were at the door and all students were directed to the gym. Hodges testimony.

34. On the morning of September 12, Principal Hodges arrived early to answer phones. Two families did not send their children to Oakvale and stated they would not be back until Principal Hodges confirmed that Grievant was gone. Hodges testimony.

35. By 9:43 a.m., Principal Hodges began forwarding all calls to the Central Office because the volume exceeded her ability to handle. Furthermore, she sent an email to Superintendent Toman to document the concerns she received in person from staff, who are also parents of children in the school. Specifically, their concern was "more of this!" which could affect the safety of the students and themselves. Hodges noted the disruption of the school, community, and the breakdown of "the trust we have built with parents who put the care of their children in our hands daily." R. Ex. 6; Hodges and Toman testimony.

36. Principal Hodges now questions the professionalism and judgment of Grievant and fears, if Grievant returns to Oakvale, then the disruption would start again, and parents would remove their band students from Grievant's class. Hodges testimony.

37. Central Office (BOE) received 25 documented calls with name, number, and summary of the call. Callers said things like Grievant is evil and teaching hate, that he

shouldn't be teaching, should be fired, is celebrating death, encouraging violence and murder. R. Ex. 9; Toman testimony.

38. Central Office, BOE staff and members, received numerous emails from staff, parents, and community members with negative comments regarding Grievant, such as phrases like “despicable comments,” “terribly unprofessional and distasteful,” “intolerable for someone that teaches our youth,” “hate speech,” “fighting words, words that incite violence,” “what else is he teaching our kids?,” “disregard for life...lack of empathy,” “hatred of patriotism,” “crosses the line...I have lost confidence that this employee can effectively teach,” and “don't want him around our daughter.” Others stated, “removal needed,” “spreading hate and rejoicing in the death,” “outrage and deep concern,” and “children don't need to be around this kind of person.” R. Ex. 11, 12, 13, and 14.

39. The BOE's business of running a county school system and a safe learning environment was disrupted by Grievant's post. The time and energy of the leadership at the BOE was consumed with managing and attempting to mitigate the mayhem created by Grievant's post. R. Ex. 9, 11, 12, 13, 14, 15, & 21.

40. On Friday, September 12, 2025, the educational environments of PMS and Oakvale were disrupted and distracted by their attempts to mitigate damage from Grievant's post, which consumed even more staff time and energy than the prior day. Hodges, Roberts, and Riffe testimony.

41. On the morning of Friday, September 12, 2025, due to Grievant's daughter's presence and overarching concerns, SRO Clemons was hyper-vigilant at PSHS—checking doors more frequently, and more aware of Grievant's daughter whereabouts on

campus. Also, SRO Clemons emailed HR Filipek and Superintendent Toman advising that Grievant's posts have been "considered incendiary by citizens in the community" and "have jeopardized the safety of the staff and students at [PMS] and perhaps even the staff at the Central Office." She further voiced her concern for the safety of Grievant's wife and Grievant's children at their respective locations as some posts shared their locations within Mercer County Public School properties. R. Ex. 8; Clemons testimony.

42. By the afternoon of September 12, 2025, Superintendent Edward Toman determined that the disruption of the school system had reached the point at which a press release was necessary. The press release was issued on the Facebook page of Mercer County Public Schools – WV, which stated, "Mercer County Public Schools is aware of recent social media posts made by a district employee related to the death of Charlie Kirk. The social media posts have unfortunately drawn a significant amount of unwanted attention and notoriety to the school system. ... the district takes all matters of employee conduct, including conduct outside of the workplace, seriously and is committed to providing a safe, respectful learning environment for students and staff...administration will act.... In accordance with West Virginia Code and district policy, we are addressing this matter through established personnel procedures. ...no additional comments will be made on this personnel matter." R. Ex. 10 and 16; Toman testimony.

43. On the late afternoon of September 12, 2025, Respondent's press release was issued on the Mercer County Public Schools Facebook page and, at the printing of Exhibit 16, had 198 reactions, 138 comments, and 210 shares by its public social media audience. The comments referred to Grievant's "hate speech," "hate and division,"

“spread hate,” and “fire them.” All readers who had seen Grievant’s post felt that Grievant was spreading hate and division. R. Ex. 16; Toman testimony.

44. Local news outlets, WVVA, WVNS, and J&J News, published the story of Mercer County Public Schools press release on their respective Facebook pages and received volumes of reactions, comments, and shares from the public social media audience. The majority of these comments argued about the freedom of speech—many pointed out that freedom of speech is not freedom from consequences. However, those who had seen the post said Grievant was “spewing hate” and “fire him.” R. Ex. 17, 18, 19, 20.

45. There was the normal presence of law enforcement and school resource officers at the home football game at Princeton Senior High School (“PSHS”) on the evening of September 12, 2025. While there was no additional security at PSHS football that night, SRO Clemmons and administrative staff had a heightened awareness and were repositioned around Grievant’s family, especially his daughter, who was performing in the PSHS band. Zickafoose and Clemmons testimony.

46. At the request of Principal Zickafoose due to the community reaction and possible danger resulting from Grievant’s post, Superintendent Toman issued a ban of Grievant from the extracurricular activities on Mercer County Public School grounds. Principal Zickafoose did not receive any complaints from parents or the community regarding Grievant’s presence at those events. After a short time, the ban was lifted to allow Grievant to again attend his children’s events. Zickafoose and Toman testimony.

47. Grievant attended the school events outside Mercer County without incident.

48. All witnesses found Grievant's words to celebrate death and incite violence. No witness interpreted the words of Grievant's posts to encourage gun control or the safety of students. Roberts, Hodges, Riffe, Toman testimony.

49. All witnesses supported the BOE reaction to Grievant's post and did not see the response as exaggerated or excessive.

50. Although there were no documented specific threats, the anger of social media content created Respondent's realistic concern that violence could break out at any given moment. R. Ex. 5-9, 11-20.

51. All witnesses were concerned that the anger, fear, and uncertainty would resurface or be rekindled if Grievant returned to Mercer County Public Schools.

