PHILLIP J. HUDOK,

Grievant,

v. **Docket No. 99-42-092**

RANDOLPH COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

On February 12, 1999, Phillip J. Hudok (Grievant), submitted this grievance directly to Level IV, in accordance with W. Va. Code § 18A-2-8, challenging his dismissal by Respondent Randolph County Board of Education (RCBE). On March 22, 1999, a brief Level IV hearing was conducted in this Grievance Board's office in Elkins, West Virginia. (See footnote 1) At the conclusion of that hearing, the parties agreed on a briefing schedule, and this matter became mature for decision on April 23, 1999, following receipt of the parties' written post- hearing arguments.

DISCUSSION

Grievant was employed by RCBE as a classroom teacher at Elkins High School. By letter dated January 22, 1999, RCBE Superintendent Glen Karlen notified Grievant that he was being suspended and terminated on the following grounds:

> The purpose of this letter is to notify you that, pursuant to West Virginia Code §18A-2-7, you are hereby suspended from your employment with the Randolph County Board of Education without pay, effective immediately, on the grounds of insubordination and willful neglect of duty. You are further notified that I will present a recommendation to the Randolph County Board of Education pursuant to West Virginia Code § 18A-2-8 that your employment with the Board be terminated on the same grounds upon the conclusion of a hearing to be held before the Randolph County Board of Education.
>
> Your suspension and my recommendation for your termination are based on your repeated, intentional and insubordinate failure to enforce the policies of the Randolph

> County Board of Education and the lawful and legitimate directives of myself and Principal Tom Pritt of Elkins High School regarding student compliance with the identification badge policy at Elkins High School. You have been specifically and repeatedly directed to enforce all County Board of Education policies, including the identification badge policy, both verbally by myself and Mr. Pritt and in writing. In fact, by letter dated December 10, 1998, you informed me that you "cannot and will not require the students to wear their ID's."

R Ex 1 in R Ex A. (See footnote 2)

A hearing was held before RCBE on February 4, 1999. At the conclusion of that hearing, RCBE voted, 4-1, to accept the Superintendent's recommendation to suspend Grievant and terminate his employment contract for insubordination and willful neglect of duty. R Ex A at 193-94. Grievant filed a timely appeal challenging this action.

In disciplinary matters, the employer bears the burden of establishing the charges by a preponderance of the evidence. W. Va. Code § 18-29-6; Nicholson v. Logan CountyBd. 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). Moreover, 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). Further, the county board has the burden of proving the charges in a disciplinary action by a preponderance of the evidence. A preponderance of the evidence is evidence which is 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 proven is more probable than not. It may not be determined by the number of witnesses, but by the greater weight of all evidence presented, which means that such factors as opportunity for knowledge, information possessed, and manner of testifying determines the weight accorded to testimony rather than the greater number of witnesses. See Black's Law Dictionary 1344-45 (4th ed. 1968); Petry v. Kanawha County Bd. of Educ., Docket No. 96- 20-380 (Mar. 18, 1997).

In August of 1998, a multi-disciplinary committee designated as the Community Coalition for Safe Schools recommended a number of proposals for improving safety and security in the schools of Randolph County. One of their specific recommendations called for identification tags to be worn by all students, staff and visitors to the county's secondary and middle schools. R Ex 2 in R Ex A. By

mid-November of 1998, RCBE began implementing an identification badge policy which required all students to display theirschool-issued identification cards in a visible place above the waist. R Ex A at 15-16; R Ex 4 in R Ex A. On November 16, 1998, Grievant wrote a letter to Jay Dailer, Dean of Student Affairs at Elkins High School, expressing his disagreement with the identification card policy, and announcing his intention to refuse to enforce the policy. R Ex A at 19. This letter does not make specific reference to Grievant's religious beliefs. R Ex 5 in R Ex A. However, Grievant did state, “I will someday face my maker and be accountable for what I have done with my life as will you.” R Ex 5 in R Ex A.

