

*Devices and One Ticket Redemption Terminal Containing \$18,692.00 in U.S. Currency* (Pa. Cmwlt., No. 761 C.D. 2023).

Finally, the Board's scant connection between the Brozzettis' and Better Bets' Applications and any criminal gaming activity is only exacerbated by the fact that the Board has no regulatory authority over skill games and is not empowered by the Video Gaming Act to conduct criminal investigations, prosecute criminal violations, or make findings of criminal culpability. See *POM of Pennsylvania, LLC v. Department of Revenue*, 221 A.3d 717, 736 (Pa. Cmwlt. 2019); 4 Pa. C.S. §§ 3904(a)(3), (7); 3904(b), (d).

In sum, we agree with Petitioners that the Board erred as a matter of law and manifestly abused its discretion (1) in concluding that the Brozzettis, through Hugo, operate illegal gambling devices, and on that basis, (2) denying the Brozzettis' and Better Bets' video gaming terminal license Applications.

### 3. Substantial Evidence

In their first issue, Petitioners argue that the Board's findings of fact and conclusions of law are not based on substantial evidence because they (1) are based on the opinion testimony of Major Miller and Mr. Svitko; and (2) are outside evidence and testimony the Board has received from casino representatives in other proceedings. Because we already have assumed the competency of this evidence and the propriety of the Board's consideration of it to conclude that the Board erred and abused its discretion in denying the Applications, we need not consider these issues. In light of our conclusions above, they are moot.

### 4. Due Process

In their fifth issue, Petitioners challenge OEC's Denial Notices on due process

grounds, arguing that they did not sufficiently advise Petitioners that denial would be recommended based, in part, on a finding that granting the Applications would be contrary to the public interest. This issue likewise is moot. We already have determined in any event that the Board erred and abused its discretion in concluding that granting the Applications would be contrary to the public interest.

### V. CONCLUSION

Because we conclude that the Board erred and abused its discretion in denying the Applications on the grounds set forth in its Corrected Adjudication, we reverse and remand to the Board with instructions to issue the requested licenses.

### ORDER

AND NOW, this 12th day of October, 2023, the March 23, 2022 orders, as amended on March 24, 2022, of the Pennsylvania Gaming Control Board (Board) are hereby REVERSED, and this matter is REMANDED to the Board with instructions to issue the requested licenses.

Jurisdiction relinquished.



R.W., Petitioner

v.

DEPARTMENT OF EDUCATION  
(PROFESSIONAL STANDARDS AND  
PRACTICES COMMISSION), Re-  
spondent

No. 277 C.D. 2022

Commonwealth Court of Pennsylvania.

Argued February 8, 2023

Decided October 18, 2023

**Background:** Educator petitioned for judicial review of an order of the Depart-

ment of Education, Professional Standards and Practices Commission, No. MI-21-013, that denied his administrative petition for complete reinstatement of his teaching certificate or expungement of his discipline listing on the Commission's and Department of Education's websites.

**Holdings:** The Commonwealth Court, No. 277 C.D. 2022, Michael H. Wojcik, J., held that:

- (1) educator's petition to expunge discipline listing was not barred by doctrine of administrative finality; and
- (2) educator no longer had constitutionally protected property interest in continuing to lawfully teach in state; but
- (3) manner in which educator's discipline history was listed and maintained on website was not narrowly tailored to state's interest in safeguarding students and school staff.

Affirmed in part, reversed in part, and remanded.

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

Lori A. Dumas, J., filed a dissenting opinion.

## 1. Criminal Law $\S$ 303.10, 303.45

A "nolle prosequi," commonly referred to a charge that is nolle prossed, is a voluntary withdrawal by the prosecuting attorney of proceedings on a particular bill or information, which can at any time be retracted to permit a revival of proceedings on the original bill or information.

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

## 2. Education $\S$ 452(2)

### Public Employment $\S$ 768(1)

Judicial review of an order of the Department of Education, Professional Standards and Practices Commission is limited to a determination of whether constitutional rights were violated, whether an error of law was committed, or whether neces-

sary findings of fact were supported by substantial evidence.

## 3. Education $\S$ 452(2)

### Public Employment $\S$ 741

Educator's petition to expunge his discipline listing on Professional Standards and Practices Commission's and Department of Education's websites was not barred by doctrine of administrative finality, although educator did not appeal Commission's order imposing his immediate suspension based on filing of criminal charges or Commission's subsequent order that lifted his suspension, educator's petition did not seek review of imposition or lifting of suspension, but rather sought to expunge discipline records of suspension once underlying criminal charges were nolle prossed and expunged, and petition also questioned manner in which Commission and Department listed and maintained suspension record, which continued to list charges that were nolle prossed and expunged. 24 Pa. Stat. Ann.  $\S$  2070.15(d).

