

ered from the March 2, 1982 Work Injury, granted Employer's Suspension Petition and terminated Claimant's WC benefits effective August 16, 1983. Thus, Claimant's Work Injury and his recovery therefrom, were actually litigated before Referee Leonard. *See id.* Claimant's Work Injury and his recovery were *essential* to Referee Leonard's Decision and were *material* to Employer's Suspension Petition adjudication. *See Patel*. Because Claimant again seeks WC benefits for the March 2, 1982 Work Injury from which Claimant was found to have fully recovered, Claimant's 2021 Claim Petition was barred by collateral estoppel, and the Board properly dismissed Claimant's 2021 Claim Petition consistent with *Miller* and *Robachinski*.<sup>12</sup>

For all of the above reasons, the Board's order is affirmed.<sup>13</sup>

Judge Fizzano Cannon did not participate in the decision in this matter.

#### ORDER

AND NOW, this 6<sup>th</sup> day of September, 2023, the Workers' Compensation Appeal Board's November 9, 2022 order is AFFIRMED. Stephen Clark's Application for Oral Argument is DENIED.



12. Claimant also asserts that WCJ Rago denied him due process when she dismissed the 2021 Claim Petition, as barred by *res judicata* and/or collateral estoppel, without reviewing his evidence. "The essential elements of procedural due process are notice and an opportunity to be heard." *Arnold v. Workers' Comp. Appeal Bd. (Lacour Painting, Inc.)*, 110 A.3d 1063, 1068 (Pa. Cmwlth. 2015). On February 24, 2021, Employer served Claimant with its answer to the 2021 Claim Petition which included *res judicata* and collateral estoppel defenses. *See* R.R. at 13a-19a. Claimant appeared at WCJ Rago's August 12, 2021 telephonic hearing, wherein

T.G.A., Petitioner

v.

DEPARTMENT OF EDUCATION and  
Professional Standards and Practices  
Commission, Respondents

No. 471 M.D. 2022

Commonwealth Court of Pennsylvania.

Argued February 8, 2023

Decided September 12, 2023

**Background:** Teacher filed petition for review seeking declaratory, injunctive, and mandamus relief from Department of Education and Professional Standards and Practices Commission regarding their maintenance of teacher's discipline records on their websites, arguing that provision of Educator Discipline Act, requiring Commission and Department to make all adjudications imposing discipline available on their websites, was unconstitutional as applied to teacher by harming his state substantive due process rights to pursue lawful employment as a teacher and to his reputation, when Commission's listing referenced criminal charges of which he was acquitted and which were expunged. Teacher and respondents filed cross-applications for summary relief.

Claimant was afforded the opportunity to respond to the *res judicata* and collateral estoppel issues. *See* R.R. at 70a. WCJ Rago rendered a legal determination on the *res judicata*/collateral estoppel effect of the prior proceedings on the 2021 Claim Petition, *see Pa. Bd. of Prob. & Parole*, for which Claimant's substantive evidence was not relevant. Thus, Claimant's due process claim is meritless.

13. Given this Court's disposition of Claimant's appeal, Claimant's Application for Oral Argument is denied.

**Holdings:** The Commonwealth Court, No. 471 M.D. 2022, Michael H. Wojcik, J., held that:

- (1) teacher was not deprived of property right to teach in state by maintenance of his discipline history on website;
- (2) provision of Act requiring Department to make all adjudications imposing discipline available on website was not unconstitutional as applied to teacher's substantive due process right to teach in state;
- (3) as matter of apparent first impression, to "lift" a teacher's suspension under means to remove the suspension upon the teacher's acquittal of the criminal charges that gave rise to his immediate suspension;
- (4) Department was not required under Criminal History Record Information Act's expungement guidelines to expunge discipline information;
- (5) manner in which Department had listed and maintained discipline history unconstitutionally, as applied, infringed on teacher's substantive due process right to protect his reputation;
- (6) issuance of permanent injunction was warranted; but
- (7) granting mandamus relief was unwarranted.

Ordered accordingly.

Stacy Wallace, J., did not participate in the decision in this case.

### 1. Constitutional Law ⇌3893

For substantive due process rights to attach, there must first be a deprivation of a property right that is constitutionally protected. Pa. Const. art. 1, § 1.

### 2. Constitutional Law ⇌4262

#### Licenses ⇌5

Once an individual has acquired a license to practice a particular profession, the licensed professional has a protected property right, for substantive due process

purposes, in the practice of that profession; nevertheless, the right to practice a chosen profession is subject to the lawful exercise of the power of the State to protect the public health, safety, welfare, and morals by promulgating laws and regulations that reasonably regulate occupations. Pa. Const. art. 1, § 1.

### 3. Constitutional Law ⇌3903

To constitute a lawful exercise of the state's police power, for substantive due process purposes, social and economic legislation must first be directed toward a valid state objective. Pa. Const. art. 1, § 1.

### 4. Constitutional Law ⇌3895

To withstand a substantive due process challenge, a statute or regulation must seek to achieve a valid state objective by means that are rationally related to that objective. Pa. Const. art. 1, § 1.

### 5. Constitutional Law ⇌3895

The "rational relationship standard" of substantive due process by which legislation is judicially measured is that the statute or regulation at issue must have a real and substantial relationship to the object sought to be obtained. Pa. Const. art. 1, § 1.

See publication Words and Phrases for other judicial constructions and definitions.

### 6. Constitutional Law ⇌3895

Whether a statute is wise, or whether it is the best means to achieve the desired result, within meaning of the rational relationship standard of substantive due process, are matters for the legislature, not the courts. Pa. Const. art. 1, § 1.

### 7. Constitutional Law ⇌3895

As long as there is a basis for finding that the statute is rationally related to a legitimate state interest, the statute must

be upheld on a substantive due process challenge. Pa. Const. art. 1, § 1.

#### 8. Injunction ⇌1032, 1095, 1106

To obtain a permanent injunction, a plaintiff must establish a clear right to relief, that there is an urgent necessity to avoid an injury which cannot be compensated for by damages, and that greater injury will result from refusing rather than granting the relief requested; however, unlike a claim for a preliminary injunction, the plaintiff need not establish either irreparable harm or immediate relief.

#### 9. Mandamus ⇌1

Mandamus is an extraordinary writ which lies to compel the performance of a ministerial act or mandatory duty where there is a clear legal right in the petitioner, a corresponding duty in the respondent, and a want of any other appropriate and adequate remedy.

#### 10. Mandamus ⇌168(2)

The burden of proof falls upon the party seeking mandamus to establish his legal right to such relief.

#### 11. Mandamus ⇌12

Mandamus is not used to direct the exercise of judgment or discretion of an official in a particular way.

#### 12. Constitutional Law ⇌4227

##### Education ⇌452(1)

##### Public Employment ⇌245

Teacher was not deprived of property right, as could provide basis for substantive due process claim, to teach in state by maintenance of his discipline history on Department of Education's website pursuant to provision of Educator Discipline Act requiring Department to make all adjudications imposing discipline available on its website, even though discipline history listed previous suspension that referenced criminal charges of which teacher was ac-

quitted and which were expunged; teacher was not prohibited from working as teacher based on criminal charges or lifted suspension, teacher was not charged with crimes that would prohibit him from being employed in school setting, teacher continued to teach out-of-state, and teacher did not aver that he was denied teaching job because of criminal charges or lifted suspension. Pa. Const. art. 1, § 1; 24 Pa. Stat. Ann. §§ 1-111(e), 2070.9b(a)(1), 2070.9b(a)(1)(iii).