On November 18, 1998, Elkins High School Principal Thomas E. Pritt wrote to Grievant, rejecting Grievant's objections to the policy, indicating that Grievant would be expected to comply with his duties under the policy. R Ex 6 in R Ex A. On November 20, 1998, Principal Pritt met with Grievant to discuss his concerns regarding the identification badge policy. R Ex A at 21. After it became apparent that Grievant was not going to comply with the policy, Principal Pritt wrote another letter to Grievant on December 3, 1998, reiterating that Grievant was expected to comply with the identification badge policy, including wearing an appropriate identification badge while on school premises. R Ex 7 in R Ex A.

On December 7, 1998, Grievant wrote to Principal Pritt indicating that he would not enforce the identification badge policy in his classroom for religious reasons. R Ex 7A in R Ex A. Principal Pritt responded to Grievant in a letter that same day, warning that failure to obtain and display a modified identification card, omitting the bar code which Grievant found objectionable on religious grounds, would result in a recommendation toSuperintendent Karlen for disciplinary action. R Ex 8 in R Ex A. On December 10, 1998, Grievant wrote to Superintendent Karlen reiterating his position as follows:

> It has come to my attention that you may not be aware of the reason that I cannot make a second compromise and enforce the EHS [Elkins High School] identification card policy. I cannot and will not require the students to wear their IDs. It is plainly and simply a matter of religious conviction. First Chronicles chapter 21 in the King James Holy Bible is clear.

R Ex 14 in R Ex A.

On December 16, 1998, Grievant provided Superintendent Karlen with a letter from his pastor at The Lighthouse Chapel which explained that the religious basis for Grievant's objection to RCBE's identification tags stemmed from language in the 1611 King James Bible relating to “the ultimate I.D.

'mark' spoken of in Revelation 13." R Ex 15 in R Ex A. Grievant further explained to his superiors that he considered the bar code to represent "the mark of the beast." On January 4, 1999, Grievant again told Principal Pritt he was not willing to enforce the identification badge policy. R Ex A at 32. On January 13 and 14, 1999, Principal Pritt visited Grievant's classes and observed that some students were not wearing their name tags in class. Grievant was again warned by Principal Pritt that disciplinary action would be taken unless he began enforcing the identification badge policy in his classes.

On January 14, 1999, Grievant initiated a grievance challenging the requirement that he be required to wear an identification badge containing a bar code, in addition to a photo. This grievance was resolved when RCBE agreed to accommodate Grievant's religious beliefs by allowing him to wear a modified identification card that did not include a bar code. R Ex A at 76. See R Ex 11 in R Ex A. On January 15, 1999, Grievant fileda separate grievance seeking relief from the requirement that he administer the identification badge policy. See R Ex 12 in R Ex A. Grievant was denied any relief on this grievance.

As stipulated at Grievant's termination hearing by RCBE's counsel, the employer determined that Grievant was attempting to invoke a right that belonged to his students, and made no effort to accommodate Grievant's request for an exemption from this policy. R Ex A at 52-53, 105. Indeed, on January 16, 1999, Superintendent Karlen wrote Grievant advising him that, although he was being accommodated for his religious beliefs in regard to personally wearing an identification badge, he was nonetheless expected to enforce the identification card policy for his students, or face disciplinary action. R Ex 18 in R Ex A. Grievant refused to compromise his beliefs, and this termination action was undertaken by RCBE.

In the instant matter, the record clearly establishes that Grievant refused to enforce the identification policy at Elkins High School, one of his duties as a member of the school faculty. Grievant's refusal to enforce the policy constitutes insubordination and willful neglect of duty under W. Va. Code § 18A-2-8, unless he was legally privileged to reject his employer's directives. See Stover v. Mason County Bd. of Educ., Docket No. 95-26-078 (Sept. 25, 1995). See also Peery v. Rutledge, 177 W. Va. 548, 355 S.E.2d 41 (1987).

Grievant contends his actions were proper because RCBE failed to comply with its obligation to accommodate his personal religious beliefs which conflict with RCBE's identification badge policy.