## 4. Statutes $\S$ 1080, 1091

When interpreting a statute, courts may not look beyond the plain meaning of the statute under the guise of pursuing its spirit.

## 5. Statutes $\S$ 1123, 1181

When interpreting a statute, courts generally use dictionaries as source material for determining the common and approved usage of a term that is not otherwise defined in the statute. 1 Pa. Cons. Stat. Ann.  $\S$  1903.

## 6. Education $\S$ 452(2)

### Public Employment $\S$ 245

### Records $\S$ 218

To "lift" an educator's suspension based on criminal charges under the Educator Discipline Act, within the meaning of the Act provision requiring that suspen-

sions be immediately lifted upon receipt of certified court documents establishing that the charges have been dismissed or otherwise removed, means to remove the suspension when the underlying charges are dismissed or removed, rather than to destroy or erase the record of suspension completely. 24 Pa. Stat. Ann. § 2070.9b(a)(1)(iii).

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

#### 7. 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.

#### 8. Constitutional Law ⇨3893

For substantive due process rights to attach to a property interest, there must first be a deprivation of a property right or other interest that is constitutionally protected. U.S. Const. Amend. 14.

#### 9. Constitutional Law ⇨4157

Pursuant to the state constitutional due process provision recognizing a right to possess and protect property and reputation, all persons in the Commonwealth possess a protected interest in the practice of their profession. Pa. Const. art. 1, § 1.

#### 10. Constitutional Law ⇨4262

Once an individual has acquired a license to practice a particular profession, the licensed professional has a constitutionally-protected state property right in the practice of that profession. Pa. Const. art. 1, § 1.

#### 11. Constitutional Law ⇨4157

The state constitutional property 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.

#### 12. States ⇨310(8, 10)

To constitute a lawful exercise of the state's police power, social and economic legislation must first be directed toward a valid state objective.

#### 13. 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. U.S. Const. Amend. 14.

#### 14. 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. U.S. Const. Amend. 14.

#### 15. Constitutional Law ⇨2489, 2497

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.

#### 16. 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 under the rational basis test for evaluating substantive due process challenges to statutes. U.S. Const. Amend. 14.

#### 17. Constitutional Law ⇨4227

##### Education ⇨449

Educator no longer had constitutionally protected property interest in continuing to lawfully teach in state, and thus Professional Standards and Practices Commission's and Department of Education's conduct, in maintaining discipline records that continued to include references to criminal charges against educator

that were nolle prossed and expunged, did not deprive educator of property right in manner that implicated his substantive due process rights, where educator surrendered his teaching certificate and was no longer eligible to teach in state. U.S. Const. Amend. 14; Pa. Const. art. 1, § 1; 24 Pa. Stat. Ann. § 2070.15(d).

#### 18. Constitutional Law ⇌3894

When confronted with a constitutional challenge to a statute on substantive due process grounds, the threshold inquiry is whether the statute regulates or restricts a constitutionally protected right. U.S. Const. Amend. 14.

#### 19. Constitutional Law ⇌4040

In contrast to the right to lawful employment, reputation is a fundamental state constitutional right, and, as such, it must be examined under strict scrutiny when considering a constitutional challenge on substantive due process grounds. U.S. Const. Amend. 14; Pa. Const. art. 1, § 1.

#### 20. Constitutional Law ⇌1053

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

#### 21. Constitutional Law ⇌4227

##### Education ⇌449

Manner in which Department of Education, Professional Standards and Practices Commission listed and maintained educator's discipline history pursuant to its statutory obligation to make disciplinary records available on website was not narrowly tailored to state's interest in safeguarding students and school staff, and, therefore, maintenance of records, as applied to educator, deprived educator of his fundamental right to protect his reputa-

tion, in violation of his substantive due process rights; Department's and Commission's records continued to associate educator with criminal charges that had been nolle prossed and expunged. U.S. Const. Amend. 14; Pa. Const. art. 1, § 1; 24 Pa. Stat. Ann. § 2070.15(d).

#### 22. Constitutional Law ⇌4040

Character and reputation are not synonymous terms, in the context of the state constitutional due process right to protection of one's reputation. Pa. Const. art. 1, § 1.

