

**THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD**

**CHRISTINE GLOVER,
Grievant,**

v.

Docket No. 2019-0262-HamED

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

DECISION

Grievant, Christine Glover, filed this action on August 13, 2018, contesting the termination her employment by the Hampshire County Board of Education as the boys' basketball coach. Grievant seeks to be placed back in the coaching position, that discrimination, harassment and retaliation be addressed, attorney's fees and costs, and medical reimbursement. This action was filed directly to level three on August 13, 2018, following the termination of her coaching contract by the Hampshire County Board of Education on August 7, 2018. An evidentiary hearing was conducted before the undersigned on January 11, 2021, at the Grievance Board's Westover office. Grievant appeared in person and by her representative, Caitlyn M. Kinsey. Respondent appeared by its counsel, Kimberly S. Croyle, BOWLES RICE, LLP. This matter became mature for consideration upon receipt of the last of the parties' on February 17, 2021.

Synopsis

Grievant was employed by Respondent as the Boys' Head Basketball Coach at Hampshire High School. Grievant's extracurricular contract for this assignment was terminated by the Respondent due to the failure of Grievant, on numerous times, to

abide by the directives of her supervisor. Respondent proved this charge by a preponderance of the evidence. The record supports a finding that Grievant was provided written notice of the charges, an explanation of the evidence, and an opportunity to respond prior to Respondent's decision to terminate Grievant her contract. Grievant makes numerous allegations regarding Respondent's unfair, wrongful or unlawful actions and cites a list of laws and policies that were allegedly violated. No evidence was presented by Grievant that supports any of these claims. This grievance is denied.

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

Findings of Fact

1. Grievant was hired by the Hampshire County Board of Education as the Boys' Head Basketball Coach at Hampshire High School on June 6, 2016.
2. Grievant was awarded a probationary contract to teach Spanish at Hampshire High School on July 5, 2016.
3. On July 15, 2017, Grievant resigned from her teaching position to practice law full time. Grievant retained her contract to coach the basketball team.
4. Grievant was issued a letter of reprimand on October 24, 2016, for not showing up to school related duties on time, following a previous warning from her principal regarding the same behavior.
5. Grievant was issued an incident report on December 7, 2016, from the Athletic Director for her refusal to demonstrate professional conduct. The Athletic Director cited "[i]nsubordination, failure to adhere to the practice schedule times that were instructed to her via email on November 18, 2016." Respondent Exhibit No. 5.

6. A level one conference was held on December 21, 2016, regarding a second incident report that was issued by the Athletic Director on November 18, 2016, for leaving student athletes unattended. Certain material was removed from Grievant's personnel file, and Grievant was directed to "follow directives sent from the Athletic Director. Failure to do so will be viewed as insubordination." No appeal of this decision was filed. Respondent Exhibit No. 5.

7. Grievant was issued a letter of reprimand on February 3, 2017, from the principal for again failing to show up for school related duties on time.

8. Grievant received an unsatisfactory coaching evaluation on March 16, 2017. The evaluation detailed unsatisfactory professional relationships regarding communication and cooperation with the principal and Athletic Director, and unsatisfactory interpersonal relationships regarding sending inappropriate text messages.

9. The "Contract Of Employment For Extracurricular Duty Assignment" was approved and renewed by the Hampshire County Board of Education on July 3, 2017, once again employing Grievant as Boys' Head Basketball Coach at Hampshire High School.

10. Grievant was placed on a Corrective Action Plan (CAP) for Coaches on July 25, 2017.

11. On October 4, 2017, all coaches were informed that a mandatory meeting would be held on October 16, 2017. Grievant failed to attend the mandatory meeting.

12. Rather than ask for permission on November 1, 2017, to take a select few students to a professional basketball game in Washington D.C., Grievant created an

“Emergency Medical Form/Field Trip Release” making it appear as if it was a sanctioned field trip. Grievant acknowledged that she did not seek permission to take the handful of students to the basketball game. Grievant also acknowledged that she was aware of the proper process of taking students on field trips.

13. Grievant failed to attend the first day of basketball practice on November 13, 2017, as required by her Corrective Action Plan.