#### 13. Constitutional Law ⇌4227

##### Education ⇌452(1)

##### Public Employment ⇌245

Provision of Educator Discipline Act, requiring Department of Education to make all adjudications imposing teacher discipline available on their websites, was not unconstitutional as applied to teacher's substantive due process right to teach in state, although teacher's suspension, imposed pursuant to Act provision requiring suspension upon being indicted for certain crimes, remained publicly available on Department's website even after he was acquitted, charges were expunged, and suspension was lifted; availability of records was rationally related to purpose of Act as it provided information to public and potential employers that teacher's teaching certificate was suspended for period of time based on criminal charges and finding of safety threat, and that suspension was lifted. Pa. Const. art. 1, § 1; 24 Pa. Stat. Ann. §§ 1-111(e), 2070.9b(a)(1), 2070.9b(a)(1)(iii), 2070.15(d).

#### 14. Constitutional Law ⇌1055

The "rational basis test" requires that a law must not be unreasonable, unduly oppressive or patently beyond the necessities of the case, and the means which it employs must have a real and substantial

relation to the objects sought to be attained.

See publication Words and Phrases for other judicial constructions and definitions.

**15. Constitutional Law** ⇨3894, 4040

When confronted with a constitutional challenge on substantive due process grounds, the threshold inquiry is whether the challenged law regulates or restricts a constitutionally protected right; however, in contrast to the right to lawful employment, reputation is a fundamental right, and, as such, it must be examined under strict scrutiny. Pa. Const. art. 1, § 1.

**16. Constitutional Law** ⇨1053

Pursuant to strict scrutiny analysis, legislation that significantly interferes with the exercise of a fundamental right will only be upheld if it is necessary to promote a compelling state interest and is narrowly tailored to effectuate that purpose.

**17. Education** ⇨452(1)

**Public Employment** ⇨245

To “lift” a teacher’s suspension under the Educator Discipline Act means to remove the suspension upon the teacher’s acquittal of the criminal charges that gave rise to his immediate suspension and does not require that disciplinary record of suspension must be destroyed or erased completely. 24 Pa. Stat. Ann. § 2070.9b(a)(1)(iii).

See publication Words and Phrases for other judicial constructions and definitions.

**18. Criminal Law** ⇨1345

**Education** ⇨452(1)

**Public Employment** ⇨245

Department of Education was not required under Criminal History Record Information Act’s (CHRIA) expungement guidelines to expunge teacher’s discipline information when posting teacher’s disci-

pline history on Department website pursuant to Educator Discipline Act requirement to make all adjudications imposing teacher discipline available on website, in case involving teacher who had previous suspension which referenced criminal charges that were later expunged; despite fact that Department had collected information on teacher’s arrest and discipline information on website referenced teacher’s expunged criminal charges, Department was not a “criminal justice agency” under plain language of CHRIA, and discipline information was not “criminal history record” as defined by CHRIA. 18 Pa. Cons. Stat. Ann. §§ 9102, 9014(e), 9124; 24 Pa. Stat. Ann. §§ 2070.9b(a)(1), 2070.9b(a)(1)(iii).

**19. Courts** ⇨90(7)

In general, Superior Court decisions are not binding on the Commonwealth Court, but they offer persuasive precedent where they address analogous issues.

**20. Education** ⇨452(1)

**Public Employment** ⇨245

Expungement of criminal history record information by criminal justice agencies pursuant to Criminal History Record Information Act (CHRIA) does not govern Department of Education’s imposition of educator discipline under Educator Discipline Act based on an educator’s criminal history. 18 Pa. Cons. Stat. Ann. §§ 9102, 9014(e), 9124; 24 Pa. Stat. Ann. §§ 2070.9b(a)(1), 2070.9b(a)(1)(iii).

**21. Education** ⇨452(1)

**Public Employment** ⇨245

Limitations under Criminal History Record Information Act on how board, commission, or department of Commonwealth can consider applicant’s criminal convictions for purposes of using license, certificate, registration, or permit, did not require Department of Education to ex-

punge from its website teacher's discipline history, which showed that he had been previously suspended pursuant to Educator Discipline Act provision, requiring suspension upon being indicted for certain crimes when accompanied by finding that educator poses threat to health, safety, or welfare of students and that referenced underlying criminal charges of which he had been acquitted and which had been expunged, where teacher had already possessed a teaching certificate and was not applicant for teaching certificate. 18 Pa. Cons. Stat. Ann. § 9124(a); 24 Pa. Stat. Ann. §§ 1-111(e), 2070.9b(a)(1), 2070.9b(a)(1)(iii).

## 22. Licenses ⇌20, 38

The Criminal History Record Information Act (CHRIA) applies only to applications for licensure and does not restrict a licensing board's power to suspend or revoke a professional license. 18 Pa. Cons. Stat. Ann. § 9124(b).

## 23. Education ⇌452(1)

### Public Employment ⇌245

Law governing Bureau of Professional and Occupational Affairs, limiting use of arrest and conviction records under certain circumstances did not require Department of Education or Professional Standards and Practices Commission to remove from websites teacher's discipline history, which showed that he had been suspended pursuant to Educator Discipline Act provision, requiring suspension upon being indicted for certain crimes and referenced underlying criminal charges of which he had been acquitted and which had been expunged; Bureau of Professional and Occupational Affairs was in Department of State, Commission was operated under Department of Education, and was not bureau of Department of State. 24 Pa. Stat. Ann. §§ 1-111(e), 2070.9b(a)(1),

2070.9b(a)(1)(iii); 63 Pa. Cons. Stat. Ann. § 3101 et seq.

## 24. Constitutional Law ⇌1053

Under strict scrutiny analysis, a law may only be deemed constitutional if it is narrowly tailored to a compelling state interest.

## 25. Constitutional Law ⇌1053

Under a strict scrutiny analysis, courts must weigh the rights infringed upon by the law against the interest sought to be achieved by it, and also scrutinize the relationship between the law (the means) and that interest (the end).

## 26. Constitutional Law ⇌4040

Individuals have a fundamental right, protected by substantive due process, to protect their reputation from false or misleading information that affects how they are regarded by their community. Pa. Const. art. 1, § 1.

## 27. Constitutional Law ⇌4227

### Education ⇌452(1)

### Public Employment ⇌245

Manner in which Department of Education's Professional Standards and Practices Commission had listed and maintained teacher's discipline history, pursuant to provision of Educator Discipline Act requiring Department to make all adjudications imposing teacher discipline available on their websites, was not narrowly tailored to Commonwealth's interest in safeguarding students and school staff, and thus, as applied, unconstitutionally infringed on teacher's substantive due process right to protect his reputation; listed disciplinary history included specific references to crimes for which teacher had been charged and acquitted, charges had been expunged, and provision of Act did not require display of specific criminal information for educators who received discipline because of criminal charges.

Pa. Const. art. 1, § 1; 24 Pa. Stat. Ann. §§ 1-111(e), 2070.9b(a)(1), 2070.9b(a)(1)(iii).