#### 23. Constitutional Law ⇌4040

Although it is not a tangible right, individuals have a fundamental due process right to protect their reputation from false or misleading information that affects how they are regarded by their community. Pa. Const. art. 1, § 1.

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#### West Codenotes

#### Unconstitutional as Applied

24 Pa. Stat. Ann. § 2070.15(d)

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Appealed from No. MI-21-013, Professional Standards and Practices Commission.

Richard S. McEwen, Edinboro; Joseph F. Canamucio and Scott P. Stedjan, Harrisburg, for Petitioner.

Nadya J. Chmil, Assistant Counsel, Harrisburg, for Respondent.

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

[1] R.W. (Educator)<sup>1</sup> petitions for review of the March 1, 2022 order of the Professional Standards and Practices Commission (Commission) that denied Educator's petition for complete reinstatement of his teaching certificate or expungement of his discipline listing on the Commission's and Department of Education's (Department) websites.<sup>2</sup> Educator argues that the Commission's order denying expungement was in error, its findings were not supported by substantial evidence, and it violated Educator's constitutional rights to pursue lawful employment as a teacher and to his reputation. Educator argues that because the

criminal charges against him were *nolle prosequi*<sup>3</sup> and later expunged, the Department and the Commission (together, Respondents) should have removed his suspension from their websites. Educator argues that his constitutional rights to pursue his lawful occupation as a teacher and to his reputation have been harmed by Respondents' maintenance of his discipline records that include a description of criminal charges which were *nolle prosequi* and expunged. We are presented with the question of whether Section 15(d) of the Educator Discipline Act (Act), 24 P.S. § 2070.15(d),<sup>4</sup> which requires Respondents to make all adjudications imposing discipline available on their websites, is unconstitutional as ap-

1. This Court granted Educator's Motion for Reconsideration and ordered this case to be sealed in an order dated May 25, 2022. Therefore, we refer to R.W. 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 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: <http://www.teachercertification.pa.gov/Screens/wfViewEducator.aspx?P=ti0i8u6Oh+l2RRKo9lIO2UQ==&S=ti0i8u6Oh+l2RKo9lIO2UQ==&PH=ce07rnUD/1KhL5MqaNZXUw==> (last visited 10/17/23). More detailed discipline history 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=3356>, <https://www.education.pa.gov/Teachers%20-%20Administrators/Certifications/Pages/details.aspx?certid=3654>, and <https://www.education.pa.gov/Teachers%20-%20Administrators/Certifications/Pages/details.aspx?certid=3855> (last visited 10/17/23).

3. A *nolle prosequi*, commonly referred to a charge that is *nolle prosequi*, is a voluntary withdrawal by the prosecuting attorney of proceedings on a particular bill or information, which can at any time be retracted to permit a revival of proceedings on the original bill or information. See *Commonwealth v. Whiting*, 509 Pa. 20, 500 A.2d 806, 807 (1985).
4. Act of December 12, 1973, P.L. 397, as amended, 24 P.S. §§ 2070.1-2070.18a. 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.

plied 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 which were *nolle prossed* and expunged. After careful review, we affirm in part and reverse in part the Commission's March 1, 2022 order. Specifically, because expungement of Educator's discipline record of his suspension under the facts presented here is not supported under the Act, we affirm the portion of the Commission's order that denied Educator's petition to expunge the record of his suspension from Respondents' websites. However, because we conclude that Respondents' maintenance of Educator's discipline record that continues to list the criminal charges which were *nolle prossed* and expunged on their websites is unconstitutional as applied to Educator, we reverse that portion of the Commission's order and remand with the direction that Respondents remove reference to Educator's criminal charges from his discipline history on the Commission's website.

The facts as summarized by the Commission in its March 1, 2022 opinion and order are as follows. On October 25, 2018, Educator was charged with institutional sexual assault, corruption of minors, harassment, and indecent assault for allegedly touching the buttocks of two female colleagues without their consent, for making inappropriate sexual comments to them, and for allegedly touching the buttocks of four female students. Commission, 3/1/22, Opinion at 1, Reproduced Record (R.R.) at 70a. After a hearing in which Educator chose not to participate, on February 15, 2019, Educator's teaching certificate was immediately suspended pursuant

