

**THE WEST VIRGINIA PUBLIC EMPLOYEES  
GRIEVANCE BOARD**

**JONATHAN STEWART,  
Grievant,**

**v.**

**Docket No. 2020-1561-CONS**

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

**DECISION**

Grievant, Jonathan Stewart, filed two grievances challenging his dismissal and suspension from employment as a teacher for the Mineral County Board of Education. Grievant seeks to be placed back in this position with back pay and benefits. Grievant filed this action directly to level three. An evidentiary hearing was conducted before the undersigned on March 4, 2021, at the Grievance Board's Westover office. Grievant appeared in person and by counsel, Christian J. Riddell, The Riddell Law Group.. Respondent appeared by its counsel, Kimberly S. Croyle, Esquire, BOWLES RICE LLP. This matter became mature for consideration upon receipt of the last of the parties' fact/law proposals on April 30, 2021.

**Synopsis**

Grievant was employed as a teacher by the Mineral County Board of Education. Grievant was dismissed from his contract of employment for immorality and insubordination following an inappropriate relationship with a sixteen year old female student and the failure to follow his supervisor's directive to have no further contact with

the student. Respondent proved these charges by a preponderance of the evidence. In addition, Respondent was acting within its discretion to dismiss an employee pursuant to the applicable law.

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

### **Findings of Fact**

1. Grievant began his employment as a substitute teacher with the Mineral County Board of Education, and entered into a regular teaching position with the school system in 2004.

2. Grievant taught with little incident over the next fifteen years, receiving good evaluations.

3. Throughout his employment, Grievant acknowledged that Mineral County Policies related to appropriate conduct, harassment and acceptable use of communication devices were applicable to all employees, including him.

4. In the fall of the 2018-2019 school year, a 16 year old female student was assigned to Grievant's class.

5. During the course of the semester, the student would finish her work before other students and the Grievant would engage in conversation with her. Grievant eventually moved the student's desk close to his desk so they could talk.

6. Grievant, a 47 year old man, confided to the student about his home life and the struggles he was having with his ailing wife.

7. When the student was preparing to leave Grievant's class at the end of the first semester, Grievant asked for her cell phone number so that they could continue to communicate.

8. Grievant admitted that beginning in January 2019 he engaged in numerous text messages with the student during all times of the day and night. Grievant also acknowledged that he sent messages to the student through social media at all times during the day and night.

9. Grievant texted the student numerous times to invite her to his classroom during times when she was supposed to be in other classes. Grievant gave the student money and other gifts such as food, bottled water and gift cards.

10. For reasons not entirely clear from the record, Grievant included the student in grief counseling addressing his personal trauma that he attended at the high school, apologizing to the student afterward.

11. Grievant frequently texted the student that he loved her, that he missed her, and thanking her for always being there for him.

12. Grievant told the student that she was the perfect woman, comparing her to the woman described in the biblical verse Proverbs 31:10-31.

13. The student felt uneasy and that the relationship was inappropriate after receiving the biblical verse from the Grievant, followed by him stating that he wanted to meet with her because he had a heavy heart. Grievant continued that he wanted to meet with the student, in private, to tell her things to assuage his personal troubles.

14. The student tried to avoid the Grievant, but he stopped her in the school hallway, made sure that no one was around, and told her that he never felt so compatible with anyone more that he felt with her and that it was destiny to have their path's cross in the future. Grievant also told her not to tell her mother that they were texting or what he had said.

15. Shortly thereafter, the student and Grievant were called into Principal Spencer's office. They were instructed by Principal Spencer that they were to have no further contact with one another.

16. Principal Spencer had received a call from the student's mother who said that she felt there were inappropriate communications going on between her daughter and the Grievant.

17. That same evening, Grievant had his daughter text the student and tell her that she could communicate with him by using his daughter's phone number.

18. Thereafter, Grievant found himself in the neighborhood where the student was living and asked her boyfriend and grandfather to follow him to a cemetery to talk. When he realized that the student was with them in the car, he began telling them he was going to blow his brains out and other talk about committing suicide.