14. A complaint was filed against the Grievant on November 15, 2017, by a parent who claimed that Grievant singled out her son and called him “a thug and a pimp” because of the way he was dressed. Respondent Exhibit No. 2.

15. The Athletic Director arranged for a meeting on November 16, 2017, with the parents of the student, the student, Grievant and central office administrators/Title IX coordinators, David Simanski and Terrie Saville.

16. Grievant was apologetic and stated that she did not mean to embarrass the student. Grievant was instructed to have no further contact with students regarding the incident.

17. In violation of that directive, Grievant solicited comments from players in support of her as a coach.

18. Grievant texted Ori Pancione, the mentor in her CAP and former boys’ basketball coach, on December 7, 2017, and asked him if he was interested in being the athletic director. Grievant indicated that she wanted an athletic director that cared about her team.

19. Despite Grievant's apology, the student's mother claimed that the harassment did not stop. On December 20, 2017, a meeting was held with Grievant, the Superintendent, and Terrie Saville to discuss the allegation of harassment.

20. Because Grievant's account was in contrast to the parent's account, the Superintendent instructed Terrie Saville and David Simanski to interview additional students on the team. The Superintendent instructed Grievant to have no further discussions with the team players regarding the matter.

21. Contrary to the Superintendent's directive, the next day at practice, Grievant asked the players to write down their account of what happened regarding the harassment allegation.

22. Grievant provided some of these statements to Allen Hewitt, the outside investigator hired to investigate a subsequent harassment allegation against the Grievant.

23. One student athlete told the investigator that Grievant "made us write letters defending her . . . She comes in and gave us all a piece of paper, gave us all a pen, and said write down what happened the day of tryouts . . . I feel like she grabbed 'em up and read 'em, and I feel like everybody was forced to like defend her in a way." Respondent Exhibit No. 2.

24. On January 4, 2018, the parents of the student in question sent an email to the Superintendent indicating that the Grievant continued to harass her son. The email stated that Grievant "instructed her varsity players to write a paper stating positive information on why she should stay as a coach . . . Second, she instructed them to write about the situation that happened with T.S. back in November and what they remembered about it . . . she repeatedly made the statement while working with other athletes, 'If I am

saying anything to offend you let me know,' making sure to make eye contact with T.S. or to be close enough that he would hear her. In recent practices since she has been called in she has instructed two of her varsity boys to get physical with a selective few including T.S. during scrimmage to 'teach them a lesson.'"

25. The Superintendent and Terrie Saville were unable to contact the Grievant about this harassment complaint on January 4, 2018. They were able to contact Don Butcher, Grievant's representative, who, upon learning of the allegations and the plan to put Grievant on paid administrative leave, agreed that Allen Hewitt would be a good choice to conduct the investigation.

26. On January 5, 2018, the Superintendent and Terrie Saville called the Grievant and informed her of the complaint. They also notified her that the complaint would be investigated by private investigator Allen Hewitt.

27. The Superintendent informed Grievant that she was on administrative leave, with pay, and instructed Grievant that she was to have no contact with any students or parents during the investigation.

28. After receiving this directive, Grievant texted the players and told them that she had been "placed on administrative leave pending the results of another complaint of harassment. I am no longer allowed to be on school property or be your coach until the investigation is complete." Respondent Exhibit No. 2.

29. The next day, Grievant texted the students and gave them "basketball homework," instructing them to honor a teacher for Teacher Appreciation night. For some unknown reason, Grievant requested that the students email a one-page essay on why they appreciated that teacher. Respondent Exhibit No. 2.

30. Despite the previous directive, Grievant hired one of the players in January as a paralegal/legal assistant. Grievant took the student on a search for houses suitable for an office where she could open a law practice in Romney, West Virginia.

31. Grievant acknowledged that she violated the terms of her CAP when she failed to attend all practices; chose not to ride the team bus because it was easier for her to drive to practices and games from her home; refused to attend practices of other sports as required by her CAP because she did not see any benefit; and, admitted that there were instances of insubordination and defiant behavior that led to her CAP.