to Section 9.2(a)(1) of the Act, 24 P.S. § 2070.9b(a)(1), added by the Act of December 20, 2000, P.L. 918, 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>5</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. R.R. at 70a. Pursuant to Section 15(d) of the Act, a record of Educator's immediate suspension was posted on Respondents' websites. On February 24, 2020, the criminal charges against Educator were *nolle prossed* "due to circumstances beyond the Commonwealth's control" and dismissed by the trial court. *Id.* at 50a, 71a. On March 10, 2020, the Commission lifted Educator's suspension, effective as of the date the criminal charges were dismissed, as required by Section 9.2(a)(1)(iii) of the Act, 24 P.S. § 2070.9b(a)(1)(iii). *Id.* at 18a-20a, 71a. By order dated February 5, 2021, the trial court expunged the criminal charges against Educator. *Id.* at 71a. 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. Educator did not appeal from the Commission's suspension order of February 15, 2019, or from the Commission's March 10, 2020 order lifting the suspension. Instead, on October 27, 2021, Educator filed a petition asking the Commission to completely reinstate his teaching certificate retroactive to the date of his immediate suspension rather than the date the criminal charges were dismissed, or to fully expunge the discipline record of his

5. 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.

suspension.<sup>6</sup> *Id.* at 21a-69a. The Department opposed Educator's petition, and the Commission heard oral arguments on January 10, 2022. *Id.* at 71a.

At the time he was criminally charged, Educator was employed as a teacher by a school district in Pennsylvania. While this matter was pending, Educator surrendered his teaching certificate effective April 1, 2022. Educator is no longer certified to teach in Pennsylvania.<sup>7</sup> Respondents' Brief at 5.

In its opinion denying Educator's petition to expunge the discipline history regarding his suspension, the Commission addressed the various legal issues raised. The Commission first found that Educator failed to timely appeal from the March 10, 2020 reinstatement adjudication, because he waited 19 months to raise his concerns, and that he also failed to timely appeal from the earlier February 15, 2019 suspension adjudication. R.R. at 72a. The Commission concluded that Educator's claims were barred under the doctrine of administrative finality, citing in support *Doheny v. Department of Transportation*, 171 A.3d 930, 934-35 (Pa. Cmwlth. 2017). R.R. at 72a. The Commission concluded that both orders, suspension and reinstatement, are adjudications because they are final determinations that affect personal or property rights. *Id.* The Commission concluded that because Educator failed to timely appeal these final adjudications, he was precluded by the doctrine of administrative finality

from bringing any action to challenge the effects of those adjudications. *Id.*

Even though it determined that Educator's petition to expunge was barred, the Commission addressed his arguments anyway. Educator argued that the Commission's pre-suspension hearing violated his procedural due process rights because he was unable to participate without the risk of self-incrimination. The Commission rejected this argument because Educator received notice and had the opportunity to be heard before his certificate was suspended, which he waived. R.R. at 73a. The Commission also concluded that Educator received notice of both the suspension and reinstatement orders and that he could have sought reconsideration or appealed the orders and did not. *Id.*

Educator further argued that the word "lift" in Section 9.2(a)(1)(ii) of the Act should be interpreted to mean "revoke by taking back" or "nullify." R.R. at 74a. The Commission declined to interpret "lifting" a suspension in this way. The Commission concluded that lifting Educator's suspension to the date the criminal charges were dismissed is consistent with the Act. *Id.* The Commission described the process of immediate suspension for criminal charges in Section 9.2(a)(1) of the Act as a three-step process. First, the Department presents evidence of criminal charges through an indictment. Second, the Department presents evidence of an educator's threat of harm to the school community, for which the allegations underlying the crimi-

6. Educator's petition to the Department entitled "Petition for Complete Reinstatement and/or Expungement," is contained in the Reproduced Record (R.R.) at 21a-69a. As a practical matter, Educator's request for complete reinstatement of his certificate to the effective date of his immediate suspension would operate as a removal or expungement of his suspension. Therefore, for ease of discussion, we will refer to Educator's petition as a "petition

to expunge" the record of his suspension from Respondents' websites.

7. Educator surrendered his teaching certificate, effective April 1, 2022, for "[a]lleged boundary violations with students," which is noted on Respondents' websites. Educator does not dispute that the discipline record regarding the surrender of his teaching certificate is properly listed and maintained by Respondents.

nal charges may serve as a basis to show threat of harm. *Id.* at 74a-75a. The Commission explained that the filing of charges will support a finding of threat of harm “in some cases but not in others.” *Id.* at 75a. Third, the educator is given the opportunity to present evidence as to why he does not pose a threat of harm to the school community. *Id.* An educator may appeal his suspension to Commonwealth Court, the suspension is effective as of the date of the Commission’s order, and a suspension where the grounds for discipline include sexual misconduct may not be stayed on appeal under Section 15(b)(1) of the Act, 24 P.S. § 2070.15(b)(1). All records relating to suspension are public at the time the suspension is imposed, and the Commission is required to make its order available on its website. *Id.*