19. This behavior led the student's mother to seek a protective order against the Grievant and to notify the superintendent of this outburst.

20. The superintendent placed Grievant on paid administrative leave while the Grievant underwent an evaluation to determine whether or not he was a danger to himself or others and the conduct could be investigated.

21. When the numerous test messages were provided to the Respondent, a referral was made to the Department of Health and Human Resources for an investigation into incidents of possible abuse.

22. The superintendent retained psychologist William Fremouw to determine whether the Grievant was a danger to himself or others.

23. During the evaluation, Grievant acknowledged that the text messages and relationship with the student were inappropriate. Grievant acknowledged that he reported the student's mother to the Department of Health and Human Resources after she filed for a protective order against him. Grievant also admitted to Dr. Fremouw that he violated the directive of his principal by having his daughter text the student.

24. Dr. Fremouw opines that Grievant did violate school policies and was insubordinate in his contact with the female student. In addition, Grievant's text messages were clearly too personal and were bordering on grooming.

25. On June 7, 2019, the Department of Health and Human Resources issued a finding that child abuse had occurred pursuant to W. VA. CODE § 49-1-201. The report found that Grievant's contact with the student bordered on grooming, as a result the student has been mentally and/or emotionally affected by Grievant's behavior.

26. The Department of Health and Human Resources' report noted that Grievant sent text and social media messages to the student during school hours, after school and on weekends. Grievant gave the student money on at least five occasions. Grievant had the student attend a grief counseling session. Grievant told the student that he loved her and missed her, as well as the undisputed conduct listed above.

27. On June 12, 2019, Superintendent Shawn Dilly completed his investigation into the allegations against the Grievant and concluded that policies were violated and Grievant's conduct was inappropriate.

28. By letter dated July 9, 2019, Superintendent Troy Ravenscroft notified the Grievant that he planned to recommend the termination of Grievant's employment. In

addition, if Grievant wished to be heard regarding this recommendation, a pre-termination hearing would be held within 30 days.

29. By letter dated July 29, 2019, the superintendent confirmed the agreed upon date of August 13, 2019, for the termination hearing. By letter dated August 7, 2019, Grievant's attorney requested a continuance of the hearing to allow her additional time to prepare.

30. On August 9, 2019, the superintendent granted this request and informed counsel that Grievant's suspension with pay was converted to a suspension, without pay, pending approval by the Board of Education and the outcome of the termination hearing.

31. Following a series of continuances at the request of the Grievant, a hearing was conducted before the Board of Education on February 11, 2020. The Grievant's suspension without pay was ratified and his employment was terminated by the Board of Education.

### **Discussion**

As this grievance involves a disciplinary matter, the Respondent bears the burden of establishing the charges against the Grievant by a preponderance of the evidence. *Nicholson v. Logan County Bd. of Educ.*, Docket No. 95-23-129 (Oct. 18, 1995); *Landy v. Raleigh County Bd. of Educ.*, Docket No. 89-41-232 (Dec. 14, 1989). "A preponderance of the evidence is evidence of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. It may not be determined by the number of the witnesses, but by the greater weight of the evidence, which does not necessarily mean the greater number of witnesses, but the opportunity for knowledge, information

possessed, and manner of testifying determines the weight of the testimony.” *Petry v. Kanawha County Bd. of Educ.*, Docket No. 96-20-380 (Mar. 18, 1997). In other words, “[t]he preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not.” *Leichliter v. W. Va. Dep’t of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

An employee of a county board of education may be suspended or dismissed for immorality, incompetency, cruelty, insubordination, intemperance, willful neglect of duty, unsatisfactory performance, a finding of abuse by the Department of Health and Human Resources in accordance with §49-1-1 *et seq.* of this code, the conviction of a felony or a guilty plea or a plea of nolo contendere to a felony charge. W. VA. CODE § 18A-2-8. “The authority of a county board of education to discipline an employee must be based upon one or more of the causes listed in W. VA. CODE § 18A-2-8, as amended, and must be exercised reasonably, not arbitrarily or capriciously. *Bell v. Kanawha County Bd. of Educ.*, Docket No. 91-20-005 (Apr. 16, 1991). See *Beverlin v. Bd. of Educ.*, 158 W. Va.1067, 216 S.E.2d 554 (1975).” *Graham v. Putnam County Bd. of Educ.*, Docket No. 99-40- 206 (Sep. 30, 1999).

