

**WEST VIRGINIA PUBLIC EMPLOYEES  
GRIEVANCE BOARD**

**SYNOPSIS REPORT**

**Decisions Issued in December 2021**

The Board's monthly reports are intended to assist public employers covered by a grievance procedure to monitor significant personnel-related matters which came before the Grievance Board, and to ascertain whether any personnel policies need to be reviewed, revised or enforced. W. Va. Code §18-29-11(1992). Each report contains summaries of all decisions issued during the immediately preceding month.

If you have any comments or suggestions about the monthly report, please send an e-mail to [wvgb@wv.gov](mailto:wvgb@wv.gov).

**NOTICE:** These synopses in no way constitute an official opinion or comment by the Grievance Board or its administrative law judges on the holdings in the cases. They are intended to serve as an information and research tool only.

**TOPICAL INDEX**  
**HIGHER EDUCATION EMPLOYEES**

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<b><u>KEYWORDS:</u></b>	Termination; Policy; In-Class Statements; COVID-19 Pandemic; Freedom of Speech; Arbitrary and Capricious
<b><u>CASE STYLE:</u></b>	<u>Mosher v. Marshall University</u> DOCKET NO. 2021-1040-MU (12/9/2021)
<b><u>PRIMARY ISSUES:</u></b>	Whether Respondent had good cause to terminate Grievant's tenured employment.
<b><u>SUMMARY:</u></b>	<p>Grievant made statements of a political nature which allegedly wished death upon a group of people who were holding mass rallies without public safety precautions during the COVID 19 pandemic. The statements were made during discussions at the beginning of two classes which were held virtually and recorded. Someone gained access to the recordings and posted selected clips of Grievant's comments on Twitter which cause a great deal of reaction among people on social media. Respondent dismissed Grievant alleging that her comments directly and substantially impair her ability to fulfill her teaching responsibilities at Marshall University. The basis of this conclusion was that the Provost and President believed conservative students would feel unsafe and uncomfortable taking Grievant's classes in the future.</p> <p>Respondent did not prove the reasons for Grievant's dismissal by a preponderance of the evidence. It is more likely than not that the stated reasons were not the actual reasons for Grievant's dismissal. Additionally, her comments were protected by the First Amendment, as well as Grievant's rights related to academic freedom and tenure.</p>

**KEYWORDS:** Motion to Dismiss; Moot; Relief

**CASE STYLE:** Amjad v. Marshall University

DOCKET NO. 2022-0151-MU (12/28/2021)

**PRIMARY ISSUES:** Whether Respondent proved by a preponderance of the evidence that no relief is available to Grievant, and this matter is moot.

**SUMMARY:** Grievant seeks to have the denial of a promotion to the rank of Professor reversed. Grievant had also been dismissed from employment and file a grievance contesting that action. Grievant withdrew the grievance contesting his dismissal prior to the resolution of the grievance related to the promotion. There is no remedy available in the promotion grievance since Grievant is no longer employed by Respondent. Any decision would be advisory, and the Grievance Board does not issue advisory opinions. This matter is moot.

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**COUNTY BOARDS OF EDUCATION**  
**PROFESSIONAL PERSONNEL**

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**KEYWORDS:** Suspension; Willful Neglect of Duty; Insubordinate; Failure to Maintain a Safe Environment

**CASE STYLE:** Compton v. Board of Education/Schools for the Deaf and the Blind  
DOCKET NO. 2021-2522-BOE (12/10/2021)

**PRIMARY ISSUES:** Whether Respondent proved that Grievant's suspension was justified.

**SUMMARY:** Grievant is employed by the West Virginia Board of Education at West Virginia Schools for the Deaf and the Blind. Grievant was suspended for not going to Seaton Hall after a supervisor said, "I need someone" to work there. Respondent did not prove this constituted an order and thus failed to prove Grievant was insubordinate, willfully neglected her duty, or compromised student safety. As such, this grievance is GRANTED.

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**KEYWORDS:** Suspension; Willful Neglect of Duty; Insubordination; Failure to Maintain a Safe Environment

**CASE STYLE:** Racey v. Board of Education/Schools for the Deaf and the Blind  
DOCKET NO. 2021-2523-BOE (12/10/2021)

**PRIMARY ISSUES:** Whether Respondent proved that Grievant's suspension was justified.

**SUMMARY:** Grievant is employed by the West Virginia Board of Education at West Virginia Schools for the Deaf and the Blind. Grievant was suspended for not going to Seaton Hall after a supervisor said she needed someone to work there. Grievant contends the supervisor did not specifically address him or even give an order. Respondent's witnesses gave conflicting testimony in this regard. Respondent did not prove that Grievant was ordered to go to Seaton Hall and thus failed to prove Grievant was insubordinate, willfully neglected his duty, or compromised student safety. Accordingly, this grievance is GRANTED.

**TOPICAL INDEX**  
**COUNTY BOARDS OF EDUCATION**  
**SERVICE PERSONNEL**

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**KEYWORDS:** Discrimination; Job Duties; Policy; COVID-19; Arbitrary and Capricious

**CASE STYLE:** Dutko, et al v. Berkeley County Board of Education  
DOCKET NO. 2021-2021-CONS (12/14/2021)

**PRIMARY ISSUES:** Whether Grievants demonstrated by a preponderance of the evidence that they were required to do any duties that fell outside of their job descriptions.

**SUMMARY:** Grievants work with students who are provided special education and related services by Berkeley County Schools. Grievants allege that they were assigned contact with students during the pandemic while others employed by Respondent were not assigned such contact. Grievants failed to prove any discrimination in the case. Grievants failed to prove any basis to deny in-person education to special education students during the pandemic.