The Commission rejected Educator’s interpretation of lifting a suspension, concluding as follows:

This statutory scheme does not support a conclusion that the General Assembly intended that a suspension simply “vanish” upon dismissal of the criminal charges. Contrary to [Educator’s] repeated assertion, mere charges alone will not support an immediate suspension under Section [9.2](a)(1) [of the Act]. As noted above, the Commission must also determine that the accused educator poses a threat and must afford the educator, upon request, a hearing at which facts relevant to that determination can be considered. A determination, based upon the totality of the evidence presented, that an educator poses a threat and is, therefore, unfit to teach *at the moment in time when that determination is made*, is not invalidated by the subsequent dismissal (or even expungement) of the criminal charges. Moreover,

had the General Assembly intended such a result, it could easily have included language to that effect. Thus, we interpret the term “lift” in this context to mean the restoration of the educator’s ability to serve as an educator effective upon the dismissal or removal of the criminal charges, rather than the nullification of the Commission’s order imposing a suspension.

R.R. at 75a-76a. (emphasis in original).

[2] The Commission also rejected Educator’s petition to expunge his suspension, concluding that there is no legal basis for this request. R.R. at 76a. The Commission noted that the trial court’s expungement order does not apply to or bind the Commission. *Id.* The Commission noted that records must be expunged in only one circumstance under the Act, when the Commission or appellate court “finds no educator misconduct” under Section 15(c) of the Act, 24 P.S. § 2070.15(c), and the Commission made no such finding here. *Id.* The Commission concluded that although the trial court’s expungement erases the record of Educator’s criminal charges, “it does not erase the Commission’s determination that an educator poses a threat to the health, safety or welfare of students or others in a school and cannot be used as a substitute for a finding by the Commission or an appellate court that there was no educator misconduct.” R.R. at 76a-77a. The Commission also concluded that because Section 15(d) of the Act requires all adjudications imposing educator discipline other than a private reprimand to be made publicly available on Respondents’ websites, removal of Educator’s suspension would be contrary to law. *Id.* at 77a. Educator then sought review of the Commission’s March 1, 2022 order by this Court.<sup>8</sup>

8. Our review is limited to a determination of whether constitutional rights were violated,

whether an error of law was committed, or whether necessary findings of fact were sup-



[3] We first address the Commission's conclusion that Educator's petition to expunge is untimely and is barred by the doctrine of administrative finality. In *Doheny*, 171 A.3d 930, our Court considered whether a driver's civil rights action against the Pennsylvania Department of Transportation (PennDOT) over the length of his license suspension was barred by *res judicata*. The Court explained that, under the "doctrine of administrative finality, if an appeal is not taken from a final administrative decision, [ ] claim preclusion prevents a collateral attack to challenge the effects of the administrative order." *Id.* at 935. Because the driver's claims in his original jurisdiction petition to the Court were the same claims that were previously decided by PennDOT, namely the length of his license suspension, from which the driver failed to timely appeal, the Court dismissed his petition for review. *Id.* The Court held that because the driver "failed to timely appeal the final administrative decisions which gave rise to this action, [the driver] is precluded from bringing any action to challenge the effects of them." *Id.*

We conclude that Educator's petition to expunge is not barred by the doctrine of administrative finality, and that the Commission erred in applying *Doheny* to the facts presented here. Educator did not appeal the Commission's orders imposing his immediate suspension or the lifting of his suspension. Educator's petition to expunge does not seek review of the imposition or lifting of his suspension, but rather seeks to expunge the discipline records of his suspension once his underlying criminal charges were *nolle prossed* and expunged. Educator's petition to expunge also questions the manner in which Respondents have listed and maintained his suspension

record pursuant to Section 15(d) of the Act, when the record continues to list the criminal charges that were *nolle prossed* and expunged. The claims now raised by Educator regarding Respondents' maintenance of his discipline record under Section 15(d) of the Act are distinct from claims under Section 9.2(a)(1) of the Act that govern the imposition and lifting of an immediate suspension based on criminal charges. Therefore, we conclude that the Commission erred by denying Educator's petition to expunge on the basis of *Doheny*.