Grievant relies upon religious accommodation requirements in federal civil rights law as a defense to his actions. This Grievance Board does not haveprimary jurisdiction to adjudicate disputes that arise under Title VII of the federal Civil Rights Act of 1964 (Title VII), 42 U.S.C. §§ 2000e, et seq., or the West Virginia Human Rights Act (WVHRA), W. Va. Code §§ 5-11-1, et seq. Harrison County Bd. of Educ. v. Carson-Leggett, 195 W. Va. 196, 466 S.E.2d 447 (1995); Vest v. Bd. of Educ., 193 W. Va. 222, 455 S.E.2d 781 (1995). However, this Grievance Board does have jurisdiction to rule upon Grievant's Title VII defense to the charge of insubordination and willful neglect of duty because he is alleging a “violation, misapplication or misinterpretation” of a statute under which he works, within the definition of “grievance” in the statutory grievance procedure for education employees, W. Va. Code § 18-29-2(a). See Rodak v. W. Va. Dep't of Tax & Revenue, Docket No. 96-T&R-536 (June 23, 1997); Hendricks v. W. Va. Dep't of Tax & Revenue, Docket No. 96-T&R-215 (Sept. 24, 1996). See also Bellinger v. W. Va. Dep't of Public Safety, Docket No. 95-DPS-119 (Aug. 15, 1995). See generally Belcher v. W. Va. Dep't of Transp., Docket No. 94-DOH-341 (Apr. 27, 1995). While such a ruling may be dispositive of the issues raised in this grievance, it has no preclusive effect on Grievant's rights to pursue remedies available through the courts under Title VII or the WVHRA. See Carson-Leggett, supra; Vest, supra. See also Asaad v. Res-Care, Inc., 197 W. Va. 684, 478 S.E.2d 357 (1996). See generally Alexander v. Gardner-Denver Co., 415 U.S. 36 (1974).

Title VII of the federal Civil Rights Act of 1964, as amended, prohibits an employer from discharging or otherwise discriminating against an employee on the basis of “race, color, religion, sex, or national origin.” 42 U.S.C. § 2000e-2(a)(1). The statute defines “religion” to include “all aspects of religious observance and practice, as well as belief.” 42U.S.C. § 2000e(j). The statute proceeds to impose an affirmative duty on employers to reasonably accommodate the religious observances and practices of its employees, unless the employer can demonstrate that such an accommodation would cause undue hardship on the conduct of its business. Id. See Trans World Airlines, Inc. v. Hardison, 432 U.S. 63 (1977). In applying Title VII's prohibition against religious discrimination, federal courts generally employ a two-part, burden shifting analysis. Toledo v. Nobel-Sysco, Inc., 892 F.2d 1481 (10th Cir. 1989); Opuku-Boateng v. California, 95 F.3d 1461 (9th Cir. 1996), cert. denied, 117 S. Ct. 1819 (1997).

First, the employee must establish a prima facie (See footnote 3) case of religious discrimination by showing:

(1) that he has a bona fide religious belief in conflict with an employment requirement or duty;

(2) that he informed his employer of the belief and conflict; and

(3) the employer nonetheless subjected him to discriminatory treatment because of his inability to fulfill the job requirements.

Heller v. EBB Auto Co., 8 F.3d 1433, 1438 (9th Cir. 1993). See EEOC v. Ilona of Hungary, Inc., 108 F.3d 1569 (7th Cir. 1997); Philbrook v. Ansonia Bd. of Educ., 757 F.2d 476 (2d Cir. 1985), aff'd on other grounds, 479 U.S. 60 (1986). Once an employee establishes a prima facie case of religious discrimination, the employer must actively attempt to accommodate an employee's religious beliefs even if, absent the religious motivation, theemployee's conduct would provide a legitimate basis for discharge. Chalmers v. Tulon Co., 101 F.3d 1012 (4th Cir. 1996), cert. denied, 118 S. Ct. 58 (1997). In other words, the burden shifts to the employer to make a reasonable accommodation of the religious practice, or to show that any accommodation would result in undue hardship. Lee v. ABF Freight Sys., Inc., 22 F.3d 1019 (10th Cir. 1994); Baz v. Walters, 782 F.2d 701 (7th Cir. 1986); Redmond v. GAF Corp., 574 F.2d 897 (7th Cir. 1978).