Respondent argues that it is immoral conduct for a teacher to repeatedly tell a student that he loves her and misses her; gives her money and gifts; and professes it is their destiny to cross paths in the future. “Immorality is an imprecise word which means different things to different people, but in essence it also connotes conduct ‘not in conformity with accepted principles of right and wrong behavior; contrary to the moral code of the community; wicked; especially, not in conformity with the acceptable standards of proper sexual behavior.’ Webster’s New Twentieth Century Dictionary

Unabridged 910 (2d ed. 1979).” *Golden v. Bd. of Educ.*, 169 W. Va. 63, 67, 285 S.E.2d 665, 668 (1981). The record of this case supports a finding that Grievant’s communications and relationship with the student constitute immorality. The relationship between a 47 year old teacher and his 16 year old student resulting in a finding of child abuse violates the school district’s and the community’s moral code. Contrary to Grievant’s argument, it has also been clearly established that there does not need to be sexual contact for a school employee to engage in immorality. *Golden, supra*.

Grievant’s argument that because he did not have sex with the student this somehow made his behavior acceptable and not immoral is without merit. Grievant does not deny that he wrote the texts and social media messages and called the sixteen year old student at her home. Grievant further acknowledges that this was inappropriate behavior for which he must now pay the consequences. Grievant attributes his actions to the stress he was experiencing as a result of his wife’s near fatal car accident. He asserts that there was no allegation of a physical relationship with the student and notes that the contents of the communications were just inappropriate and not lewd or lascivious. While there is not evidence that Grievant engaged in any sexual contact with the student, the contents of the texts which he wrote to her were unquestionably of an intimate nature. Grievant’s treatment of the student as a peer to whom he could confide his personal problems and could express his yearnings for comfort violated the basic trust that society expects of teachers. In fact, Dr. Femouw made a finding that while no sexual contact occurred between the Grievant and the student, his messages were too personal and bordering on grooming. Grievant clearly engaged in behavior which was not in conformity with principles of right and wrong and, therefore, has acted immorally



Respondent argues that Grievant violated policies related to an employee's code of conduct and by contacting the student after being told by his supervisor to cease such conduct was insubordination. Insubordination "includes, and perhaps requires, a wilful disobedience of, or refusal to obey, a reasonable and valid rule, regulation, or order issued . . . [by] an administrative superior." *Santer v. Kanawha County Bd. of Educ.*, Docket No. 03-20-092 (June 30, 2003); *Butts v. Higher Educ. Interim Governing Bd.*, 212 W. Va. 209, 569 S.E.2d 456 (2002) (*per curiam*). See *Riddle v. Bd. of Directors, So. W. Va. Community College*, Docket No. 93-BOD-309 (May 31, 1994); *Webb v. Mason County Bd. of Educ.*, Docket No. 26-89-004 (May 1, 1989). "[F]or 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, supra*.

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

There is no dispute that on April 8, 2019, Grievant was called into the principal's office and directed to have not further contact with the female student. In defiance of this instruction, Grievant admitted that he ignored his supervisor and had his daughter provide the student with a number which she could use to contact him. There is no question that Grievant defied his principal's directive and was insubordinate. Grievant's failure to abide

by the Employee Code of Conduct and policies that prohibit inappropriate relationships with students likewise amounted to insubordination.