Further, we note that pursuant to the regulations governing the Commission and the Department, the General Rules of Administrative Practice and Procedure, 1 Pa. Code §§ 31.1-35.251 (GRAPP), govern formal proceedings before the Department and the Commission. *See* 22 Pa. Code § 233.109. Relevant here, the GRAPP regulations permit an individual to file a written application, an informal complaint, a formal complaint, or a petition to seek "authorization or permission which an agency may give under statutory or other delegated authority administered by it." 1 Pa. Code § 35.1. *See also* 1 Pa. Code §§ 35.2, 35.5, 35.9, 35.10, and 35.17. Here, Educator's petition to expunge is a petition under GRAPP, seeking relief from Respondents regarding the manner in which they listed and maintained his suspension history on their websites. As such, Educator's petition to expunge is permitted under GRAPP and is not barred for his failure to timely appeal the Commission's earlier orders regarding his suspension.

[4, 5] Turning to the merits, Educator argues that the Commission committed an error of law by refusing to expunge his suspension record, and that expungement

ported by substantial evidence. *Gow v. Department of Education*, 763 A.2d 528, 531 n.2 (Pa.

Cmwlt. 2000).

under the Act should be read *in pari materia* with expungement of criminal records under the Criminal History Record Information Act (CHRIA), 18 Pa. C.S. §§ 9101-9183. Respondents contend that the Commission relied upon the plain language of the Act and CHRIA and committed no error of law. Our analysis of this issue first turns on the language of the Act. 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 & 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)*, 255 A.3d 214, 221 (Pa. 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. *Gmer-ek 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, 24 P.S. § 2070.1b (Definitions), added by the Act of December 20, 2000, P.L. 918, 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, 24 P.S. § 2070.15(c), requires as follows:

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.

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 criminal charges that gave rise to his immediate suspension have been *nolle prossed*.

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).

[6] With the description 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 when Educator’s criminal charges underlying his

suspension were *nolle prossed*. 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 dismissal 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.

[7] 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* Section 9102 of CHRIA, 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.” Section 9104(e) of CHRIA, 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>9</sup>

In *Jones v. Pennsylvania Department of Education*, (Pa. Cmwlt., No. 1690 C.D. 2017, 2018 WL 8693440, filed October 4,

9. “In general, Superior Court decisions are not binding on this Court, but they offer persuasive precedent where they address analo-

gous issues.” *Lerch v. Unemployment Compensation Board of Review*, 180 A.3d 545, 550 (Pa. Cmwlt. 2018).

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>10</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, Pa. Const. art. 1 § 1, 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.*

10. See Pa.R.A.P. 126(b) ("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.").

11. Educator also argues that the Commission erred in interpreting the Act because it lacked substantial evidence in the record to support

Our Court's rationale in *Jones*, which affirmed the Department's imposition of educator discipline even when the 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] statutes or parts of statutes *in pari materia* shall be construed together, if possible." 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. Therefore, we discern no error of law in the Commission's conclusion that Educator is not entitled to expungement of his suspension history under the Act when the criminal charges underlying the suspension were *nolle prosequi* and expunged. See R.R. at 75a-76a.<sup>11</sup>

[8-14] We next turn to Educator's constitutional claims regarding his right to lawful employment and his reputation. As to the employment issue, Educator and Respondents agree on the applicable legal

this conclusion of law. Because there are no disputed questions of fact, and the Commission took no testimony at its January 10, 2022 hearing, Educator's argument regarding the lack of substantial evidence is misplaced. Because we conclude that the Commission did not commit legal error, we need not address this issue further.

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>12</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 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).

[15, 16] 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, “in-

cluding 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.*

[17] Educator argues that Respondents’ listing and maintenance of his discipline records pursuant to Section 15(d) of the Act that continue to include reference to criminal charges that were *nolle prossed* and expunged infringes on his right to continue lawful employment as a teacher in the Commonwealth. Respondents contend that continued listing of Educator’s discipline records is a legitimate exercise of their authority to regulate the teaching profession, and is rationally related to their legitimate interest in safeguarding school students and staff. We reject Educator’s argument on this issue because he no longer has a protected property interest in continuing to lawfully teach in the Commonwealth. For substantive due process rights to attach, there must first be a deprivation of a property right that is constitutionally protected. *Khan*, 842 A.2d at 946. Here, there is no dispute that Edu-

12. 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.”

cator surrendered his teaching certificate, and that he is no longer eligible to teach in Pennsylvania.<sup>13</sup> Therefore, Respondents' conduct does not deprive him of a protected property interest in continuing to teach.

[18–20] 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 Constitution. 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 necessary to promote a compelling state interest and if it is narrowly tailored to effectuate that purpose. *Id. See also Nixon v. Commonwealth*, 576 Pa. 385, 839 A.2d 277, 287 (2003).