32. The Superintendent informed Grievant on July 6, 2018, that he would recommend the termination of her coaching contract.

33. The Hampshire County Board of Education voted to terminate Grievant's coaching contract on August 7, 2018.

34. Grievant was fully paid for the 2017-2018 school year, despite being on administrative leave from January 5, 2018, through the end of the 2017-2018 basketball season.

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 properly terminated Grievant’s coaching contract because she was insubordinate. 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*.

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. An employee's belief that management's decisions are incorrect, absent a threat to the employee's health or safety, does not confer upon her the right to ignore or disregard the order, rule, or directive. Employees are expected to respect authority and do not have unfettered discretion to disobey or ignore clear instructions. An employee has the right to expect subordinate personnel to not manifest disrespect toward supervisory personnel that undermines this status, prestige, and authority. Few defenses are available to the employee who disobeys a lawful directive; the prudent employee complies first and expresses her disagreement later. Essentially, an employer can meet its burden of proof by showing that the person giving the order had the authority to do so, and that the order did not require the employee to act illegally or place herself or co-workers at unnecessary risk. *Graham v. Putnam Cty Bd. of Educ.*, 212 W.Va.524, 575 S.E.2d 134 (2002); *Graham v. Wetzel County Bd. of Educ.*, Docket No. 2013-001-WetED (Feb. 15, 2013).

Grievant was insubordinate when she repeatedly defied the Superintendent's directives to not contact students while allegations that she was harassing a student were

being investigated. On November 16, 2017, she was reminded that she needed to maintain professionalism at all times. Thereafter, she solicited letters of support of her coaching from her players. On December 20, 2017, she was told by the Superintendent to have no contact with students regarding the incidents under investigation. Rather than obeying, Grievant contacted all of the players and asked them to write what they observed on the day in question. On January 5, 2018, Grievant was placed on administrative leave and instructed to have no contact with the students. Grievant defied the Superintendent's directive and contacted the students on two occasions.

In the instant case, it appears that the Superintendent and the Board of Education reasonably concluded that the prospect of Grievant's behavior changing was poor at best. In a period of less than two years Grievant accumulated a lengthy record of intentionally defying authority. The record established that Grievant refused to comply with anything to which she disagreed and refused to adhere to the standards expected of all employees. From defying her supervisor's directives to creating a fraudulent emergency medical release on Hampshire High School letterhead, it is apparent from the record that Respondent has proven by a preponderance of the evidence that Grievant was insubordinate.

Grievant was required by the Hampshire High School Coaches Handbook to have fair and unbiased relationships with the players on her team. Grievant's action singling students out to take to professional basketball games, to making disparaging comments, to employ and to take house hunting for offices does not appear to comport with being fair and unbiased toward the rest of the team. The Employee Code of Conduct was violated when Grievant created an emergency medical release and put it on Hampshire

High School letterhead. Grievant admitted that she did not seek to have the trip approved by the school system. Grievant also admitted that she knew how to do that because she had done so as a teacher in the school system. Grievant picked a select group of players from the team prior to the official try-outs. Grievant had them check out of school early, and transported them from her house to and from Washington, D.C. This violated the Hampshire High School Coaches Handbook and the Employee Code of Conduct by failing to demonstrate and maintain a high standard of self-conduct and ethical behavior.

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).

Contrary to the assertion of the Grievant, Respondent argues that Grievant was provided the due process she was entitled to when it terminated her coaching contract. The West Virginia Supreme Court of Appeals confirmed that coaches have due process rights in their contracts issued pursuant to WEST VIRGINIA CODE 18A-4-16. In *Smith v. Board of Educ. of County of Logan*, 176 W.Va. 65, 341 S.E.2d 685 (1985), the Supreme Court determined that procedural safeguards related to an employee's dismissal or termination apply to extracurricular coaching contracts. The Court holding that "[t]he procedural requirements mandated under West Virginia Code § 18A-2-7 (1984 Replacement Vol.) and West Virginia Code § 18A-2-8 (Supp. 1985), clearly apply, by the unqualified terms used therein, to all school personnel positions. Accordingly, it follows that school board actions relating to contracts entered into pursuant to West Virginia Code

