IN THE CIRCUIT COURT OF [*county*] COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

v. [*case number*]

Hon. [*name*]

[*name-all caps*],

 Defendant.

DEFENDANT’S INSTRUCTION NO. \_\_\_\_

 Count \_\_ of the indictment charges the defendant with Battery on a School Employee.

You may return one of three verdicts under this Count of the indictment:

(1) guilty of Battery on a School Employee;

(2) guilty of Assault on a School Employee or

(3) not guilty.

 Battery on a School Employee occurs when (1) a person unlawfully and intentionally makes physical contact of an insulting or provoking nature with the person of a school employee while the employee is engaged in the performance of official duties, or while commuting to or from his or her place of employment, and when the motive for the battery is retaliation for some action taken by the employee to supervise or discipline one or more pupils in accordance with the law; or (2) a person unlawfully and intentionally causes physical harm to a school employee while the employee is engaged in the performance of official duties, or while commuting to or from his or her place of employment, and the motive for the battery is retaliation for some action taken by the employee to supervise or discipline one or more pupils in accordance with law.

 Assault on a School Employee occurs when (1) a person unlawfully attempts to commit a violent injury to the person of a school employee while the employee is engaged in the performance of official duties, or while commuting to or from the employee’s place of employment, and the motive for the assault is retaliation for some action taken by the employee to supervise or discipline one or more pupils in accordance with law; or (2) when a person unlawfully commits an act which places a school employee in reasonable apprehension of immediately receiving a violent injury while the employee is engaged in the performance of his or her duties, or is commuting to or from his or her place of employment, and the motive for the assault is retaliation for some action taken by the employee to supervise or discipline one or more pupils in accordance with law.

 “School Employee” means a person employed by a county board of education whether employed on a regular full time basis, an hourly basis or otherwise and includes a student teacher.

 The burden is on the State to prove the defendant’s guilt beyond a reasonable doubt and the defendant is not required to prove [himself] [herself] innocent. [He] [She] is presumed by the law to be innocent of this charge and this presumption remains with [him] [her] throughout the entire trial.

 Before the defendant can be convicted of Battery on a School Employee, the State must overcome the presumption that the defendant is innocent and prove beyond a reasonable doubt that:

1. the defendant,

2. in [insert county] County, West Virginia,

3. on or about the \_\_ day of [insert month], [insert year],

4. did unlawfully and intentionally,

5. (make physical contact of an insulting or provoking nature with the person of) (cause physical harm to),

6. [insert name(s) of victim(s)], a school employee

7. {while [insert name(s) of victim(s)] was engaged in the performance of his/her duties} {while [insert name(s) of victim(s)] was commuting to or from [his] [her] place of employment},

8. and the motive for the battery was retaliation for action taken by [insert name(s) of victim(s)] to supervise or discipline one or more pupils in accordance with law.

 If, after impartially considering, weighing and comparing all the evidence (that of both the State and the defendant), you are convinced beyond a reasonable doubt of the truth of the charge as to each of these elements, you may find the defendant guilty of Battery as charged. If you have a reasonable doubt of the truth of the charge as to any one or more of these elements, you shall find the defendant not guilty (and deliberate on the lesser included offense of Assault on a School Employee as instructed).

 Before the defendant can be convicted of Assault of a School Employee, the State must overcome the presumption that the defendant is innocent and prove beyond a reasonable doubt that:

1. the defendant,

2. in [insert county] County, West Virginia,

3. on or about the \_\_ day of [insert month], [insert year],

4. did unlawfully {attempt to commit a violent injury to the person of [insert name(s) of victim(s)], a school employee} {commit an act which placed [insert name(s) of victim(s)], a school employee, in reasonable apprehension of immediately receiving a violent injury},

5. {while [insert name(s) of victim(s)] was engaged in the performance of [his] [her] duties} {while [insert name(s) of victim(s)] was commuting to or from [his] [her] place of employment}

6. and the motive for the assault was retaliation for action taken by [insert name(s) of victim(s)] to supervise or discipline one or more pupils in accordance with law.

 If, after impartially considering, weighing and comparing all the evidence (that of both the State and the defendant), you are convinced beyond a reasonable doubt of the truth of the charge as to each of these elements of Assault on a School Employee, you may find defendant guilty as charged. If you have a reasonable doubt of the truth of the charge as to any one or more of these elements, you shall find the defendant not guilty.

GIVEN:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

REFUSED:\_\_\_\_\_\_\_\_\_\_\_\_\_

MODIFIED:\_\_\_\_\_\_\_\_\_\_\_\_

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 JUDGE