SUSAN BOSSIE MADDOX,

Grievant,

v. **DOCKET NO. 02-20-233**

KANAWHA COUNTY BOARD

OF EDUCATION,

Respondent.

DECISION

In a request for an informal conference prior to filing a grievance dated May 10, 2002, Grievant asserted, “On May 6, 2002 the Kanawha Board of Education illegally voted to deny my statutory right to select an administrative position equal to [my] current position or to displace the least senior secondary principal. 18A-4-8-b [sic]. I am requesting immediate placement without going through the interview process.” As the resolution of that complaint was not satisfactory to grievant, she filed a level one statement of grievance alleging, “You have denied me the transfer to Hayes Junior High School which I was previously guaranteed. I am not satisfied with your response.” She further stated, “You, the Board and others have acted illegally. I should not have to interview for a vacant position. I should be guaranteed my job as promised at Hayes Junior High School in accordance with the law.”

As filed at level four, her statement of grievance and relief sought read: “The decision of the Kanawha County Board of Education to override the Superintendent's decision was arbitrary and an abuse of discretion. The Board did not follow therequirements of § 18A-4-8b Code of West Virginia. I am happy with my placement at Andrew Jackson Middle School but I do not believe politics should be the basis of decisions. My fees should be paid.”

The grievance was denied at levels one and two, and level three was waived. A level four hearing was held in the Grievance Board's Charleston office on December 12, 2002, with Respondent represented by its attorney, James Withrow, Esq., and Grievant by her attorney, Roger D. Forman, Esq. of Forman and Huber, LC. The parties agreed to submit their proposed findings of fact and conclusions of law by January 21, 2003, whereupon the matter became mature for decision.

STIPULATED FACTS

The following facts have been stipulated to by the parties:

1. At all times relevant to this case, Grievant was principal of Clendenin Middle School.

2. Clendenin Middle School was slated for closing at the end of [the 2001-2002] school year and has now been closed.

3. Grievant had sufficient seniority to retain a principal's position in a middle or junior high school in Kanawha County.

4. On February 21, 2002, the principal of Sissonville Middle School resigned. 5. On March 13, 2002, the Superintendent notified Grievant that, due to a reduction in the number of principals' positions, he would recommend she be transferred to Hayes Junior High School, replacing a less-senior principal there.

6. On May 6, 2002, the principal at Andrew Jackson Middle School resigned (effective June 21, 2002), and the Board voted not to follow the Superintendent's recommended transfer of Grievant, but instead to place her on administrative transfer and subsequent assignment.

7. At that Board meeting, there was representation from parents of Hayes Junior High School students that at least some of the Board members had made commitments to those parents to retain the principal there despite her lack of seniority.

FINDINGS OF FACT

I find the following additional fact has been proven by a preponderance of the evidence:

8. Since the filing of this grievance, Grievant applied for and was granted the job of Principal at Andrew Jackson Middle School, and is satisfied with that job.

DISCUSSION

Normally in a non-disciplinary grievance, the grievant bears the burden of proof and her allegations must be proven by a preponderance of the evidence. See, W. Va. Code § 18-29-6, 156 W. Va. C. S. R. 1 § 4.21. However, Grievant's satisfactory placement as Principal at Andrew Jackson Middle School has rendered her claim moot, and the relief shenow seeks is an advisory opinion and attorney's fees, neither of which are available in this forum.

Grievant's level four brief proposed that the undersigned Administrative Law Judge find as a

matter of law that “it was illegal for the Board to require application and interview for Ms. Bossie-Maddox to seek a new job;” and “the Kanawha County Board [of Education] violated Ms. Bossie-Maddox's rights.” She is happy with her new job and is not seeking placement at any other school or restoration of any lost pay or benefits. At this point the only affirmative relief she requests is attorney's fees.

The requested opinions regarding the possible illegality of Respondent's actions and its alleged violations of Grievant's rights would, at this point, be entirely advisory. The Grievance Board does not render advisory opinions. W. Va. Educ. & State Employees Grievance Bd. Procedural Rules § 4.22. Neither does the Grievance Board award attorney's fees. In level four grievance hearings, an “Administrative Law Judge has no authority to award attorney's fees under the law. [Citations omitted.]” Wyant v. W. Va. Dep't of Trans./Div. of Highways, Docket No. 00-DOH-219 (Nov. 29, 2000).

CONCLUSIONS OF LAW

1. This is a non-disciplinary grievance in which Grievant bears the burden of proof. Grievant's allegations must be proven by a preponderance of the evidence. *See*, W. Va. Code § 18-29-6, 156 W. Va. C. S. R. 1 § 4.21. "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that acontested fact is more likely true than not." Leichliter v. W. Va. Dep't. of Health and Human Resources, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the party bearing the burden has not met its burden. Id.

2. The Grievance Board does not render advisory opinions. W. Va. Educ. & State Employees Grievance Bd. Procedural Rules § 4.22. *See* Prickett v. Monongalia County Bd. of Educ., Docket No. 00-30-280 (Nov. 16, 2000); Priest v. Kanawha County Bd. of Educ., Docket No. 00-20-144 (Aug. 15, 2000); Keys v. Div. of Envtl. Protection, Docket No. 97-DEP-176 (Sept. 4, 1997); Dooley v. Dep't of Transp., Docket No. 94-DOH-255 (Nov. 30, 1994); Bryant v. Fayette County Bd. of Educ., Docket No. 91-13-198 (Mar. 13, 1992); Pascoli & Kriner v. Ohio County Bd. of Educ., Docket No. 91-35-229/239 (Nov. 27, 1991); Lewis v. Greenbrier County Bd. of Educ., Docket No. 91-13-198 (June 12, 1991).

3. In level four grievance hearings, an “Administrative Law Judge has no authority to award attorney's fees under the law. Stollings v. Div. of Envtl. Protection, Docket No. 97-DEP-411 (June 8,

1998); Chafin v. Boone County Health Dep't and Div. of Personnel, Docket No. 95-BCHD-362 (June 21, 1996). *See e.g.*, Smarr v. Wood County Bd. of Educ., Docket No. 54-86-062 (June 16, 1986)." Wyant v. W. Va. Dep't of Trans./Div. of Highways, Docket No. 00-DOH-219 (Nov. 29, 2000).

4. Grievant has failed to request relief that may be granted in this case.

For the foregoing reasons, this grievance is hereby **DENIED.** Any party may appeal this Decision to the Circuit Court of Kanawha. Any such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code § 18-29- 7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal, and should not be so named. However, the appealing party is required by W. Va. Code § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Grievance Board with the civil action number so that the record can be prepared and transmitted to the circuit court.

Date: February 3, 2003 _____

M. Paul Marteney

Administrative Law Judge