Although no evidence was presented to the undersigned at the level three hearing, Grievant alleged that his due process rights were violated. Respondent counters that it provided Grievant the due process to which he was entitled when it suspended him without pay and terminated his contract. "It is not necessary for a pre-disciplinary hearing to be a full adversarial evidentiary hearing; however, an employee is entitled to written notice of the charges, an explanation of the evidence, and an opportunity to respond prior to a board of education's decision to discipline the employee." *Board of Education v. Wirt*, 192 W. Va. 568, 453 S.E.2d 402 (1994). There is no dispute in the record that this was the process afforded to Grievant prior to the termination of his contract. Concerning the suspension with pay, which was converted to a suspension without pay on August 9, 2019, Grievant argues that the superintendent did not have that authority. This argument is without merit. WEST VIRGINIA CODE § 18A-2-7 authorizes a superintendent to unilaterally impose a suspension for up to thirty days. Any delay beyond that timeframe was brought about by Grievant requesting that the hearing on the issue be continued on a few occasions. The delay in the hearing to ratify the recommendation to suspend the Grievant without pay was occasioned by the Grievant.

Based upon the above, the undersigned upholds the County Board's decision to suspend Grievant without pay and to terminate the Grievant's contract.

The following Conclusions of Law support the decision reached.

### **Conclusions of Law**

1. As this grievance involves a disciplinary matter, the Respondent bears the burden of establishing the charges against the Grievant by a preponderance of the evidence. *Nicholson v. Logan County Bd. of Educ.*, Docket No. 95-23-129 (Oct. 18, 1995); *Landy v. Raleigh County Bd. of Educ.*, Docket No. 89-41-232 (Dec. 14, 1989). "A preponderance of the evidence is evidence of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. It may not be determined by the number of the witnesses, but by the greater weight of the evidence, which does not necessarily mean the greater number of witnesses, but the opportunity for knowledge, information possessed, and manner of testifying determines the weight of the testimony." *Petry v. Kanawha County Bd. of Educ.*, Docket No. 96-20-380 (Mar. 18, 1997). In other words, "[t]he preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." *Leichliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

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

3. "The authority of a county board of education to discipline an employee must be based upon one or more of the causes listed in W. VA. CODE § 18A-2-8, as amended, and must be exercised reasonably, not arbitrarily or capriciously. *Bell v. Kanawha County Bd. of Educ.*, Docket No. 91-20-005 (Apr. 16, 1991). See *Beverlin v. Bd. of Educ.*, 158 W. Va. 1067, 216 S.E.2d 554 (1975)." *Graham v. Putnam County Bd. of Educ.*, Docket No. 99-40- 206 (Sep. 30, 1999).

4. Insubordination "includes, and perhaps requires, a wilful disobedience of, or refusal to obey, a reasonable and valid rule, regulation, or order issued . . . [by] an administrative superior." *Santer v. Kanawha County Bd. of Educ.*, Docket No. 03-20-092 (June 30, 2003); *Butts v. Higher Educ. Interim Governing Bd.*, 212 W. Va. 209, 569 S.E.2d 456 (2002) (*per curiam*). See *Riddle v. Bd. of Directors, So. W. Va. Community College*, Docket No. 93-BOD-309 (May 31, 1994); *Webb v. Mason County Bd. of Educ.*, Docket No. 26-89-004 (May 1, 1989). "[F]or 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, supra*.

5. "Immorality is an imprecise word which means different things to different people, but in essence it also connotes conduct 'not in conformity with accepted principles of right and wrong behavior; contrary to the moral code of the community; wicked; especially, not in conformity with the acceptable standards of proper sexual behavior.' Webster's New Twentieth Century Dictionary Unabridged 910 (2d ed. 1979)." *Golden v. Bd. of Educ.*, 169 W. Va. 63, 67, 285 S.E.2d 665, 668 (1981).

6. Respondent established by a preponderance of the evidence the allegations of immorality and insubordination that led to the suspension and dismissal of Grievant.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. See W. VA. CODE § 6C-2-5. Neither the West Virginia Public Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. However, the appealing party is required by W. VA. CODE § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The Civil Action number should be included so that the certified record can be properly filed with the circuit court. See *a/so* 156 C.S.R. 1 § 6.20 (2018).

**Date: June 4, 2021**



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**Ronald L. Reece**  
**Administrative Law Judge**