## 28. Civil Rights ⇌1761

Issuance of permanent injunction was warranted enjoining Department of Education and Professional Standards and Practices Commission from listing on its website teacher's criminal charges, of which he had been acquitted and which had been expunged, that led to his suspension, which had been displayed pursuant to provision of Educator Discipline Act requiring Department to make all adjudications imposing teacher discipline available on their websites; teacher had established clear right to excision of information as remedy for violation of his substantive due process right to reputation, which could not be compensated for by damages, and greater injury would result from refusing, rather than granting, requested relief. Pa. Const. art. 1, § 1; 24 Pa. Stat. Ann. §§ 1-111(e), 2070.9b(a)(1), 2070.9b(a)(1)(iii).

## 29. Declaratory Judgment ⇌210

### Mandamus ⇌79

Granting teacher's request for mandamus relief was unwarranted to compel Department of Education to remove his disciplinary history from its website, which included reference to criminal charges of which he had been acquitted and which had been expunged, that led to suspension, which had been displayed pursuant to provision of Educator Discipline Act requiring Department to make all adjudications imposing teacher discipline available on their websites; court's directive to Department to remove references to criminal charges by issuing declaratory and injunctive relief did not involve ministerial act or mandatory duty,

but was rather narrowly tailored remedy to address infringement of teacher's constitutional right to protect his reputation. Pa. Const. art. 1, § 1; 24 Pa. Stat. Ann. § 2070.9b(a)(1).

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West Codenotes

## Unconstitutional as Applied

24 Pa. Stat. Ann. § 2070.15(d)

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## Original Jurisdiction

Joseph F. Canamucio and Scott Stedjan, Harrisburg, for Petitioner.

Kevin Bradford, Philadelphia, for Respondents.

BEFORE: HONORABLE RENÉE COHN JUBELIRER, President Judge, HONORABLE PATRICIA A. McCULLOUGH, Judge, HONORABLE ANNE E. COVEY, Judge, HONORABLE MICHAEL H. WOJCIK, Judge, HONORABLE CHRISTINE FIZZANO CANNON, Judge, HONORABLE ELLEN CEISLER, Judge, HONORABLE LORI A. DUMAS, Judge

## CASE SEALED

### OPINION BY JUDGE WOJCIK

T.G.A. (Educator)<sup>1</sup> filed a petition for review in our original jurisdiction seeking declaratory, injunctive, and mandamus relief from the Department of Education (Department) and the Professional Standards and Practices Commission (Commission) (together, Respondents) regarding Respondents' maintenance of Educator's discipline record on their websites.<sup>2</sup> Edu-

1. This Court granted Educator's application to seal this case in an order dated October 5, 2022. Therefore, we refer to T.G.A. by his initials only, or as "Educator."

2. The Commission maintains public discipline records on its website that are accessible to the public and give details about an educator's discipline history. The Department

cator objects to Respondents' continued listing of his immediate suspension on their websites when he was acquitted of the underlying criminal charges and those criminal charges were expunged. Educator seeks review of the issue of whether Section 15(d) of the Educator Discipline Act (Act), 24 P.S. § 2070.15(d),<sup>3</sup> which requires the Commission and the Department to make all adjudications imposing discipline available on their websites, is unconstitutional as applied to Educator by harming his right to pursue lawful employment as a teacher and to his reputation, when the Commission's listing references criminal charges of which he was acquitted and which were expunged. Educator and Respondents filed Cross-Applications for Summary Relief which are now before us. After careful review, we deny in part and grant in part both Educator's and Respondents' cross-applications for summary relief, grant Educator's application for a permanent injunction, and deny Educator's application for mandamus relief. Specifically, because we conclude that Respondents' maintenance of Educator's discipline record that continues to list the criminal

charges of which he was acquitted and which were expunged on their websites is unconstitutional as applied to Educator, we direct Respondents to remove references to Educator's criminal charges from Educator's discipline history on the Commission's website.

Educator and Respondents were before this Court for consideration of Educator's application for a preliminary injunction, and Respondents' preliminary objections, which were denied and overruled, respectively, in a memorandum opinion filed on November 1, 2022. *See T.G.A. v. Department of Education* (Pa. Cmwlth., No. 471 M.D. 2022, filed November 1, 2022) (Wojcik, J.)(single-judge op.) (*T.G.A. I*). The facts as stipulated to by the parties and summarized by the Court are as follows.

On August 21, 2017, Educator was charged with aggravated indecent assault, unlawful restraint, and indecent assault for actions involving an adult he met on a dating website. *T.G.A. I*, slip op. at 1-2. After a hearing on February 28, 2018, in which Educator chose not to participate, Educator's teaching certificate was imme-

also maintains a listing of teacher certifications on a different website known as the Teacher Information Management System (TIMS), through which educators and school entities may access certification information including an educator's discipline history. The general public can search both websites to review certificate and discipline information of educators. Educator's discipline history on TIMS is in summary form only without further details. Educator's discipline history is available on the Department's TIMS website at: <https://www.education.pa.gov/Teachers%20-%20Administrators/Certifications/Pages/details.aspx?certid=3286> (last visited 8/30/23). More detailed discipline information is contained on the Commission's website and includes a recitation of Educator's criminal charges. Educator's discipline history is available on the Commission's website at: <https://www.education.pa.gov/Teachers%20-%20Administrators/Certifications/Pages/details.aspx?certid=3097> and

<https://www.education.pa.gov/Teachers%20-%20Administrators/Certifications/Pages/details.aspx?certid=3286> (last visited 8/30/23).

3. Act of December 12, 1973, P.L. 397, *as amended*, 24 P.S. §§ 2070.1a-2070.18c. Section 15(d) of the Act, added by Section 3 of the Act of December 14, 1989, P.L. 612, 24 P.S. § 2070.15(d), provides as follows:

(d) The Commission shall make all adjudications imposing discipline, other than a private reprimand, available on a publicly accessible Internet website and shall cooperate with the [D]epartment in maintaining a central online registry on a publicly accessible Internet website of charter and cyber charter school staff members and contracted educational provider staff members whose eligibility for employment has been suspended, revoked, surrendered or otherwise disciplined pursuant to this [A]ct.

diately suspended pursuant to Section 9.2(a)(1) of the Act, added by the Act of December 22, 2000, P.L. 918, 24 P.S. § 2070.9b(a)(1), which requires the Commission to direct the Department to suspend a teacher's certificate upon being indicted with a crime set forth in Section 111(e)(1) through (3) of the Public School Code of 1949 (School Code),<sup>4</sup> when accompanied by a finding that the educator poses a threat to the health, safety, or welfare of students or other persons in the schools of the Commonwealth. *T.G.A. I*, slip op. at 2. Pursuant to Section 15(d) of the Act, a record of Educator's immediate suspension was posted on Respondents' websites. *Id.* On October 11, 2018, Educator was acquitted of all criminal charges in a bench trial. *Id.* Thereafter, the Commission directed the Department to lift Educator's suspension as required by Section 9.2(a)(1)(iii) of the Act, 24 P.S. § 2070.9b(a)(1)(iii), because Educator was acquitted of the charges. *Id.* Notice that Educator's suspension was lifted appears on Respondents' websites, but the charges underlying his immediate suspension continue to be listed on the Commission's website.<sup>5</sup> Educator continues to reside in Pennsylvania, his Pennsylvania certificate is inactive for reasons unrelated to any discipline, and he remains employed as a

teacher by a school district in Ohio, which is not far from his home. *Id.* In a letter dated June 9, 2022, Educator, through counsel, wrote to the Department requesting that the Department remove its publication of his criminal charges from its website, which the Department did not do. *Id.* See Petitioner's Brief in Support of Summary Relief, Exhibit I.