Grievant clearly and unambiguously notified RCBE that his refusal to enforce the identification badge policy at Elkins High School was based upon his religious beliefs. See EEOC v. Ithaca Ind., 849 F.2d 116 (4th Cir. 1988), cert. denied, 488 U.S. 924 (1988). The fact that Grievant did not initially identify a problem with RCBE's requirement that he enforce the identification card policy in his school is not significant. At no point in the negotiations over accommodating Grievant's religious objections to wearing a bar-coded identification badge did he affirmatively waive his right to raise a religious objection to the enforcement requirement. See EEOC v. Townley Manufacturing Co., 859 F.2d 610 (9th Cir. 1988), cert. denied, 489 U.S. 1077 (1989). In any event, the religious basis for Grievant's refusal to enforce the policy was clearly established by the time RCBE decided to terminate his employment.

In oral argument at the Level IV hearing, RCBE's counsel argued that Grievant's refusal to enforce the identification badge policy on his assigned students, unlike his refusal to wear an

identification badge with a bar code, was not personal to him. Thus, from RCBE's perspective, Grievant cannot invoke someone else's right to freedom from religious discrimination as a basis for requiring an accommodation. The undersigned has not found any reported Title VII cases concerning an employee's refusal to participate in a security identification system on religious grounds. Nonetheless, other Title VII cases dealing with the requirement for religious accommodation provide adequate guidance for disposition of this grievance. A significant number of religious accommodation cases involve employees who are unable to work on their Sabbath. See, e.g., Trans World Airlines, supra; Cooper v. Oak Rubber Co., 15 F.3d 1375 (6th Cir. 1994); EEOC v. Hacienda Hotel, 881 F.2d 1504 (9th Cir. 1989); Gordon v. MCI Telecommunications Corp., 791 F. Supp. 431 (S.D.N.Y. 1992). In this context, courts have recognized that in addition to refusing to work on his Sabbath, an employee who believes it is a sin to solicit another employee to work in his place on the Sabbath may properly object to such a requirement, thereby shifting the burden to the employer to accommodate the employee's religious beliefs. Smith v. Pyro Min. Co., 827 F.2d 1081 (6th Cir. 1987), cert. denied, 485 U.S. 989 (1988); EEOC v. IBP, Inc., 824 F. Supp. 147 (C.D. Ill. 1993); EEOC v. J.P. Stevens & Co., 740 F. Supp. 1135 (M.D.N.C. 1990).

Thus, “where an employee sincerely believes that working on Sunday is morally wrong and that it is a sin to induce another to work in his stead, then an employer's attempt at accommodation that requires the employee to seek his own replacement is not reasonable.” Smith, supra, at 1088. In a similar vein, a postal clerk established a Title VII claim for entitlement to religious accommodation on the basis of her conscientious objection to handing out selective service registration forms. McGinnis v. U.S. Postal Serv., 512 F. Supp. 517 (N.D. Cal. 1980). Likewise, an IRS employee established a religious accommodation requirement for his refusal to handle tax-exempt statusapplications from organizations advocating abortion and other practices inimical to his Catholic faith. Haring v. Blumenthal, 471 F. Supp. 1172 (D.D.C. 1979).

The undersigned finds that Grievant's refusal to enforce RCBE's identification badge policy at Elkins High School, based upon his sincerely held religious beliefs, represents conduct which is protected under the religious discrimination provision in Title VII. RCBE accommodated Grievant's belief that it was contrary to his religion to wear a bar-coded identification badge, but terminated Grievant for refusing to enforce that same requirement on his students. “Where an employee has more than one religious belief which conflicts with work requirements, the employer must

accommodate both beliefs." EEOC v. IBP, supra, citing EEOC v. Universal Mfg. Corp., 914 F.2d 71 (5th Cir. 1990); EEOC v. University of Detroit, 904 F.2d 331 (6th Cir. 1990). Accord, Cooper, supra.

Title VII protects "all aspects of religious observance and practice, as well as belief." 42 U.S.C. 2000e(j) (emphasis added). See Redmond, supra. Grievant's refusal to enforce RCBE's identification badge policy for religious reasons substantially parallels the employee's refusal to solicit another employee to work on the Sabbath, the employee's refusal to hand out selective service registration forms, and the employee's refusal to process applications for tax-exempt status from organizations promoting abortions, as previously discussed. In each case, the employee is being asked to do something that, while not as personal to them as working on the Sabbath, serving in the armed forces, or performing an abortion, is nonetheless inimical to their religious beliefs. See Cooper v. General Dynamics, 533 F.2d 163 (5th Cir. 1976). Accordingly, the undersigned concludes that RCBE had a duty to accommodate Grievant's religious beliefs in regard toenforcement of the identification badge policy at Elkins High School. See Smith, supra; EEOC v. IBP, supra; EEOC v. J.P. Stevens, supra; McGinnis, supra; Haring, supra.