52. Most responses were angry, negative, and critical of Grievant's position. However, the BOE received three emails purportedly in support of Grievant. The first email came from the parent of a student with compassion on Grievant's plight but specifically said that he did not agree with Grievant's "harsh, insensitive, and offensive" post which was "in very poor taste with regrettable words." The second email was received from Grievant's sister who stated that she "was shocked and saddened," but later accepted Grievant's explanation of his intent. The third email was sent by a friend of 24 years who spoke in favor of Grievant's right to freedom of speech but did not mention the content of the posts. R. Ex. 22.

53. On September 16, 2025, Grievant and his attorney, Andrea Powell, met with Superintendent Toman and Assistant Superintendent Mitchell, Assistant Superintendent Adkins, Human Resources Director Filipek, and Respondent's counsel, Jason Long. Grievant admits neither he nor his attorney offered an explanation. Grievant testimony.

54. Following the meeting, Superintendent Toman advised by letter of September 16, 2025:

“...This letter is to formally notify you that, as of today’s date, you are being placed on suspension, without pay. In addition, I will be recommending termination of your employment contract. I will present this recommendation to the Mercer County Board of Education (“Board”) at a special meeting scheduled for September 22, 2025, at 11:00 a.m.

The recommendation for termination is based upon the matters previously documented and shared with you during our meeting on September 16, 2025. Specifically, following the death of Charlie Kirk, you posted controversial and inflammatory social media posts that sparked significant notoriety. Candidly, you set off firestorms within the schools you serve, our entire school community, the local community, statewide and nationally.

As shared with you during our meeting, due to the nature of your posts, as well the notoriety, it is not possible for you to continue as an effective classroom teacher. The notoriety brought on was of your own doing and the Board did not contribute to the frenzy. Your activity does not entitle you to unlimited free speech protections, and in the instant, the board has an interest in creating a safe, healthy, and unbiased learning in environment which outweighs your free speech interests. Simply put, your conduct seized [sic] to be private in nature because of the rational nexus factors. Your social media posts, among other things, was so inflammatory that it has been paralyzing to the school system, and the system has lost confidence in you in the workplace and in performance of your job duties. parents and the community have shared this same belief. Lastly, there are true concerns that our employees now face because of your conduct.

Your personal views that were made public undermine the trust of students and families that you serve. Those personal views and personal conduct prevent you from being an effective employee of our school system.”

R. Ex. 1.

55. Grievant created a GoFundMe account on September 16, 2025. Grievant wrote of his reasons for “such an ugly post.” He admitted that he experienced death threats, people “driving by my house blowing horns and screaming obscenities,” and posts on social media disclosing his home address, telephone number, email address, his place of employment, his wife’s place of employment, and the names of his children’s

schools. He explained that these things happened “because I refused to mourn the loss of this generation’s Hitler Youth commandant.” R. Ex. 5; Clemons and Grievant testimony.

56. On September 17, 2025, Principal Hodges again emailed Superintendent Toman with her concerns from staff and parents. Her primary concern centered around safety of staff and students, as well as the disruption of the educational process. She stated that, “More of this!” led to fears that schools, community, or students may be at risk for violence. She asserted that the threats of violence to Grievant put the children in danger and that parents requested that students be removed or not have contact with Grievant. R. Ex. 7; Hodges testimony.

57. On September 18, 2025, Superintendent Toman wrote to Grievant’s representative, Robert P. Dunlap, Esq., to advise that Grievant’s request to attend his children’s school events was denied because “[w]e believe that Mr. Vaughn’s attendance would ‘jeopardize the health, safety, or welfare of students, employees, or visitors; impact the learning environment or the school-sponsored activity; prejudice an investigation or disciplinary proceedings involving the employee;’ W. Va. Code 18A-2-8(g).” G. Ex. 1; Toman, Clemmons, and Zickafoose testimony.

58. Respondent rescheduled the matter for the BOE meeting on October 16, 2025, to accommodate the request of Grievant’s counsel, Robert Dunlap. G. Ex. 24.

59. Although the matter was removed from the agenda, members of the public appeared at the BOE meeting in September to voice their opinion. One spoke in favor of Grievant, while the remaining four or five spoke against Grievant. Prudich and Hodges testimony.

60. At the BOE meeting of October 16<sup>th</sup>, Grievant appeared with counsel, Robert Dunlap. Ultimately, the BOE voted to terminate Grievant's employment contract.

61. At the level three hearing, BOE members, Gregory Prudich, Mark Godfrey, and Elijah Paul Hodges, affirmed their vote in favor of termination. Each made the determination without coercion, based on the adverse effects and disruption of Grievant's posts on the school system. For this situation, the BOE considered lesser discipline but saw no alternative to termination. Prudich, Godfrey, and Hodges testimony.

62. BOE member and attorney, Gregory Prudich, learned of Grievant's post on the night of September 10, when he received texts from two individuals. Prudich views his BOE duty evaluating a termination like a juror voting on the "death penalty." For that reason, he is frequently the sole BOE vote against termination. Regarding Grievant's post, Prudich stated, "It appears to celebrate violence. That's intolerable." Prudich testimony.

63. Retired teacher and principal, BOE Mark Godfrey, was advised first by text of Grievant's post, then later saw Facebook "blowing up. He justified termination on the amount of disruption of the school day at two schools and the possibility that the situation "could lead to a violent event at one of our schools." He noted, "If [the post] had been timely removed, we wouldn't be here." Godfrey testimony.

64. BOE Paul Hodges became aware of Grievant's post when his daughter, who lives in Roanoke, advised him. He was never personally contacted by any member of the schools or community. At the September BOE meeting, he recalls one former student surprisingly speaking in Grievant's favor but more spoke against Grievant. He believed that Grievant's follow-up statement could have apologized and been written in a

manner to maintain Grievant's integrity, but it was not. His vote in favor of termination was based on parents taking kids out of the schools and general disruption of the schools. Hodges testimony.

65. The Employee Code of Conduct Policy 5902 for West Virginia school employees is contained in the legislative rules of West Virginia Board of Education ("WVBE"), which state 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 (2002).