The Court overruled Respondents' first preliminary objection because the defense of sovereign immunity does not apply to the relief sought by Educator. *T.G.A. I*, slip op. at 6-8. The Court concluded that because Educator "seeks to restrain Respondents from engaging in conduct he alleges is unconstitutional, the sovereign immunity defense does not apply." *Id.* at 8. The Court overruled Respondents' second preliminary objection in the nature of a demurrer because it was not clear and free from doubt that Educator is not entitled to relief. *Id.* at 8. The Court also denied Educator's request for a preliminary injunction because Educator failed to show that a preliminary injunction was necessary to prevent any immediate harm or that he was denied employment as a teacher because of the Department's listing. *Id.* at 8-11. Respondents and Educator filed Cross-Applications for Summary Relief that are now before us.<sup>6</sup>

4. Act of March 10, 1949, P.L. 30, as amended, 24 P.S. § 1-111(e)(1)-(3). There is no dispute that the crimes Educator was charged with are listed in Section 111(e)(1) of the School Code.

5. As permitted by Section 9.2(b) of the Act, 24 P.S. § 2070.9b(b), the Department filed a second set of educator misconduct charges against Educator under Section 13 of the Act, 24 P.S. § 2070.13, based on the same conduct for which Educator faced criminal charges. After a hearing, the Commission dismissed this charge, finding insufficient evidence of educator misconduct. All records pertaining to this educator misconduct charge were ordered to be expunged from Educator's file

pursuant to Section 15(c) of the Act, 24 P.S. § 2070.15(c). Educator does not dispute that these discipline records were properly expunged.

6. Summary relief under Pa.R.A.P. 1532(b) is available where:

the "party's right to judgment is clear and no material issues of fact are in dispute." For summary relief purposes, the record "is the same as a record for purposes of a motion for summary judgment" and includes pleadings, depositions, answers to interrogatories, admissions, affidavits, and reports signed by expert witnesses. "When ruling on an application for summary relief, we review the record in the light most fa-



[1–5] As to the employment issue, Educator and Respondents agree on the applicable legal framework for review, as follows. For substantive due process rights to attach, there must first be a deprivation of a property right that is constitutionally protected. *Khan v. State Board of Auctioneer Examiners*, 577 Pa. 166, 842 A.2d 936, 946 (2004). Pursuant to article I, section 1 of the Pennsylvania Constitution,<sup>7</sup> all persons in the Commonwealth “possess a protected interest in the practice of their profession.” *Khan*, 842 A.2d at 946. Once an individual has acquired a license to practice a particular profession, “the licensed professional has a protected property right in the practice of that profession.” *Id.* “Nevertheless, the right to practice a chosen profession is subject to the lawful exercise of the power of the State to protect the public health, safety, welfare, and morals by promulgating laws and regulations that reasonably regulate occupations.” *Id.*

To constitute a lawful exercise of the state’s police power, social and economic legislation must first be directed toward a valid state objective. [ ] To withstand a substantive due process challenge, a statute or regulation must seek to achieve a valid state objective by means that are rationally related to that objective. [ ] The rational relationship standard of substantive due process by

avorable to the nonmoving party, resolving all doubts as to the existence of a disputed material fact against the moving party.” *Pennsylvania Manufacturers’ Association Insurance Company v. Johnson Matthey, Inc.*, 243 A.3d 298, 305 n.6 (Pa. Cmwlth. 2020) (internal citations omitted).

7. Pa. Const. art. I, § 1. Article I, section 1 states: “All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.”

which legislation is judicially measured is that the statute or regulation at issue must have a real and substantial relationship to the object sought to be obtained.

*Id.* (internal citations omitted).

[6, 7] Our Supreme Court has acknowledged that certain property rights in the continued practice of one’s profession are sufficiently important to surround them with numerous legal protections, “including disciplinary hearings that are consistent with procedural due process.” *Khan*, 842 A.2d at 947.

Indeed, this Court has unequivocally held that the right to pursue a profession is not a fundamental right for substantive due process purposes, which would entitle it to strict scrutiny, and legislation infringing upon that right need only be examined to determine whether there is a real and substantial relationship to a governmental interest.

*Id.* (internal citations omitted.) Whether a statute is wise, or whether it is the best means to achieve the desired result, are matters for the legislature, not the courts. *Id.* “As long as there is a basis for finding that the statute is rationally related to a legitimate state interest, the statute must be upheld.” *Id.*

[8–11] As to his employment rights, Educator seeks declaratory,<sup>8</sup> injunctive,<sup>9</sup>

8. For declaratory relief, courts shall have the power to “declare rights, status, and other legal obligations” under Section 7532 of the Declaratory Judgments Act (DJA), 42 Pa. C.S. § 7532. The DJA’s purpose is remedial. “Its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations, and is to be liberally construed and administered.” 42 Pa. C.S. § 7541(a); *Bayada Nurses, Inc. v. Department of Labor and Industry*, 607 Pa. 527, 8 A.3d 866, 874 (2010).

9. Relevant here, to prevail on a claim for a permanent injunction, Educator

and mandamus<sup>10</sup> relief to compel Respondents to remove his discipline listing from their websites. Educator argues that he was unable to participate in the hearing before his immediate suspension was imposed, because he would have been compelled to potentially incriminate himself while criminal charges were pending. Educator argues that Respondents did not notify him of the option to provide an affidavit agreeing not to teach while criminal charges were pending. See Section 9.2(a)(1)(ii) of the Act, 24 P.S. § 2070.9b(a)(1)(ii). Educator argues that his continued association with criminal charges of which he was acquitted and which were expunged is not rationally related to Respondents' legitimate governmental interest in either student or staff safety. In the alternative, Educator argues that Respondents' actions in maintaining his discipline record are arbitrary.

Respondents contend that their right to regulate Educator's employment is a legitimate exercise of their police powers, and that maintenance of Educator's discipline listing is rationally related to the Act's purpose, which is to safeguard school students and staff. Respondents object to Educator's request for declaratory relief because he has not exhausted the administrative processes available to him. Respon-

must establish a clear right to relief, that there is an urgent necessity to avoid an injury which cannot be compensated for by damages, and that greater injury will result from refusing rather than granting the relief requested. However, unlike a claim for a preliminary injunction, the plaintiff need not establish either irreparable harm or immediate relief.

*Big Bass Lake Community Association v. Warren*, 950 A.2d 1137, 1144 n.8 (Pa. Cmwlth. 2008) (internal citations omitted).

10. "Mandamus is an extraordinary writ which lies to compel the performance of a

respondents argue that Educator could have participated in the pre-suspension hearing without incriminating himself by offering argument only, or by offering testimony or evidence from others to show that he was not a danger to students or staff. Respondents also note that, as specifically provided in Section 9.2(a)(1)(ii) of the Act, Educator could have avoided an immediate suspension, and thus would have had no discipline listing, if he filed an affidavit agreeing not to work as a teacher while his criminal charges were pending, but he did not do so. Respondents also argue that Educator failed to sufficiently aver that his right to work as a teacher has been infringed upon by Respondents' discipline listing, because, in fact, Educator remains employed in Ohio as a teacher, and he presented no evidence that he was denied teaching employment in Pennsylvania because of Respondents' discipline listing.