§ 18A-4-16 (1984 Replacement Vol.) are not exempt from such requirements.” *Id.* Relying on decisions of the State Superintendent of Schools under the grievance procedure in place at the time, the Court reasoned:

The State Superintendent has consistently held that a school board’s refusal to renew a teacher’s coaching position must be considered a transfer subject to the procedural protections of West Virginia Code § 18A-2-7 (1984 Replacement Vol.). *See, e.g., Hosaflook v. Nestor*, (State Superintendent of Schools Decision, June 1, 1984). The Superintendent has determined that failure to follow these procedures when choosing not to renew a coaching contract will result in automatic reassignment to the same position for the following year under the same terms and conditions of the current contract.

Because the board of education in the *Smith* case failed to afford the coach an opportunity to be heard prior to his termination, the coach was reinstated into his position and awarded back pay.

In the instant case, the Grievant was afforded an opportunity to be heard that was in compliance with the protections required by *Bd. of Educ. of the County of Mercer v. Wirt*, 192 W.Va. 568, 453 S.E.2d 402 (1994). The Court explained that, “[u]nder W. Va. Code § 18A-2-8, due process requires a pre-termination hearing of a tenured employee under W. Va. Code § 18-2-6. It is not necessary for a pre-termination hearing to be a full adversarial evidentiary hearing; however, an employee is entitled to a written notice of the charges, an explanation of the evidence, and an opportunity to respond prior to a Board of Education’s decision to terminate the employee. If an employee presents a danger to students or others at work and there is not reasonable way to abate the danger, a pre-termination hearing is not required.” *Id.* The record supports a finding that this was the process afforded to Grievant prior to the termination of her coaching contract.

Finally, the undersigned lacks authority to determine whether Title VII of the Civil Rights Act of 1964; the Federal Age Discrimination in Employment Act; Title IX of the Education Act of 1972; or the West Virginia Whistle Blower Act have been violated. In addition, Grievant makes numerous allegations regarding Respondent's unfair, wrongful or unlawful actions and cites a list of laws and policies that were allegedly violated. A grievant "cannot simply cite a source of public policy and then make a bald allegation that the policy might somehow have been violated. There must be some elaboration upon the employer's act jeopardizing public policy and its nexus to the discharge. 'The mere citation of a statutory provision is not sufficient to state a cause of action for retaliatory discharge without a showing that the discharge violated the public policy that the cited provision clearly mandates. *Armstrong v. W. Va. Div. of Culture & History*, 229 W.Va. 538, 729 S.E.2d 860 (2012). No evidence was presented by Grievant that supports a violation of any of these claims.

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. 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. An employee's belief that management's decisions are incorrect, absent a threat to the employee's health or safety, does not confer upon her the right to ignore or disregard the order, rule, or directive. Employees are expected to respect authority and do not have unfettered discretion to disobey or ignore clear instructions. An employee has the right to expect subordinate personnel to not manifest disrespect toward supervisory personnel that undermines this status, prestige, and authority. Few defenses are available to the employee who disobeys a lawful directive; the prudent employee complies first and expresses her disagreement later. Essentially, an employer can meet its burden of proof by showing that the person giving the order had the authority to do so, and that the order did not require the employee to act illegally or place herself or co-workers at unnecessary risk. *Graham v. Putnam Cty Bd. of Educ.*, 212 W.Va.524, 575 S.E.2d 134 (2002); *Graham v. Wetzel County Bd. of Educ.*, Docket No. 2013-001-WetED (Feb. 15, 2013).

6. "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.

7. Respondent established by a preponderance of the evidence the allegations of insubordination that led to the termination of Grievant’s contract.

8. Grievant was afforded an opportunity to be heard that was in compliance with the protections required by *Bd. of Educ. of the County of Mercer v. Wirt*, 192 W.Va. 568, 453 S.E.2d 402 (1994).

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 *also* 156 C.S.R. 1 § 6.20 (2018).

Date: March 25, 2021

Ronald L. Reece
Administrative Law Judge