### **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.*

Respondent asserts that Grievant was dismissed for social media posts originating on his Facebook account which appeared to condone violence.<sup>2</sup> Respondent argues that Grievant's social media activity was provocative and inappropriate, which created notoriety and lead to irreparable damage to his fitness for employment as an effective teacher. For these reasons, Respondent determined that Grievant's posts were not entitled to free speech protection and Respondent's interests in a safe and supportive learning environment outweighed Grievant's free speech interest. Grievant asserts that there was no rational nexus between his posts and his job duties. Further, he claims the notoriety was caused by Respondent. Therefore, Grievant argues that dismissal by Respondent violated his First Amendment right of free speech, requiring his reinstatement.

The parties agree that Grievant's posts to his Facebook account were created away from work and on Grievant's personal electronic device. It is well settled that, "[i]n order to dismiss a school board employee for acts performed at a time and place separate from employment, the Board must demonstrate a 'rational nexus' between the conduct performed outside of the job and the duties the employee is to perform. Syllabus Point 2,

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<sup>2</sup> Neither party presented whether Grievant's post was visible to the public (any user on Facebook) or otherwise limited by Grievant's privacy settings. The ability to capture a screenshot (photograph) is not limited by privacy settings. Any user with access to view Grievant's post may capture a screenshot of the post, then share the screenshot to any audience chosen by that user.

*Golden v. Bd. of Educ.*, 169 W. Va. 63, 285 S.E.2d 665 (1981).” Syl. Pt. 2, *Woo v. Putnam County Bd. of Educ.*, 202 W. Va. 409, 413 (1998). The West Virginia Supreme Court of Appeals additionally stated:

The conduct of a teacher ceases to be private in at least two circumstances: (1) if the conduct directly affects the performance of the occupational responsibilities of the teacher; or (2) if, without contribution on the part of the school officials, the conduct has become the subject of such notoriety as to significantly and reasonably impair the capability of the particular teacher to discharge the responsibilities of the teaching position.

*Id.* at 412.

Respondent asserts that Grievant’s conduct outside of work directly affects the performance of his occupational duties as a teacher. The content of the original post and the edits indicate Grievant’s error of judgment and that his fitness to serve as a role model is marred. See W. VA. CODE ST. R. § 126-162-4 (2002). Teachers hold positions of trust, charged with instruction and modeling of respect, good judgment, and professionalism. In response to Grievant’s post, several parents and guardians called to request their students’ removal from Grievant’s classroom or to ensure that their student was not enrolled in Grievant’s class. Students were kept home. Multiple colleagues now question Grievant’s ability to appropriately interact with students. Parents fear the possibility of Grievant’s inappropriate discussions with students. Certainly, there was a loss of trust by parents and the community in Grievant’s character and judgment. Effective teaching depends on the trust of parents and guardians—trust that Grievant will safeguard their students’ emotional and physical well-being. This loss of trust has a direct impairment of Grievant’s effectiveness as a teacher.

Respondent alleges that Grievant’s conduct outside of work created safety concerns. Celebration of death is incompatible with the promotion of a safe environment,

Respondent is responsible for the safety of the school, staff, students, and the community. In addition, Grievant's safety was a concern for Respondent. In his GoFundMe statement and his level three hearing testimony, Grievant stated that he felt unsafe—he received death threats, disruptions at his home, and his family's whereabouts was shared on social media. Respondent reasonably believed the presence of Grievant on the school property created the potential for violence and that Grievant's future return to the classroom could reintroduce that danger. For that reason, Grievant was unable to be present in his classroom to perform his teaching duties. Grievant's off duty conduct directly affected his performance.

Further, Grievant's posts directly oppose the BOE's concerns of bullying, intimidation, and violence in schools. The "West Virginia Manual for Expected Behavior in Safe and Supportive Schools," incorporated by reference into the legislative rule, provides "guidance and procedures to create and support positive school climate and culture improvement processes to promote student success." W. VA. CODE ST. R. § 126-99 *et seq.* (2024). The policy mandates public schools to develop and ensure "an orderly and safe environment that is conducive to teaching and learning for all." *Id.* Overall, West Virginia school officials have made a determined effort to promote school communities where all students feel safe. *Durstein v. Cabell County Bd. of Educ.*, Docket No. 2017-1955-CabED (Sept. 22, 2017). "Safety and order are the foundation of a positive school climate/culture that supports student academic achievement and personal-social development." W. VA. CODE ST. R. § 126-99-1.1 (2024). Soundly, Respondent determined that the presence of Grievant in the school would impair its ability to maintain an orderly and safe learning environment. For all of the reasons above, Respondent has

proven by a preponderance of the evidence that Grievant caused irreparable damage to his occupational effectiveness.

Further, there is no dispute that Grievant's posts received significant notoriety. The original and edited posts and screenshots of those posts were widely shared.<sup>3</sup> The Facebook accounts of the BOE and PMS were also tagged in some posts.<sup>4</sup> Local news outlets included stories regarding the posts. The parties do not disagree that the contents of Grievant's posts went "viral" on social media.<sup>5</sup> However, the issue is whether Grievant's posts, without contribution on the part of Respondent, became "the subject of such notoriety as to significantly and reasonably impair the capability of the particular teacher to discharge the responsibilities of the teaching position." *Woo*, 202 S.E.2d at 412. The public outcry and attention given to Grievant's posts seems to have exceeded the notoriety previously seen by the Grievance Board in *Durstein v. Cabell County Bd. of Educ.*, Docket No. 2017-1955-CabED (Sept. 22, 2017).

Grievant points only to the Friday afternoon press release as Respondent's contribution to the notoriety, the only public acknowledgement by Respondent. The press release was nonspecific, stating that a district employee's social media post regarding the death of Charlie Kirk was being addressed pursuant to BOE's policies and procedures. Although Grievant argues the press release increased the public reaction and notoriety, Grievant presented no evidence to support that proposition. Grievant alleges no other

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<sup>3</sup> "A social media platform amplifies the distribution of the speaker's message—which favors the employee's free speech interests—but also increases the potential, in some cases exponentially, for departmental disruption, thereby favoring the employer's interest in efficiency." *Liverman v. City of Petersburg*, 844 F.3d 400, 407 (4th Cir. 2016).