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

[21] As to his reputation, Educator argues that Respondents’ perpetual publication of his immediate suspension that references the underlying criminal charges that were *nolle prossed* and expunged violates his substantive due process rights by infringing on his reputation protected by article I, section 1 of the Pennsylvania Constitution. Educator argues that the manner in which Respondents’ have listed and maintained his discipline record on their websites damages his reputation by misleading the public by continuing to associate him with criminal charges that have been *nolle prossed* and expunged. Educator further argues that Respondents’ maintenance of his discipline record under Section 15(d) of the Act frustrates the purpose of CHRIA, and specifically violates Section 9122 of CHRIA, 18 Pa. C.S. § 9122 (governing expungement of

13. Educator does not dispute that he surrendered his teaching certificate, effective April 1, 2022, or that the discipline record of his surrender has been improperly listed and maintained by Respondents. Educator’s disci-

pline record of his surrender may be found at: [https://www.education.pa.gov/Teachers% 20-% 20Administrators/Certifications/Pages/details.aspx?certid=3855](https://www.education.pa.gov/Teachers%20-%20Administrators/Certifications/Pages/details.aspx?certid=3855) (last visited 10/17/23).

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 criminal charges underlying the immediate suspension have been erased.

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 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 in their websites.

To analyze Educator's reputation claim, 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 1, section 1 of the Pennsylvania Constitution, we must utilize 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.

[22, 23] 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. Commonwealth*, 147 Pa. Cmwlt. 351, 607 A.2d 850, 855-56 (1992).

Here, the Commission has published and maintains 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 states 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 charged with Institutional Sexual Assault, Corruption of Minors – Defendant Age 18 or Above, Harassment – Subject Other to Physical Contact, Endangering Welfare of Children, and Indecent Assault – Without Consent of Another on October 25, 2018 in [ ] County, PA.” 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, 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 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 when his criminal charges have been *nolle prossed* and expunged. 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 reputation by continuing to associate him with criminal charges that were *nolle prossed* and expunged. Therefore, we reverse the portion of the Commission’s order that denied Educator’s petition to expunge regarding the manner in which Respondents have listed and maintained their websites, and remand with the direction that the Commission order 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

14. Educator’s listing is available on the Commission’s website at: [https://www.education.pa.gov/Teachers% 20-% 20Administrators/Certifications/Pages/details.aspx?certid=3356](https://www.education.pa.gov/Teachers%20-%20Administrators/Certifications/Pages/details.aspx?certid=3356), (last visited 10/17/23).

15. Educator’s listing is available on the Department’s TIMS website at: <http://www.teachercertification.pa.gov/Screens/wfViewEducator.aspx?P=ti0i8u6Oh+l2RKo9lI02UQ==&S=ti0i8u6Oh+l2RKo9lI02UQ==&PH=ce07rnUD/1KhL5MqaNZXUw==> (last visited 10/17/23).



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.<sup>16</sup>

Accordingly, we affirm in part and reverse in part the Commission’s order that denied Educator’s petition to expunge. We affirm the portion of the Commission’s order that denied Educator’s request to completely expunge the disciplinary record of his suspension from Respondents’ websites. We reverse the portion of the Commission’s order that denied Educator’s request regarding the manner in which Respondents have listed and maintained Educator’s discipline record on their websites, and remand to the Commission to direct Respondents to remove all references to Educator’s criminal charges from their websites.

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

### **ORDER**

AND NOW, this 18<sup>th</sup> day of October, 2023, the order of the Professional Stan-

dards and Practices Commission dated March 1, 2022, is AFFIRMED in part, REVERSED in part, and this matter is REMANDED, in accordance with the foregoing Opinion.

Jurisdiction relinquished.

### **DISSENTING OPINION BY JUDGE DUMAS**

Respectfully, I dissent. The Majority properly recognizes that the right to reputation is a “fundamental interest which cannot be abridged without compliance with constitutional standards of due process and equal protection.” *R. v. Dep’t of Pub. Welfare*, 535 Pa. 440, 636 A.2d 142, 149 (1994). A law impacting a fundamental right should be analyzed under the strict scrutiny standard, *i.e.*, it must be narrowly tailored to serve a compelling state interest. *Nixon v. Commonwealth*, 839 A.2d 277, 286-87 (2003). Instantly, the compelling state interest is to safeguard students and staff in Pennsylvania’s schools. Thus, the law must be narrowly tailored to protect students and staff.