Educator clearly has a protected property interest in his Pennsylvania teaching certificate. Educator does not dispute that the Department legitimately imposed an immediate suspension of his certificate pursuant to Section 9.2(a)(1) of the Act, based on his indictment for several crimes under Section 111(e)(1) of the School Code, accompanied by a finding that he posed a

ministerial act or mandatory duty where there is a clear legal right in [the petitioner], a corresponding duty in [the respondent(s)], and a want of any other appropriate and adequate remedy." *Valley Forge Racing Association, Inc. v. State Horse Racing Commission*, 449 Pa. 292, 297 A.2d 823, 824-25 (1972). "The burden of proof falls upon the party seeking this extraordinary remedy to establish his legal right to such relief." *Werner v. Zazyczny*, 545 Pa. 570, 681 A.2d 1331, 1335 (1996). "Mandamus is not used to direct the exercise of judgment or discretion of an official in a particular way." *Clark v. Beard*, 918 A.2d 155, 159 (Pa. Cmwlth. 2007).

threat to the health, safety, or welfare of students or school staff. Educator also does not dispute that Respondents properly lifted his suspension pursuant to Section 9.2(a)(1)(iii) of the Act, and noted the lifting of his suspension on their websites upon receipt of certified court documents establishing his acquittal. Therefore, we focus on whether Respondents' maintenance of Educator's discipline records on their websites pursuant to Section 15(d) of the Act bears a rational relationship to the Act's purpose of ensuring the health, safety, and welfare of students and school staff, and we conclude that it does.

[12] We first analyze whether Educator's property right to teach in Pennsylvania has been deprived by Respondents' maintenance of his discipline history on their websites, and we conclude that Educator has suffered no such deprivation. First, we note that Educator is not prohibited from working as a teacher in Pennsylvania based on his criminal charges or because of his lifted suspension. Although Section 111(e)(1) through (3) of the School Code prohibits school employees with certain criminal convictions from being employed in a school setting, there is no such prohibition for school employees who are charged with those crimes. Second, as stipulated to by the parties, Educator continues to teach in Ohio where he continues to pursue his lawful profession. *See* Pre-Hearing Stipulations attached to Petitioner's Brief in Support of Summary Relief. Third, Educator did not aver or testify before this Court that he was denied a teaching job in Pennsylvania because of his criminal charges or his lifted suspension. *See T.G.A. I*, slip op. at 2. Therefore, Educator failed to show that he has been deprived of his protected property right to continue his lawful employment as a teacher by Respondents' maintenance of his dis-

cipline history on their websites. *See Khan*, 842 A.2d at 946.

[13, 14] Further, we conclude that Respondents' maintenance of Educator's discipline records does not violate Educator's right to lawfully teach in Pennsylvania because the availability of these records is rationally related to the Act's purpose of safeguarding students and school staff from contact with those charged with serious crimes who pose a threat to the safety of those students and staff. Although Educator's suspension has been lifted, the maintenance of his discipline records provides information to the public and potential employers that Educator's teaching certificate was suspended for a period of time based on criminal charges and a finding of a safety threat, the suspension was lifted, and he is currently eligible to teach in Pennsylvania should he choose to reactivate his Pennsylvania certificate. The rational basis test requires that a law "must not be unreasonable, unduly oppressive or patently beyond the necessities of the case, and the means which it employs must have a real and substantial relation to the objects sought to be attained." *Nixon v. Commonwealth*, 576 Pa. 385, 839 A.2d 277, 287 (2003) (quoting *Gambone v. Commonwealth*, 375 Pa. 547, 101 A.2d 634, 637 (1954)). *See also Khan*, 842 A.2d at 946. Under this standard, we reject Educator's argument that Section 15(d) of the Act is unconstitutional as applied to his employment rights, because Respondents' maintenance of Educator's discipline history is rationally related to the ongoing safety of school students and staff.

[15, 16] Educator also seeks declaratory, injunctive, and mandamus relief as to his reputation. As to the reputation issue, Educator and Respondents agree on the applicable legal framework for review, as follows. Reputation is protected in article I, section 1 of the Pennsylvania Constitu-

tion. When confronted with a constitutional challenge on substantive due process grounds, the threshold inquiry is whether the Act regulates or restricts a constitutionally protected right. *Khan*, 842 A.2d at 946. However, in contrast to the right to lawful employment, reputation is a fundamental right, and, as such, it must be examined under strict scrutiny. *Id.* at 947. Pursuant to strict scrutiny analysis, legislation that significantly interferes with the exercise of a fundamental right will only be upheld if it is necessary to promote a compelling state interest and is narrowly tailored to effectuate that purpose. *Id.* See also *Nixon*, 839 A.2d at 287.

In *In re Fortieth Statewide Investigating Grand Jury*, 647 Pa. 489, 190 A.3d 560 (2018), our Supreme Court considered whether the public release of a report of a statewide investigating grand jury that contained findings of criminal or morally reprehensible conduct of certain individuals impaired their reputations in violation of article I, section 1 of the Pennsylvania Constitution. Relevant here, the Court confirmed that the “protection of one’s reputation is a fundamental right under the Pennsylvania Constitution.” *Id.* at 566. The appellants in that case, members of the Roman Catholic clergy accused by the grand jury of such conduct, sought to have “unsupported, false, and/or misleading findings [ ] excised from the report prior to its release to the public, in order that their reputations might be preserved.” *Id.* at 571. The Court opined that “the right of citizens to security in their reputations is not some lesser-order precept. [ ] Rather, in Pennsylvania, it is a fundamental constitutional entitlement.” *Id.* at 572 (internal citation omitted). Because the Court determined that the appellants demonstrated that release of the grand jury report unconstitutionally impaired their rights to reputation, the Court ordered the grand jury report to be excised to remove “spe-

cific and contextual references” to any appellant who had a challenge pending before the Court. *Id.* at 578.

As to his reputation, Educator argues that Respondents’ perpetual publication of his immediate suspension that references the underlying criminal charges, which were dismissed and expunged, violates his substantive due process rights by infringing on his right to reputation protected by article I, section 1 of the Pennsylvania Constitution. Educator argues that being publicly associated with charges of which he was acquitted and were expunged frustrates the purpose of the Criminal History Record Information Act (CHRIA), 18 Pa. C.S. §§ 9101-9183, and specifically violates Section 9122 of CHRIA, 18 Pa. C.S. § 9122 (governing expungement of criminal history record information), and Section 9124 of CHRIA, 18 Pa. C.S. § 9124 (governing the use of criminal history record information by licensing agencies). Educator acknowledges that immediate suspension under Section 9.2(a)(1) of the Act comports with the purpose of protecting students and school staff from a teacher charged with serious crimes, while the criminal process is pending. Educator objects to Respondents’ permanent maintenance of Educator’s discipline record because it no longer serves a compelling state interest when the “danger” has passed, once Educator was acquitted and the charges expunged. Educator further argues that when his suspension was lifted pursuant to Section 9.2(a)(1)(iii) of the Act, Respondents should have erased or expunged his discipline record entirely, because the underlying criminal charges were expunged.