<sup>4</sup> On social media, a person or group may be "tagged" by another user when they are identified by the user to be connected to the post or its topic.

<sup>5</sup> Social media which spreads quickly and widely is said to be "viral."

action by Respondent aimed at heightening the media coverage. Furthermore, Respondent had no duty to disprove the possible effect of that press release. *Woo, supra*. Grievant failed to prove that Respondent contributed significantly to the notoriety of Grievant's post.

On the other hand, rather than remove his original post as requested by Principal Roberts, Grievant continued to poke the fire with edits of his original post for "clarity."<sup>6</sup> Despite his stated goal, the edited post continued to be viewed as derogatory, if not more derogatory, than the original post. The edited post was also widely shared and disseminated among the community, staff, and general public. Many of the irate parents and citizens attached a screenshot of the edited post to their emails, proving that his clarifications did not remove or change the prior understanding of his post. The last portion of his last revision stated, if anyone believes Grievant was inciting violence, "they don't know me very well at all." Unfortunately, due to the nature of social media (reposting, sharing and posting of screenshots), few of the readers knew Grievant outside that post. Even those that know Grievant perceived "More of this!" to encourage violence. After the edit, "More of this!" was then stated twice in the post. Although he eventually removed the entire post, the proverbial blaze was out of control. Moreover, Grievant continued to make more posts of a similar nature, regarding the death of Charlie Kirk.<sup>7</sup>

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<sup>6</sup> Grievant's comments in defense of his post are very similar to the Plaintiff/fire captain in the case of *Bagley v City of Columbia*. Bagley's comments were interpreted to threaten life, including law enforcement with whom he regularly worked alongside, and caused others to question his judgment, character, and intentions. *Bagley v. City of Columbia*, 2024 U.S. Dist. LEXIS 24097 (D.S.C. 9/3/2024) pages 19-23.

<sup>7</sup> Respondent based Grievant's dismissal on his post with the donkey and elephant cartoon and "More of this!" The other posts display Grievant's disregard and lack of remorse for disruption of Respondent's interest.

Grievant did not make a timely attempt to calm the firestorm. Thus, the notoriety was amplified by third parties and public reaction and Grievant himself—not by Respondent. Therefore, Respondent proved there is a rational nexus between Grievant’s outside and his employment, both for its direct effect on his performance as a teacher and for the impairment of his ability to teach due to notoriety.

Next, Grievant argues that his Facebook post is protected by the First Amendment of the United State Constitution, which prohibits Respondent from terminating his employment based thereon. The First Amendment of the Constitution of the United States provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. CONST. AMEND. I.<sup>8</sup>

While public employees possess First Amendment rights, those rights are not absolute and must be balanced against the employers’ interest in efficiency, workplace harmony, and mission fulfillment. *Pickering v. Bd. of Educ.*, 391 U.S. 563 (1968). The West Virginia Supreme Court of Appeals set out the standard by which the First Amendment is applied to the termination of a public-school employee in *Alderman v. Pocahontas County Bd. of Educ.*, 223 W. Va. 431; 675 S.E.2d 907 (2009).<sup>9</sup> In applying *Pickering*, the Court began the analysis:

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<sup>8</sup> See *also*, W. VA. CONST. ART III, § 3-7, which protects freedom of speech and of the press.

<sup>9</sup> The facts in *Alderman, supra* are significantly different than this matter but the factors and balancing test the Court set out based upon federal and state cases are applicable.

When this Court was previously confronted with analyzing a similar issue of free speech under the First Amendment, we relied on a case from the United States Supreme Court in holding: Under *Pickering v. Board of Education*, 391 U.S. 563, 88 S. Ct. 1731, 20 L. Ed. 2d 811 (1968), public employees are entitled to be protected from firings, demotions and other adverse employment consequences resulting from the exercise of their free speech rights, as well as other First Amendment rights. However, *Pickering* recognized that the State, as an employer, also has an interest in the efficient and orderly operation of its affairs that must be balanced with the public employees' right to free speech, which is not absolute. Syl. pt. 3, *Orr v. Crowder*, 173 W. Va. 335, 315 S.E.2d 593 (1984).

*Alderman*, 223 W. Va. 431, 441.

Based upon their prior decisions, the Court specifically held there are restrictions to a public employee's exercise of free-speech rights. To determine whether the conduct is private and protected, these three factors apply:

First, an employee's speech, to be protected, must be spoken as a citizen on a matter of public concern. If the employee did not speak as a citizen on a matter of public concern, then the employee has no First Amendment [protection].

The second factor that is invoked considers statements that are made with the knowledge that they were false or with reckless disregard of whether they were false, and such statements are not protected.

The third factor that is invoked considers statements made about persons with whom there are close personal contacts that would disrupt discipline or harmony among coworkers or destroy personal loyalty and confidence, and such statements may not be protected.

*Id.*

This Board applied the above factors in *Durstein v. Cabell County Bd. of Educ.* Docket No. 2017-1955-CabED (Sept. 22, 2017). A public high school social studies teacher made some controversial Twitter posts during the 2016 Presidential election. Her memes, tweets, and retweets related to national news events regarding immigration, Muslims, and African-Americans. Therefore, the Grievance Board determined she was speaking on a matter of public concern. Durstein's post stated that Muslims were the enemy and, although the government had made no policy statement of such, there were

groups who believed that to be true. Thus, the Board determined that Durstein did not make the posts with reckless disregard for truth. Durstein daily interacted with Muslim and African-American staff and students, which triggered the third factor. Because her posts would likely disrupt discipline and harmony among her students and coworkers, the Grievance Board held that Durstein's posts were not protected speech for which her employer was prohibited from terminating her employment.

Grievant argues that his social media posts are related to a matter of public concern. In the instant matter, Grievant's posts were made in response to the shooting of Charlie Kirk, a political activist and media personality. Charlie Kirk's death immediately became a matter of national controversy and public division. Given the standard and the political context, Grievant's posts constitute statements on a matter of public concern and the possibility of a First Amendment claim arises to invoke evaluation of the second and third factors of *Alderman*.