It is possible that no accommodation to Grievant's religious beliefs may be available without an undue hardship being created for RCBE. However, inasmuch as RCBE refused to recognize any obligation to accommodate Grievant's religious beliefs in regard to enforcing the identification badge policy, it made no effort to offer a reasonable accommodation on that issue. Thus, no determination on whether an undue hardship would be created by any effort to accommodate Grievant's beliefs can be made on the basis of the record before the undersigned. Any impact on RCBE from Grievant's refusal to enforce the identification policy on his students would call for undue speculation and require further evidence beyond the de minimus impact suggested by the present record. See, e.g., EEOC v. Hacienda Hotel, supra; Brown v. General Motors Corp., 601 F.2d 956 (8th Cir. 1979); Redmond, supra; Boomsma v. Greyhound Food Management Co., 639 F. Supp. 1448 (W.D. Mich. 1986), app. dismissed, 815 F.2d 76 (6th Cir. 1987). Indeed, "[n]umerous courts have held that employers violate Title VII when they fail to discuss any accommodations with the employee." Wolf, Friedman & Sutherland, Religion in the Workplace 80 (1998). (See footnote 4)

Accordingly, the undersigned finds that Grievant's refusal to enforce the identification badge policy at Elkins High School, under the circumstances presented, is protected by the prohibition against religious discrimination in Title VII of the Civil RightsAct of 1964, as amended, providing a

defense to the charges of insubordination and willful neglect of duty under W. Va. Code § 18A-2-8. Because the charges against Grievant are not sustained, it is not necessary to address the issue of whether termination was too severe a penalty for Grievant's actions. See Stover, supra.

In addition to the foregoing discussion, the following findings of fact and conclusions of law are appropriate in this matter.

FINDINGS OF FACT

1. Grievant was employed by the Randolph County Board of Education (RCBE) as a classroom teacher at Elkins High School in Elkins, West Virginia.

2. In mid-November 1998, RCBE instituted a policy which required all students, faculty, and visitors to wear an identification badge while in Elkins High School.

3. The identification badge at issue included a photo of the individual, as well as their name and a bar code corresponding to an assigned number.

4. Shortly after this policy was instituted, Grievant voiced his objections to the policy citing various grounds, including some religious references. R Ex 5 in R Ex A.

5. In the course of discussions between Grievant and his Principal, Thomas Pritt, and RCBE Superintendent Glen Karlen, it became apparent that Grievant had religious objections to wearing an identification badge with a bar code, or enforcing such a requirement on the students in his class. See R Exs 14 & 15 in R Ex A.

6. RCBE accommodated Grievant's religious objections to wearing an identification badge with a bar code, by allowing Grievant to wear an identification badge with his name and photograph, but without the bar code. R Ex 18 in R Ex A. 7. RCBE made no effort to accommodate Grievant's religious beliefs which caused him to refuse to enforce the identification badge policy for the students in his class. R Ex A at 52-53, 105.

8. On January 22, 1999, Grievant was suspended and terminated for refusing to enforce the identification badge policy on his students. R Ex 1 in R Ex A.

9. Prior to Grievant's refusal to enforce the identification badge policy, he performed all assigned teaching duties in a satisfactory manner, and was generally popular with his students.

CONCLUSIONS OF LAW

1. The employer must establish the charges in a disciplinary matter by a preponderance of the evidence. W. Va. Code § 18-29-6; Froats v. Hancock County Bd. of Educ., Docket No. 91-15-159 (Aug. 15, 1991); Landy v. Raleigh County Bd. of Educ., Docket No. 89-41-232 (Dec. 14, 1989).

2. Insubordination and willful neglect of duty are among the causes listed in W. Va. Code § 18A-2-8, for which an education employee may be disciplined. Stover v. Mason County Bd. of Educ., Docket No. 95-26-078 (Sept. 25, 1995). See Beverlin v. Bd. of Educ., 158 W. Va. 1067, 216 S.E.2d 554 (1975).