Respondents argue that the Act requires suspension under these circumstances to protect students and school staff from Educator and to ensure that past educator discipline remains available to protect the ongoing safety of school students and staff.

Respondents argue that in furtherance of the state's compelling interests in both safety and transparency, suspension based on sexual misconduct charges is both immediate and public and is not subject to a stay even if appealed pursuant to Section 15(b)(1) of the Act, 24 P.S. § 2070.15(b)(1). Respondents further argue that Section 17.2 of the Act, added by the Act of December 18, 2013, P.L. 1205, 24 P.S. § 2070.17b, which contains strict confidentiality provisions for educator discipline proceedings, specifically exempts from these strict confidentiality requirements immediate suspensions, information previously made public, or information that was available independently. Respondents submit that although Educator's criminal charges were expunged after acquittal, CHRIA does not apply to Respondents because neither the Department nor the Commission are criminal justice agencies subject to CHRIA. Respondents note that criminal history record information collected by noncriminal justice agencies is specifically excluded from CHRIA's scope, pursuant to Section 9102 of CHRIA, 18 Pa. C.S. § 9102 (Definitions), and Section 9104(e) of CHRIA, 18 Pa. C.S. § 9104(e) ("[i]nformation collected by noncriminal justice agencies and individuals identified in this section shall not be considered criminal history record information"). Respondents contend that Educator's reputation was not harmed by the accurate listing of Educator's arrest contained on their websites, and information on Educator's arrest is already available to the public or any employer when they conduct a simple Google search. See Exhibit 2 to Respondents' Brief.

Our analysis of this issue turns on the language of the Act, and its effect on Educator's fundamental right to protect his reputation from misleading or inaccurate information on Respondents' websites. In interpreting the Act, the following applies.

When presented with issues of statutory interpretation, this Court's standard of review is de novo and our scope of review is plenary. *Whitmoyer v. Workers' Compensation Appeal Board (Mountain Country Meats)*, 646 Pa. 659, 186 A.3d 947, 954 (2018). We are mindful, as always, that the object of statutory interpretation is to ascertain the intent of the General Assembly, the best indicator of which is the plain language of the statute itself. 1 Pa. C.S. § 1921(a)(b); *Department of Labor [and] Industry v. [Workers' Compensation Appeal Board] (Lin & [Eastern] Taste)*, 647 Pa. 28, 187 A.3d 914, 922 (2018). Where statutory language is clear and unambiguous, this Court must give effect to the words of the statute. *Crown Castle NG [East] LLC v. Pennsylvania Public Utility Commission* [660 Pa. 674], 234 A.3d 665, 674 (2020). When interpreting a statute, courts may not look beyond the plain meaning of a statute under the guise of pursuing its spirit. *Id.*; see also *Warrantech Consumer Products Services, Inc. v. Reliance Insurance Company in Liquidation*, 626 Pa. 218, 96 A.3d 346, 354 (2014).

*City of Johnstown v. Workers' Compensation Appeal Board (Sevanick)*, — Pa. —, 255 A.3d 214, 221 (2021). Further, it is a rule of statutory construction that where terms are not otherwise defined in a statute, "[w]ords and phrases shall be construed according to their common and approved usage. . . ." Section 1903 of the Statutory Construction Act of 1972, 1 Pa. C.S. § 1903. We generally use dictionaries as source material for determining the common and approved usage of a term. *Gmerek v. State Ethics Commission*, 751 A.2d 1241, 1260 (Pa. Cmwlth. 2000), *aff'd*, 569 Pa. 579, 807 A.2d 812 (2002).

Section 1.2 of the Act, added by the Act of December 20, 2000, P.L. 918, 24 P.S.

§ 2070.1b (Definitions), includes “suspension” in the definition of “discipline.” “Suspension” is defined as “the temporary termination of a certificate . . . for a specific period of time, for an indefinite period of time or until specific conditions are met.” *Id.* The Act does not directly define “lift” or “expunge,” but it describes specific circumstances in which the Department must “lift a suspension” or “expunge” an educator’s discipline records. In the context of discipline for criminal offenses, Section 9.2(a)(1)(iii) of the Act requires Respondents to “immediately lift a suspension upon receipt of certified court documents establishing that the charges have been dismissed or otherwise removed.” In the context of reinstatement of a certificate, Section 16(a) of the Act, 24 P.S. § 2070.16(a), permits an educator whose certificate has been suspended to “apply to the [C]ommission for an order lifting the suspension.” The Commission “shall order the lifting of the suspension . . . if the [C]ommission determines it would be just and proper.” *Id.* When an educator’s suspension has been lifted, the educator is eligible to teach in Pennsylvania.

In contrast, Section 15(c) of the Act requires:

Where the [C]ommission’s adjudication finds no educator misconduct under this [A]ct, the charges pertaining to the disciplinary proceeding shall be expunged from any personal or professional file of the educator maintained by the [D]epartment and the school entity unless the school entity has taken or is pursuing local disciplinary action against the educator.

24 P.S. § 2070.15(c). Thus, although the Act does not directly define “lift” or “expunge,” the Act directs that suspensions be lifted in certain circumstances, and discipline records be expunged in other circumstances. The Act does not state that an

educator’s suspension must be expunged when the educator is acquitted of the criminal charges that gave rise to his immediate suspension.

Because they are not specifically defined in the Act, we turn to other sources to construe “lift” and “expunge” according to their common and approved usage. “Lift” is defined as follows:

To raise, to take up. To “lift” a promissory note is to discharge its obligation by paying its amount or substituting another evidence of debt. To “lift the bar” of the statute of limitations, or of an estoppel, is to remove the obstruction which it interposes, by some sufficient act or acknowledgement.

Black’s Law Dictionary 924-25 (6th ed. 1990). “Expunge” is defined as “[t]o destroy; blot out; obliterate; erase; effect designedly; strike out wholly. The act of physically destroying information—including criminal records—in files, computers, or other depositories.” Black’s Law Dictionary 582 (6th ed. 1990).

[17] With the descriptions of these terms in the Act and the definitions of these terms in mind, we conclude that to “lift” Educator’s suspension under the Act means to remove the suspension upon Educator’s acquittal of the criminal charges that gave rise to his immediate suspension. We reject Educator’s argument that the disciplinary record of his suspension must be destroyed or erased completely, because the legislature did not require Respondents to “expunge” a suspension upon acquittal of criminal charges, but rather to “lift” the suspension. We may not rewrite the Act to substitute “expunge” for “lift.” *City of Johnstown*, 255 A.3d at 221. We further note that here, Respondents lifted Educator’s suspension after he was acquitted of his criminal charges pursuant to Section 9.2(a)(1)(iii) of the Act, and Respondents expunged all of

Educator's records relating to a separate educator misconduct charge after the Commission dismissed the charge pursuant to Section 15(c) of the Act. The difference between lifting a suspension and expunging a discipline record were clearly demonstrated in Educator's interactions with Respondents.