The second factor is a determination whether the statement is false or made with a reckless disregard without consideration whether the statement may or may not be false. *Alderman*, 223 W. Va. at 918. The statement for which Grievant was terminated from employment was: "At least our national obsession with fire arms took a real piece of shit and not an innocent child this time. More of this!" While Grievant later defended this statement as an "[o]bjective statement of fact," the statement is actually a statement of opinion. "[F]our factors are considered to ascertain whether, under the 'totality of circumstances,' a statement is fact or opinion. These factors are: (1) 'the specific language used'; (2) 'whether the statement is verifiable'; (3) 'the general context of the statement'; and (4) 'the broader context in which the statement appeared.'" *Milkovich v.*

*Lorain Journal Co.*, 497 U.S. 1, 8-9, 110 S. Ct. 2695, 2700 (1990) (citation omitted).

Grievant's statement is not verifiable and nothing in Grievant's post, before or after that phrase, is stated for the truth of the matter. Grievant's opinion is the focus—not facts.

The third factor is whether the speech was "made about persons with whom there are close personal contacts that would disrupt discipline or harmony among coworkers or destroy personal loyalty and confidence." *Alderman, supra*. Grievant was not speaking of "persons with whom there are close personal contacts." Grievant was speaking of Charlie Kirk, specifically. Unlike Durstein, Grievant did not reference a broad class of people, members of which Grievant had close personal contacts.

Therefore, Grievant's speech was protected free speech. However,

*Pickering* recognized that the employer has an interest in the efficient and orderly operation of its affairs that must be balanced with the public employee's right to free speech. We are further guided by the principle that, "while the First Amendment invests public employees with certain rights, it does not empower them to "constitutionalize the employee grievance." *Connick*, 461 U.S., at 154." *Garcetti v. Ceballos*, 547 U.S. 410, 420, 126 S. Ct. 1951, 1959, 164 L. Ed. 2d 689 (2006). If the speech meets the test to be considered protected speech, then a balancing test is used to determine whether the speech must be tolerated even if it would undermine the Board's authority.

*Alderman v. Pocahontas Cty. Bd. of Educ.*, 223 W. Va. 431, 443, 675 S.E.2d 907, 919 (2009).

When Grievant's protected speech is balanced with order and efficiency of an employer's affairs, it is clear that Grievant's post interfered with Respondent's interest in a secure and successful learning environment. The trust, confidence, and respect of the BOE, school staff, students, parents, guardians, and the community are required for the effective execution of the educational functions for which Respondent bears

responsibility.<sup>10</sup> Coworkers and parents read Grievant's posts as a celebration of Kirk's violent death and a call for more violence. Such violence could harm staff, parents, students, and community. Although Grievant protests that interpretation, it remains the majority interpretation taken from his words. Respondent witnessed harmony at the workplace impaired; working relationships destroyed; loyalty and confidence in Grievant devastated; and Grievant's performance of his duties as an effective teacher impeded. Furthermore, the operation and mission of the Mercer County Public Schools was disrupted and would continue to be interrupted by Grievant's continued employment. Respondent acted decisively to prevent disruption of a safe and supportive learning environment and to eliminate the possibility of further hostility of parents, coworkers, and students that would discourage cooperation and endanger the community.

Respondent's witnesses credibly attested to the significant disruption to Respondent's affairs in the days following Grievant's post and the continuing apprehension of Grievant's presence in the school.<sup>11</sup> The evidence reflects the contempt for Grievant among the students, parents, guardians, and the community. Grievant's posts impaired the efficient and orderly operation of Respondent's business. The balancing test shows Respondent's interest outweighs Grievant's First Amendment protection.

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<sup>10</sup> "When close working relationships are essential to fulfilling public responsibilities, a wide degree of deference to the employer's judgment is appropriate. Furthermore, we do not see the necessity for an employer to allow events to unfold to the extent that the disruption of the office and the destruction of working relationships is manifest before taking action." *Connick v. Myers*, 461 U.S. 138, 151-152 (1983).

<sup>11</sup> The Fourth Circuit has ruled that, "the employer does not need to prove actual disruption, 'but only that an adverse effect was 'reasonably to be apprehended.'" *Maciariello v. Sumner*, 973 F.2d 295, 300 (4th Cir. 1992), (quoting *Jurgensen v. Fairfax Cnty., Va.*, 745 F.2d 868, 879 (4th Cir. 1984))."

Grievant asserts that Respondent lacked good cause for termination. 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) (2024).

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) (2024).

Grievant's behavior outside of work violates every element of the employee code of conduct, which requires Grievant to exhibit positive examples, responsible citizenship,

self-control, and moral and ethical behavior. W. VA. CODE ST. R. § 126-162-4 (2002); W. VA. CODE ST. R. § 126-12-3 (2024). The Employee Code of Conduct Policy 5902 for West Virginia school employees is contained in the legislative rules of West Virginia Board of Education (“WVBE”), which state 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 (2002).<sup>12</sup>

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

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<sup>12</sup> West Virginia Board of Education Legislative Rule Title 126, Series 162 applies to all West Virginia school personnel, including teachers, employed by a county of board of education. Respondent did not provide specific conduct policy of Mercer County BOE.

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*). "A number of Grievance Board decisions have held that an employer can establish insubordination by demonstrating a policy or directive that applied to the employee was in existence at the time of the violation, and the employee's failure to comply was sufficiently knowing and intentional to constitute the defiance of authority inherent in a charge of insubordination. *Conner v. Barbour County Bd. of Educ.*, Docket No. 94-01-394 (Jan. 31, 1995); *Domingues v. Fayette County Bd. of Educ.*, Docket No. 04-10-341 (Jan. 28, 2005); *Breck v. Putnam County Bd. of Educ.*, Docket No. 2011-1542-PutED (February 13, 2012); *Robinette v. Boone County Bd. of Educ.*, Docket No. 2014-1437-BooED (Feb. 10, 2015). 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).