In my view, Section 15(d) of the Educator Discipline Act (Act), 24 P.S. § 2070.15(d),<sup>1</sup> fails to adequately protect an educator’s right to reputation when that educator has been acquitted of criminal charges.<sup>2</sup> However, R.W. was not acquitted of criminal charges. Rather, the charges against him were *nolle prossed* and there-

16. See also *T.G.A. v. Department of Education and Professional Standards and Practices Commission*, 302 A.3d 830 (Pa. Cmwlth., No. 471 M.D. 2022, filed September 12, 2023) (holding that the maintenance of an educator’s discipline record on the Department’s and Commission’s websites that continues to list the criminal charges of which the educator was acquitted and which were expunged was a violation of educator’s right to reputation).

1. Act of December 12, 1973, P.L. 397, as amended, 24 P.S. §§ 2070.1a-2070.18a.

2. See *T.G.A. v. Dep’t of Educ., and Pro. Standards and Practices Comm’n*, — Pa. Cmwlth. —, 302 A.3d 830 (No. 471 M.D. 2022, filed September 12, 2023) (finding that maintenance of educator’s disciplinary record on publicly accessible website, following his acquittal of criminal charges, was a violation of his right to reputation).

fore subject to different legal standards and outcomes.

An acquittal is a resolution in the defendant's favor. "A judgment of acquittal, whether based on a verdict of not guilty or on a ruling by the court that the evidence was insufficient to convict, may not be appealed." *Commonwealth v. Gibbons*, 567 Pa. 24, 784 A.2d 776, 778 (2001). In contrast, a *nolle prosequere* is "a voluntary withdrawal by a prosecuting attorney of charges in a particular criminal bill or information and acts neither as an acquittal nor a conviction." *Kearney v. Bureau of Pro. & Occupational Affs., State Bd. of Med.*, 172 A.3d 127, 129 n.3 (Pa. Cmwlth. 2017). Following a *nolle prosequere*, the Commonwealth may reinstate charges against the defendant. *Commonwealth v. Whiting*, 509 Pa. 20, 500 A.2d 806, 807 (1985).

Additionally, when the Commonwealth brings criminal charges to trial, a factfinder has an opportunity to consider the circumstances and facts underlying the case and make a determination; in a *nolle prosequere*, which may occur at any time during a criminal proceeding, the facts may never be heard in an open court. This difference is reflected in the concerns and procedures regarding expungement. Following acquittal, a defendant is entitled to expungement as of right. *Commonwealth v. D.M.*, 548 Pa. 131, 695 A.2d 770 (1997). After a *nolle prosequere*, the Commonwealth may challenge expungement in a *Wexler* hearing. See *Commonwealth v. Moto*, 611 Pa. 95, 23 A.3d 989, 993 (2011); *Commonwealth v. Wexler*, 494 Pa. 325, 431 A.2d 877, 879 (1981).

In a *Wexler* hearing, the court considers several relevant factors including, but not limited to (1) the strength of the Commonwealth's case against the petitioner; (2) the reasons the Commonwealth wishes to retain the records; (3) the petitioner's age, criminal record, and employment history;

(4) the length of time elapsed between the arrest and the petition to expunge; and (5) any specific, adverse consequences the petitioner may endure should expunction be denied. See *Moto*, 23 A.3d at 993. Thus, the court balances the Commonwealth's interest in maintaining records for safety reasons against an individual's interest in freeing his record of criminal charges. See, e.g., *id.* at 994-95 (suggesting that expungement may be improper where the Commonwealth has withdrawn charges because a wife-complainant has refused to testify against a husband-defendant or where a minor victim is unable to testify against an alleged sexual offender).

Moreover, in other circumstances where the Commonwealth's safety interest is less compelling, the reporting of information regarding a defendant's arrest and charges is considered merely a collateral consequence of those charges. See, e.g., *Ferguson v. Dep't of Transp.*, 267 A.3d 628, 632 (Pa. Cmwlth. 2021), *appeal granted*, 280 A.3d 859 (Pa. 2022) (distinguishing *Commonwealth v. Chichkin*, 232 A.3d 959 (Pa. Super. 2020), *overruled by Commonwealth v. Moroz*, 284 A.3d 227 (Pa. Super. 2022) (holding that a prior acceptance of ARD in a DUI case is a prior offense, and not unconstitutional in license suspension civil proceedings)).

If the purpose of the Act is to protect students and school staff from a teacher charged with serious crimes, then it would be antithetical to that purpose to direct the Commission to remove all references to R.W.'s criminal charges from its websites.

For these reasons, I dissent.