[18, 19] Educator's attempts to equate expungement of criminal records under CHRIA with expungement of his discipline history under the Act are likewise unpersuasive. Under the plain language of CHRIA, neither the Department nor the Commission are criminal justice agencies, as that term is defined in CHRIA. *See* 18 Pa. C.S. § 9102. Similarly, educator discipline information maintained by Respondents is not criminal history record information as defined in CHRIA. *Id.* Further, CHRIA specifically states that "[i]nformation collected by noncriminal justice agencies and individuals from the sources identified in this section shall not be considered criminal history record information." 18 Pa. C.S. § 9104(e). Therefore, although Respondents collected information on Educator's arrest, because those agencies are not criminal justice agencies, they are not subject to CHRIA's expungement guidelines under Section 9124 of CHRIA, 18 Pa. C.S. § 9124. *See also Commonwealth v. Harris*, 212 A.3d 64, 69 n.3 (Pa. Super. 2019) (agencies that are not criminal justice agencies were not required to expunge criminal history record information).<sup>11</sup>

In *Jones v. Pennsylvania Department of Education*, 2018 WL 8693440 (Pa. Cmwlth., No. 1690 C.D. 2017, filed October

4, 2018), our Court considered whether an educator who pled guilty to a disqualifying crime in New Jersey, whose conviction was later expunged, was subject to discipline under the Act, and determined that she was.<sup>12</sup> In that case, the Department lodged an educator misconduct complaint against the educator pursuant to Section 9.2(a)(2) of the Act, 24 P.S. § 2070.9b(a)(2), due to her conviction of theft by deception, a crime of moral turpitude under the Act. *Jones*, slip op. at 2. Our Court affirmed the Department's revocation of the educator's Pennsylvania teaching certificate based on her conviction of a crime of moral turpitude, even though the conviction was ultimately expunged in New Jersey, holding that "the Commission did not err by declining to deem [the educator's] theft by deception conviction expunged and terminate disciplinary proceedings against her on that basis." *Jones*, slip op. at 5. The Court further held that the Commission did not violate the educator's due process rights under article I, section 1 of the Pennsylvania Constitution, because the educator had a mechanism by which she could seek reinstatement of her teaching certification under Section 16 of the Act, 24 P.S. § 2070.16. *Jones*, slip op. at 6. The Court held that "this [revocation] sanction represents a rational exercise of the Commonwealth's police power and, in addition can potentially be undone at this point if [the educator] chooses to avail herself of the aforementioned reinstatement process." *Id.*

[20] Our Court's rationale in *Jones*, which affirmed the Department's imposition of educator discipline even when the

11. "In general, Superior Court decisions are not binding on this Court, but they offer persuasive precedent where they address analogous issues." *Lerch v. Unemployment Compensation Board of Review*, 180 A.3d 545, 550 (Pa. Cmwlth. 2018).

12. *See* Pa.R.A.P. 126(b)(1)-(2) ("As used in this rule, 'non-precedential decision' refers to . . . an unreported memorandum opinion of the Commonwealth Court filed after January 15, 2008. [ ] Non-precedential decisions . . . may be cited for their persuasive value.").

criminal conviction underlying the discipline was expunged in another state, is equally applicable here. Therefore, we reject Educator’s argument the Act and CHRIA should be read *in pari materia* regarding the definition of expungement. We acknowledge that statutes are considered *in pari materia* when “they relate to the same persons or things,” and that “[s]tatutes or parts of statutes *in pari materia* shall be construed together, if possible, as one statute.” Section 1932 of the Statutory Construction Act of 1972, 1 Pa. C.S. § 1932. We conclude that the Act, relating to educator discipline, and CHRIA, relating to the use of criminal history record information by criminal justice agencies, do not relate to the same persons or things with respect to expungement of records. Expungement of criminal history record information by criminal justice agencies does not govern Respondents’ imposition of educator discipline based on an educator’s criminal history.

[21, 22] We are likewise unpersuaded by Educator’s argument that expungement under the Act should be interpreted in light of recent changes to CHRIA or the law governing the Bureau of Professional and Occupational Affairs, commonly known as Act 53.<sup>13</sup> Section 9124(a) of CHRIA, 18 Pa. C.S. § 9124(a), limits how a board, commission, or department of the Commonwealth may consider an applicant’s criminal convictions for purposes of issuing a license, certificate, registration, or permit. Section 9124(b) of CHRIA, 18 Pa. C.S. § 9124(b), prohibits Commonwealth boards, commissions, or departments from using, relevant here, arrest records where the arrest did not result in conviction or convictions that have been expunged, “in

consideration of an application for a license, certificate, registration[,] or permit.” Our Court considered the application of Section 9124(b) of CHRIA to a licensee’s application for reinstatement of his license and held that it “applies only to applications for licensure and does not restrict a licensing board’s power to suspend or revoke a professional license.” *Fulton v. Bureau of Professional and Occupational Affairs, State Board of Barber Examiners*, 169 A.3d 718, 725 (Pa. Cmwlth. 2017). Similarly here, Educator here already possesses a teaching certificate and is not an applicant for a teaching certificate. Therefore, the limitations in Section 9124 of CHRIA are not applicable to him.

[23] Further, by its plain language, Chapter 31 of the law governing the Bureau of Professional and Occupational Affairs, licensing boards, and licensing commissions, 63 Pa. C.S. §§ 3101-3118, which includes limitations on the use of arrest and conviction records under certain circumstances, does not apply to Educator or Respondents. Consideration of criminal convictions is limited to an applicant for a license or certificate, and Educator is not an applicant. *See* 63 Pa. C.S. § 3113(b). Furthermore, Chapter 31 of the law governing the Bureau of Professional and Occupational Affairs, licensing boards, and licensing commissions defines “licensing commission” as “a departmental or administrative commission under the bureau,” whereas “bureau” is defined as “[t]he Bureau of Professional and Occupational Affairs in the Department of State.” *See* 63 Pa. C.S. § 3102 (Definitions). Here, the Professional Standards and Practices Commission is operated under the Department of Education, and neither the De-

13. The Act of July 1, 2020, P.L. 575, No. 53, commonly known as Act 53, amended Section 9124 of CHRIA and enacted Chapter 31 of the law governing the Bureau of Professional and

Occupational Affairs, licensing boards, and licensing commissions, 63 Pa. C.S. §§ 3101-3118.



partment nor the Commission is a bureau in the Department of State.

[24, 25] We now turn to the manner in which Respondents listed and maintained Educator's discipline records to determine whether their listings violate Educator's fundamental right to protect his reputation. As a fundamental right guaranteed in article I, section 1 of the Pennsylvania Constitution, we must utilize a strict scrutiny analysis to determine whether Educator's right to reputation has been infringed upon by Section 15(d) of the Act. *Khan*, 842 A.2d at 947. "Under that analysis, courts must weigh the rights infringed upon by the law against the interest sought to be achieved by it, and also scrutinize the relationship between the law (the means) and that interest (the end)." *Nixon*, 839 A.2d at 286-87. Under strict scrutiny analysis, "a law may only be deemed constitutional if it is narrowly tailored to a compelling state interest." *Id.* at 287. See also *Khan*, 842 A.2d at 947.

[26] As our Supreme Court has explained, "[c]haracter' and 'reputation' are not synonymous terms. The former is what a man is, the latter is what he is supposed to be, says Webster." *Hopkins v. Tate*, 255 Pa. 56, 99 A. 210, 212 (1916). Although it is not a tangible right, individuals have a fundamental right to protect their reputation from false or misleading information that affects how they are regarded by their community. See *Pennsylvania Bar Association v. Pennsylvania Insurance Department*, 147 Pa.Cmwlth. 351, 607 A.2d 850, 855-56 (1992).