Respondent counters that Grievant's off-duty conduct negatively impacted his employment responsibilities, caused the loss of public trust, and hindered efficient operation of Respondent's business; therefore, Respondent had good cause to justify termination of Grievant. Although Grievant had no prior discipline, Grievant's flagrant violation of WVBE Employee Code of Conduct meets the definition of "insubordination"

for dismissal of a school board employee under WEST VIRGINIA CODE § 18A-2-8.<sup>13</sup> Moreover, the *Alderman* Court reiterated the BOE's authority to dismiss a teacher based upon just cause which must be exercised reasonably, not arbitrarily or capriciously. W. VA. CODE § 18a-2-8 (2024); *Alderman*, 223 W. Va. at 919. Respondent proved insubordination as good cause for dismissal by a preponderance of the evidence.

Further, Grievant argues there was no material disruption of classroom instruction and Respondent's safety concerns were based on speculation of violence which never materialized; therefore, Respondent acted in an arbitrary and capricious manner. 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), *aff'd* Mercer Cnty. Cir. Ct. Docket No. 97-CV-374-K (Oct. 16, 1998).

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<sup>13</sup> West Virginia Code § 18A-2-8. Suspension and dismissal of school personnel by board; appeal. (a) 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.

“[T]he “clearly wrong” and the “arbitrary and capricious” standards of review are deferential ones which presume an agency's actions are valid as long as the decision is supported by substantial evidence or by a rational basis. Syllabus Point 3, *In re Queen*, 196 W.Va. 442, 473 S.E.2d 483 (1996).” Syl. Pt. 1, *Adkins v. W. Va. Dep't of Educ.*, 210 W. Va. 105, 556 S.E.2d 72 (2001) (*per curiam*). “While a searching inquiry into the facts is required to determine if an action was arbitrary and capricious, the scope of review is narrow, and an administrative law judge may not simply substitute her judgment for that of [the employer].” *Trimboli v. Dep't of Health and Human Res.*, Docket No. 93-HHR-322 (June 27, 1997), *aff'd* Mercer Cnty. Cir. Ct. Docket No. 97-CV-374-K (Oct. 16, 1998); *Blake v. Kanawha County Bd. of Educ.*, Docket No. 01-20-470 (Oct. 29, 2001), *aff'd* Kanawha Cnty. Cir. Ct. Docket No. 01-AA-161 (July 2, 2002), *appeal refused*, W.Va. Sup. Ct. App. Docket No. 022387 (Apr. 10, 2003).

1. Contrary to Grievant's argument, there was certainly disruption of classroom instruction amid the valid concern of possible violence. The staff of Oakvale and PMS were extraordinarily burdened and stressed on the days after Grievant's post. Multiple parents requested removal of their students from Grievant's classroom. Grievant no longer possesses the proper judgment, professionalism, or ability to educate students in the manner expected by Respondent. The widespread community concern expressed by phone, email, and text established the resulting impairment of his classroom effectiveness. While, thankfully, no actual violence was seen, Respondent plainly conveyed its interest in "protecting individuals from the fear of violence, from the disruption that fear engenders, and from the possibility that the threatened violence will occur." *R.A.V. v. City of St. Paul, Minn.*, 505 U.S. 377, 388, 112 S. Ct. 2538, 120 L. Ed.

2d 305 (1992); *see also Watts v. United States*, 394 U.S. 705, 707-08, 89 S. Ct. 1399, 22 L. Ed. 2d 664 (1969).” *State v. Calvert*, No. 15-0195, 2016 W. Va. LEXIS 457, at 10-11 (June 3, 2016). When violence is a possibility, actual harm is not required.<sup>14</sup> “When close working relationships are essential to fulfilling public responsibilities, a wide degree of deference to the employer’s judgment is appropriate. Furthermore, we do not see the necessity for an employer to allow events to unfold to the extent that the disruption of the office and the destruction of working relationships is manifest before taking action.” *Connick v. Myers*, 461 U.S. 138, 151-152 (1983). Respondent was not required to wait for an irreversible act of violence to occur. Respondent rightly recognized the disruption of its daily operations and distinct possibility of harm to students, staff, and community, then took an appropriate action to protect life and maintain operation of the learning environment. Grievant failed to prove that his dismissal was unreasonable, arbitrary, or capricious.

Lastly, Grievant asserts that he was not afforded due process. “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.

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<sup>14</sup>The Fourth Circuit has ruled that “the employer does not need to prove actual disruption, ‘but only that an adverse effect was ‘reasonably to be apprehended.’” *Maciariello v. Sumner*, 973 F.2d 295, 300 (4th Cir. 1992), (quoting *Jurgensen v. Fairfax County, Va.*, 745 F.2d 868, 879 (4th Cir. 1984)).”

“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.

On the afternoon of September 11, 2025, Grievant was casually made aware of the concern surrounding his post and received a recommendation to remove the post from VP Riffe. On the evening of September 11, Grievant was specifically advised of the concern by Principal Roberts who requested removal of the post. On the evening of September 12, Grievant was advised that he was no longer permitted on Mercer County Public School property. On Tuesday, September 16, 2025, Grievant and his attorney, Andrea Powell, met with Superintendent Toman and others to discuss Grievant’s charges. Although Grievant testified that he did not present his position at that meeting, the law merely requires the opportunity to be heard and present Grievant’s position. Grievant appeared with counsel to represent his interests. Therefore, the requirement was satisfied. By letter of the same date, Grievant was further advised of the suspension without pay and the recommendation to terminate his employment contract which would be presented to the BOE. By letter dated September 17, Grievant’s attorney, Robert

Dunlap, wrote to contest the suspension and termination. After rescheduling for the convenience of Grievant's counsel, Grievant was again presented with an opportunity to be heard at the BOE meeting on October 16, 2025. Grievant again appeared with counsel to represent his interests. Clearly, Grievant was provided with sufficient notice, explanation, and opportunity to respond. Grievant failed to prove violation of his due process rights.