3. Title VII of the Civil Rights Act of 1964, as amended, prohibits an employer from discharging or otherwise discriminating against an employee on the basis of religion. 42 U.S.C. § 2000e-2(a)(1). The statute defines “religion” to include “all aspects of religious observance and practice, as well as belief.” 42 U.S.C. § 2000e(j). The statute places an affirmative duty on employers to reasonably accommodate the religious observances andpractices of its employees, unless the employer can demonstrate that such an accommodation would cause undue hardship on the conduct of its business. Id. See Trans World Airlines, Inc. v. Hardison, 432 U.S. 63 (1977).

4. In order to demonstrate that his employer violated Title VII's prohibition against religious discrimination, a grievant must first establish a prima facie case by showing:

> (1) that he has a bona fide religious belief in conflict with an employment requirement or duty;
>
> (2) that he informed his employer of the belief and conflict; and
>
> (3) the employer nonetheless subjected him to discriminatory treatment because of his inability to fulfill the job requirements.

Heller v. EBB Auto Co., 8 F.3d 1433, 1438 (9th Cir. 1993). See EEOC v. Ilona of Hungary, Inc., 108 F.3d 1569 (7th Cir. 1997); Philbrook v. Ansonia Bd. of Educ., 757 F.2d 476 (2d Cir. 1985), aff'd on other grounds, 479 U.S. 60 (1986).

5. Grievant established a prima facie case of religious discrimination under Title VII by demonstrating, by a preponderance of the evidence, that his refusal to enforce RCBE's identification

badge policy at Elkins High School was based upon his religious beliefs, that he informed RCBE of these beliefs, and he was nonetheless terminated for his refusal to act contrary to those beliefs. See Smith v. Pyro Min. Co., 827 F.2d 1081 (6th Cir. 1987), cert. denied, 485 U.S. 989 (1988); EEOC v. IBP, Inc., 824 F. Supp. 147 (C.D. Ill. 1993); EEOC v. J.P. Stevens & Co., 740 F. Supp. 1135 (M.D.N.C. 1990); McGinnis v. U.S. Postal Serv., 512 F. Supp. 517 (N.D. Cal. 1980); Haring v. Blumenthal, 471 F. Supp. 1172 (D.D.C. 1979). 6. Once an employee establishes a prima facie case of religious discrimination, the employer must actively attempt to accommodate an employee's religious beliefs even if, absent the religious motivation, the employee's conduct would provide a legitimate basis for discharge. Chalmers v. Tulon Co., 101 F.3d 1012 (4th Cir. 1996), cert. denied, 118 S. Ct. 58 (1997).

7. RCBE made no effort to accommodate Grievant's religious objections to enforcing the identification badge policy and did not establish that any reasonable accommodation of Grievant's refusal to enforce the policy would create more than a de minimus hardship on its operation of Elkins High School.

Accordingly, this grievance is **GRANTED**. Respondent Randolph County Board of Education is hereby **ORDERED** to reinstate Grievant to his position as a classroom teacher at Elkins High School with full back pay and benefits, plus interest, and to expunge any record of this suspension and termination from his personnel records.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Randolph County and such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code § 18-29-7. Neither the West Virginia Education and State 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 appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

LEWIS G. BREWER

ADMINISTRATIVE LAW JUDGE

Dated: May 6, 1999

Footnote: 1

Grievant was represented by counsel, Frank P. Bush, Jr. Respondent was also represented by counsel, Basil R. Legg, Jr.

Footnote: 2

At the Level IV hearing, RCBE introduced the transcript and exhibits from Grievant's termination hearing. This document will be referred to as "R Ex A" with further reference to any exhibits as "R Ex in R Ex A" and to the transcript as "R Ex A at .

Footnote: 3

A prima facie case generally refers to a set of facts which, if not rebutted or contradicted by other evidence, would be sufficient to support a ruling in favor of the party establishing such facts. See Black's Law Dictionary 1353 (4th Ed. 1968).

Footnote: 4

RCBE's oral argument and post-hearing brief did not address the question of whether any reasonable accommodation could be afforded short of undue hardship.