14. Educator's listing is available on the Commission's website at: <https://www.education.pa.gov/Teachers%20Administrators/Certifications/Pages/details.aspx?certid=3097> and <https://www.education.pa.gov/Teachers%20Administrators/Certifications/Pages/details.aspx?certid=3286> (last visited 8/30/23).

[27] Here, the Commission has published and maintained Educator's "Certificate Action Details" on its website as required by Section 15(d) of the Act. Educator's listing includes categories of information for his name, date of birth, last school in which employed, last position held, certificate type and area, the action taken (regarding his certificate), the date of the notification, and the date the action was taken.<sup>14</sup> Under the category "Action Taken," the Commission entered Educator's "Immediate Suspension," and on a separate page stated that his "Suspension [was] Lifted," accompanied by respective dates those actions were taken. The listing also includes a category entitled "Grounds for Discipline," in which the following description appears: "Educator was criminally charged with Aggravated Indecent Assault, Unlawful Restraint, and Indecent Assault." On the page detailing the lifting of Educator's suspension, the "Grounds for Discipline" category is blank. On its TIMS website, the Department also maintains Educator's listing, which includes similar information about Educator and the status of his teaching certificate, and a notation that his certificate was suspended and that the suspension was lifted, but it contains no details about the reason for the suspension or about his arrest.<sup>15</sup>

Under the applicable strict scrutiny standard, we conclude that the manner in which the Commission has listed and maintained Educator's discipline history under Section 15(d) of the Act is not "narrowly tailored" to the Commonwealth's interest

15. Educator's listing is available on the Department's TIMS website at: <https://www.education.pa.gov/Teachers%20Administrators/Certifications/Pages/details.aspx?certid=3286> (last visited 8/30/23).

in safeguarding students and school staff and is, therefore, unconstitutional as applied to Educator. *Khan*, 842 A.2d at 947; *Nixon*, 839 A.2d at 287. For the reasons discussed earlier, this conclusion does not require Respondents to expunge or erase completely Educator’s discipline history from their websites upon his acquittal of those criminal charges. However, under the facts presented here, we conclude that the manner in which Respondents have listed and maintained Educator’s discipline history unconstitutionally infringes on his right to protect his reputation by continuing to associate him with criminal charges of which he was acquitted and which were expunged. Therefore, we direct Respondents to remove all specific references to the crimes with which Educator was charged, in particular, the recitation of the criminal charges under the “Grounds for Discipline” on the Commission’s website.

It is important to note that Section 15(d) of the Act does not require Respondents to include specific criminal information on their websites for educators who receive discipline because of criminal charges or convictions. Section 15(d) of the Act requires the Commission to “make all adjudications imposing discipline, other than a private reprimand, available on a publicly accessible Internet website,” and in cooperation with the Department, to “maintain[ ] a central online registry on a publicly accessible Internet website” for educators “whose eligibility for employment has been suspended, revoked, surrendered or otherwise disciplined” pursuant to the Act.

We are further guided by our Supreme Court, which approved redaction as a remedy for a violation of the right to reputation. In *In re Fortieth Statewide Investigating Grand Jury*, 190 A.3d at 578, the Supreme Court determined that the appellants demonstrated that release of the

grand jury report at issue unconstitutionally impaired their rights to reputation and ordered the grand jury report to be excised to remove “specific and contextual references” to any appellant who had a challenge pending before the Court.

In *Doe v. Zappala*, 987 A.2d 190 (Pa. Cmwlth. 2009), our Court considered whether to grant a permanent injunction against law enforcement officials who were alleged to have failed to fully expunge certain criminal history record information from their files pursuant to CHRIA. As our Court explained,

[t]he purpose of expungement [of criminal history record information under CHRIA] is to protect an individual from the difficulties and hardships that may result from an arrest on record including the harm to one’s reputation and opportunities for advancement in life. *Commonwealth v. Butler*, 448 Pa.Super. 582, 672 A.2d 806 (1996). However, although “expungement affords an individual some protection from the difficulties and hardships that may result from an arrest on record, [it] cannot entirely protect him from the consequences of his prior actions.” *Id.*

*Doe*, 987 A.2d at 194. We acknowledge that Respondents’ removal of Educator’s criminal charges from their websites will not remove all information of Educator’s criminal charges from public knowledge. See Exhibit 2 to Respondents’ Brief. However, we conclude that the removal of Educator’s criminal charges from Respondents’ websites is a narrowly tailored remedy necessary to prevent constitutional harm to Educator’s reputation.

[28, 29] Accordingly, we grant in part and deny in part Educator’s and Respondents’ Cross-Applications for Summary Relief on the legal issue of whether Section 15(d) is unconstitutional as applied to Educator when he was acquitted of crimi-

nal charges that were later expunged. We deny Educator's request to completely expunge his disciplinary record from Respondents' websites, and grant Respondents' request to maintain on their websites the record of Educator's immediate suspension and the lifting of that suspension. We grant Educator's request and deny Respondents' request regarding the manner in which Respondents have listed and maintained Educator's disciplinary record on their websites, and direct Respondents to remove all references to Educator's criminal charges from their websites. We grant Educator's request for declaratory relief, and declare that Section 15(d) of the Act is unconstitutional as applied to Educator, to the extent that Respondents may no longer list and maintain information on their websites regarding Educator's criminal charges. We grant Educator's application for a permanent injunction because we conclude that Educator has established a clear right to excision as a remedy for the unconstitutional damage to his reputation, which cannot be compensated for by damages, and that greater injury will result from refusing rather than granting the requested relief. *See Big Bass Lake Community Association*, 950 A.2d at 1144 n.8. Finally, we deny Educator's request for mandamus relief because our direction to Respondents does not involve a ministerial act or mandatory duty, but a narrowly tailored remedy to address the infringement of Educator's constitutional right to protect his reputation. *See Valley Forge Racing Association, Inc.*, 297 A.2d at 824-25.

Judge Wallace did not participate in the decision of this case.

### ORDER

AND NOW, this 12<sup>th</sup> day of September, 2023, we grant in part and deny in part T.G.A.'s and the Department of Education's (Department) and Professional Standards and Practices Commission's (Commission) Cross-Applications for Summary Relief. We deny T.G.A.'s request to expunge his disciplinary record from the Department's and Commission's websites. We grant the Department's and Commission's request to maintain on their websites the record of T.G.A.'s immediate suspension and the lifting of that suspension. We grant T.G.A.'s request and deny the Department's and Commission's request regarding the manner in which T.G.A.'s disciplinary record is listed and maintained on their websites. We direct the Department and the Commission to remove all references to T.G.A.'s criminal charges from their websites. We grant T.G.A.'s request for declaratory relief, and declare that Section 15(d) of the Educator Discipline Act, Act of December 12, 1973, P.L. 397, *as amended*, added by the Act of December 14, 1989, P.L. 612, 24 P.S. § 2070.15(d), is unconstitutional as applied to Educator, to the extent that the Department and the Commission may no longer list and maintain information on their websites regarding T.G.A.'s criminal charges. We grant T.G.A.'s application for a permanent injunction, and we deny T.G.A.'s application for mandamus relief.