Grievant claims that his temporary exclusion from his children's extracurricular activities was disproportionate and excessive. For the safety of all, Respondent temporarily prohibited Grievant's attendance at extracurricular events on Mercer County BOE property. However, the ban was later lifted by Respondent; therefore, the matter is now moot and no available remedy exists. Grievant failed to prove the ban was disproportionate and excessive.

Grievant made statements to the Facebook community in the midst of a heated national debate. Although Grievant contends his post called for the greater good, most readers clearly saw the opposite—a call to violence. Applying *Alderman* and adopting its recitation of the *Pickering* factors, Grievant's social media post met the test to be considered protected speech however, Respondent proved the speech could not be tolerated due to Grievant's significant interference with Respondent's interest in the efficient and orderly operation of its affairs. Respondent proved it was justified in dismissal of Grievant.

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. It is well settled that, "[i]n order to dismiss a school board employee for acts performed at a time and place separate from employment, the Board must demonstrate a 'rational nexus' between the conduct performed outside of the job and the duties the employee is to perform. Syllabus Point 2, *Golden v. Bd. of Educ.*, 169 W. Va. 63, 285 S.E.2d 665 (1981)." Syl. Pt. 2, *Woo v. Putnam County Bd. of Educ.*, 202 W. Va. 409, 413 (1998). The West Virginia Supreme Court of Appeals additionally stated:

The conduct of a teacher ceases to be private in at least two circumstances: (1) if the conduct directly affects the performance of the occupational responsibilities of the teacher; or (2) if, without contribution on the part of the school officials, the conduct has become the subject of such notoriety as to significantly and reasonably impair the capability of the particular teacher to discharge the responsibilities of the teaching position.

*Id.* at 412.

3. The "West Virginia Manual for Expected Behavior in Safe and Supportive Schools," incorporated by reference into the legislative rule, provides "guidance and procedures to create and support positive school climate and culture improvement processes to promote student success." W. VA. CODE ST. R. § 126-99 *et seq.* (2024). The policy mandates public schools to develop and ensure "an orderly and safe environment that is conducive to teaching and learning for all." *Id.* Overall, West Virginia school officials have made a determined effort to promote school communities where all students feel safe. *Durstein v. Cabell County Bd. of Educ.*, Docket No. 2017-1955-CabED

(Sept. 22, 2017). “Safety and order are the foundation of a positive school climate/culture that supports student academic achievement and personal-social development.” W. VA. CODE ST. R. § 126-99-1.1 (2024).

4. The issue is whether Grievant’s posts, without contribution on the part of Respondent, became “the subject of such notoriety as to significantly and reasonably impair the capability of the particular teacher to discharge the responsibilities of the teaching position.” *Woo*, 202 S.E.2d at 412. The public outcry and attention given to Grievant’s posts seems to have exceeded the notoriety previously seen by the Grievance Board in *Durstein v. Cabell County Bd. of Educ.*, Docket No. 2017-1955-CabED (Sept. 22, 2017).

5. The First Amendment of the Constitution of the United States provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. CONST. AMEND. I.<sup>15</sup>

6. While public employees possess First Amendment rights, those rights are not absolute and must be balanced against the employers’ interest in efficiency, workplace harmony, and mission fulfillment. *Pickering v. Bd. of Educ.*, 391 U.S. 563 (1968).

7. While public employees possess First Amendment rights, those rights are not absolute and must be balanced against the employers’ interest in efficiency,

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<sup>15</sup> See also, W. VA. CONST. ART III, § 3-7, which protects freedom of speech and of the press.

workplace harmony, and mission fulfillment. *Pickering v. Bd. of Educ.*, 391 U.S. 563 (1968).

8. The West Virginia Supreme Court of Appeals set out the standard by which the First Amendment is applied to the termination of a public-school employee in *Alderman v. Pocahontas County Bd. of Educ.*, 223 W. Va. 431; 675 S.E.2d 907 (2009).<sup>16</sup>

In applying *Pickering*, the Court began the analysis:

When this Court was previously confronted with analyzing a similar issue of free speech under the First Amendment, we relied on a case from the United States Supreme Court in holding: Under *Pickering v. Board of Education*, 391 U.S. 563, 88 S. Ct. 1731, 20 L. Ed. 2d 811 (1968), public employees are entitled to be protected from firings, demotions and other adverse employment consequences resulting from the exercise of their free speech rights, as well as other First Amendment rights. However, *Pickering* recognized that the State, as an employer, also has an interest in the efficient and orderly operation of its affairs that must be balanced with the public employees' right to free speech, which is not absolute. Syl. pt. 3, *Orr v. Crowder*, 173 W. Va. 335, 315 S.E.2d 593 (1984).

*Alderman*, 223 W. Va. 431, 441.

9. Based upon their prior decisions, the Court specifically held there are restrictions to a public employee's exercise of free-speech rights. To determine whether the conduct is private and protected, these three factors apply:

First, an employee's speech, to be protected, must be spoken as a citizen on a matter of public concern. If the employee did not speak as a citizen on a matter of public concern, then the employee has no First Amendment [protection].

The second factor that is invoked considers statements that are made with the knowledge that they were false or with reckless disregard of whether they were false, and such statements are not protected.

The third factor that is invoked considers statements made about persons with whom there are close personal contacts that would disrupt discipline or harmony among coworkers or destroy personal loyalty and confidence, and such statements may not be protected.

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<sup>16</sup> The facts in *Alderman*, *supra* are significantly different than this matter but the factors and balancing test the Court set out based upon federal and state cases are applicable.

*Id.*

10. The second factor is a determination whether the statement is false or made with a reckless disregard without consideration whether the statement may or may not be false. *Alderman*, 223 W. Va. at 918.

11. “[F]our factors are considered to ascertain whether, under the ‘totality of circumstances,’ a statement is fact or opinion. These factors are: (1) ‘the specific language used’; (2) ‘whether the statement is verifiable’; (3) ‘the general context of the statement’; and (4) ‘the broader context in which the statement appeared.’” *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 8-9, 110 S. Ct. 2695, 2700 (1990) (citation omitted).

12. The third factor is whether the speech was “made about persons with whom there are close personal contacts that would disrupt discipline or harmony among coworkers or destroy personal loyalty and confidence.” *Alderman*, *supra*. If so, such statements are not protected.

13. Grievant’s speech was protected free speech. However,

*Pickering* recognized that the employer has an interest in the efficient and orderly operation of its affairs that must be balanced with the public employee’s right to free speech. We are further guided by the principle that, “while the First Amendment invests public employees with certain rights, it does not empower them to “constitutionalize the employee grievance.” *Connick*, 461 U.S., at 154.” *Garcetti v. Ceballos*, 547 U.S. 410, 420, 126 S. Ct. 1951, 1959, 164 L. Ed. 2d 689 (2006). If the speech meets the test to be considered protected speech, then a balancing test is used to determine whether the speech must be tolerated even if it would undermine the Board’s authority.

*Alderman v. Pocahontas Cty. Bd. of Educ.*, 223 W. Va. 431, 443, 675 S.E.2d 907, 919 (2009).

14. When Grievant's protected speech is balanced with order and efficiency of an employer's affairs, it is clear that Grievant's post interfered with Respondent's interest in a secure and successful learning environment.

15. 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) (2024).

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) (2024).

16. Grievant's behavior outside of work violates every element of the employee code of conduct, which requires Grievant to exhibit positive examples, responsible citizenship, self-control, and moral and ethical behavior. W. VA. CODE ST. R. § 126-162-4 (2002); W. VA. CODE ST. R. § 126-12-3 (2024).

17. The Employee Code of Conduct Policy 5902 for West Virginia school employees is contained in the legislative rules of West Virginia Board of Education ("WVBE"), which state 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 (2002).

18. 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*). “A number of Grievance Board decisions have held that an employer can establish insubordination by demonstrating a policy or directive that applied to the employee was in existence at the time of the violation, and the employee's failure to comply was sufficiently knowing and intentional to constitute the defiance of authority inherent in a charge of insubordination. *Conner v. Barbour County Bd. of Educ.*, Docket No. 94-01-394 (Jan. 31, 1995); *Domingues v. Fayette County Bd. of Educ.*, Docket No. 04-10-341 (Jan. 28, 2005); *Breck v. Putnam County Bd. of Educ.*, Docket No. 2011-1542-PutED (February 13, 2012); *Robinette v. Boone County Bd. of Educ.*, Docket No. 2014-1437-BooED (Feb. 10, 2015).

19. 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).

20. Grievant's flagrant violation of WVBE Employee Code of Conduct meets the definition of “insubordination” for dismissal of a school board employee under WEST VIRGINIA CODE § 18A-2-8. Moreover, the *Alderman* Court reiterated the BOE's authority to dismiss a teacher based upon just cause which must be exercised reasonably, not arbitrarily or capriciously. W. VA. CODE § 18a-2-8 (2024); *Alderman*, 223 W. Va. at 919.

21. Respondent proved insubordination as good cause for dismissal by a preponderance of the evidence.

22. 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), *aff’d* Mercer Cnty. Cir. Ct. Docket No. 97-CV-374-K (Oct. 16, 1998).

23. “[T]he “clearly wrong” and the “arbitrary and capricious” standards of review are deferential ones which presume an agency’s actions are valid as long as the decision is supported by substantial evidence or by a rational basis. Syllabus Point 3, *In re Queen*, 196 W.Va. 442, 473 S.E.2d 483 (1996).” Syl. Pt. 1, *Adkins v. W. Va. Dep’t of Educ.*, 210 W. Va. 105, 556 S.E.2d 72 (2001) (*per curiam*). “While a searching inquiry into the facts is required to determine if an action was arbitrary and capricious, the scope of review is narrow, and an administrative law judge may not simply substitute her judgment for that of [the employer].” *Trimboli v. Dep’t of Health and Human Res.*, Docket No. 93-HHR-322 (June 27, 1997), *aff’d* Mercer Cnty. Cir. Ct. Docket No. 97-CV-374-K (Oct. 16, 1998); *Blake v. Kanawha County Bd. of Educ.*, Docket No. 01-20-470 (Oct. 29, 2001), *aff’d*

Kanawha Cnty. Cir. Ct. Docket No. 01-AA-161 (July 2, 2002), *appeal refused*, W.Va. Sup. Ct. App. Docket No. 022387 (Apr. 10, 2003).

24. Respondent plainly conveyed its interest in "protecting individuals from the fear of violence, from the disruption that fear engenders, and from the possibility that the threatened violence will occur." *R.A.V. v. City of St. Paul, Minn.*, 505 U.S. 377, 388, 112 S. Ct. 2538, 120 L. Ed. 2d 305 (1992); *see also Watts v. United States*, 394 U.S. 705, 707-08, 89 S. Ct. 1399, 22 L. Ed. 2d 664 (1969)." *State v. Calvert*, No. 15-0195, 2016 W. Va. LEXIS 457, at 10-11 (June 3, 2016).

25. When violence is a possibility, actual harm is not required. "When close working relationships are essential to fulfilling public responsibilities, a wide degree of deference to the employer's judgment is appropriate. Furthermore, we do not see the necessity for an employer to allow events to unfold to the extent that the disruption of the office and the destruction of working relationships is manifest before taking action." *Connick v. Myers*, 461 U.S. 138, 151-152 (1983).

26. "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.

27. Respondent proved by a preponderance of the evidence that there was a rational nexus between Grievant’s conduct outside his job and the duties he had to perform as a teacher.

28. Respondent proved by a preponderance of the evidence that Grievant’s social media activity directly affected his performance as a teacher and that Grievant’s post was the subject of significant untainted notoriety which irreparably impaired his capacity to continue as an effective teacher in Mercer County Public Schools.

29. When the *Pickering* balancing test is applied to the facts of this case, Respondent’s interest in creating a safe and supportive learning environment outweighs Grievant’s right to make provocative social media statements.

30. Respondent proved by a preponderance of the evidence that it had good cause to terminate Grievant.

31. Respondent did not violate any law, rule, or policy or act in an arbitrary and capricious manner by terminating Grievant.

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: July 20, 2026**

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**Kimberly D. Bentley**  
**Administrative Law Judge**