THE WEST VIRGINIA PUBLIC EMPLOYEES

GRIEVANCE BOARD

DONNIE LAWRENCE,

Grievant,

v.

Docket No. 2008-0666-BSC

BLUEFIELD STATE COLLEGE

Respondent.

DISMISSAL ORDER

Grievant initiated this grievance on September 13, 2007, alleging inappropriate behavior by one of his fellow professors at Bluefield State College. His Statement of Grievance provides, in part, the following:

> Breech by Prof. Steenken upon utterance of words spoken under auspices of Bluefield State College during an official meeting before students seeking admission . . . Prof. Steenken alledgedly [sic] said that the New River Community College does not want Dr. Lawrence to teach at its campuses. These statements impact/damage/tarnish Dr. Steenken's colleagues and the students. This definitely is defamatory toward Dr. Lawrence.

Grievant's Statement of Relief indicates the following:

> Public apology to entire quorum of Senate w/Dr. Lawrence present. Due to malicious nature, consider her to be hostile when considering any other statements or accusations she has made concerning Dr. Lawrence.

After denials at the lower levels, this matter was appealed to level three on October 23, 2007. Respondent filed a Motion to Dismiss this grievance on November 27, 2007. Grievant was given until

January 22, 2008, to respond. Respondent filed an Amended Motion to Dismiss this grievance on March 6, 2008. Grievant represented himself in this particular grievance. Respondent is represented by Elaine L. Skorich, Assistant Attorney General. This matter was reassigned to the undersigned following the retirement of Acting Chief Administrative Law Judge Janis I. Reynolds. The matter became mature for decisionon the Amended Motion to Dismiss upon receipt of the parties' pleadings in the matter on March 6, 2008. The following material facts are undisputed:

Findings of Facts

1. Grievant is employed by Bluefield State College as an untenured professor.

2. On September 13, 2007, the instant grievance was filed at level one. Grievant asserts inappropriate comments about Grievant were made by Dr. Steenken, Grievant's supervisor and Chair of the School of Education, to individuals seeking admission to Bluefield State College.

3. The content of these comments is not evident from the record. The essence of the assertion is that Dr. Steenken made statements that Grievant believed tarnished the image of professors and students of the college. The statements were defamatory toward Grievant as well.

4. Grievant seeks a public apology to the entire quorum of the Faculty Senate from Dr. Steenken. Grievant also requests that Dr. Steenken not take part in any tenure or promotion decisions concerning Grievant.

Discussion

Pursuant to the Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 156-1-6 6.11(2007), “[a] grievance may be dismissed, in the discretion of the administrative law judge, if no claim upon which relief can be granted is stated or a remedy wholly unavailable to the grievant is requested.” [Previously codified at W. Va. 156 C.S.R. 1 § 4.12 (2004).]

Grievant contends that Dr. Steenken made statements to potential students that damaged and tarnished Dr. Steenken's colleagues and students of the college. Inaddition, the alleged statements are defamatory toward Grievant. Dr. Lawrence believes this hostile behavior on the part of his supervisor demands an apology, and Dr. Steenken should be precluded from making employment decisions affecting him. In essence, Grievant's demand that Dr. Steenken not be allowed to participate in any tenure or promotion decision is tantamount to a request for Bluefield State College to assign a different supervisor to Grievant.

While Grievant's concern for his reputation is certainly understandable, a public apology is not

available as relief from this Grievance Board. *Emrick v. Wood County Bd. of Educ.*, Docket No. 03-54-300 (Mar. 9, 2004); *Hall v. W. Va. Div. of Corr.*, Docket No. 89- CORR-687 (Oct. 19, 1990). The Grievance Board has also held, "a letter stating that actions of certain employees were inappropriate is in the nature of a request for an apology, which is not available from this Grievance Board." *Emrick, supra*.

Grievant is also seeking speculative relief given his request that, given the alleged malicious behavior of Dr. Steenken, future comments about Grievant made by her be considered hostile. This Grievance Board has continuously refused to address issues when the relief sought is "speculative or premature, or otherwise legally insufficient." *Stepp v. Dep't. of Trans./Div. of Highways,* Docket No. 06-DOH-215 (Oct 27, 2006) citing *Dooley v. Dep't. of Trans./Div. of Highways*, Docket No. 94-DOH-255 (Nov. 30, 1994); *Pascoli & Kriner v. Ohio County Bd. of Educ.*, Docket No. 91-35-229/239 (Nov. 27, 1991). "[R]elief which entails declarations that one party or the other was right or wrong, but provides no substantive, practical consequences for either party, is illusory, and unavailable from the Grievance Board." *Miraglia v. Ohio County Bd. of Educ.*, Docket No. 92-35-270 (Feb. 19,1993). Typically, a Grievant must show "an injury-in-fact, economic or otherwise" to have what "constitutes a matter cognizable under the grievance statute." *Lyons v. Wood County Bd. of Educ.*, Docket No. 89-54-601 (Feb. 28, 1990); *Dunleavy v. Kanawha County Bd. of Educ.*, Docket No. 20-87-102-1 (June 30, 1987). Grievant has not alleged that he has suffered an injury-in-fact to constitute a matter capable of being examined under the grievance statute.

Grievant's demand that Dr. Steenken, due to her alleged comments, not be allowed to participate in any tenure or promotion decision is tantamount to a request for Bluefield State College to assign a different supervisor to Grievant. Once again, this type of relief is unavailable. As a general rule, "[A] Grievant's belief that his supervisor's management decisions are incorrect is not grievable unless these decisions violate some rule, regulation, or statute, or constitute a substantial detriment to, or interference with, the employee's effective job performance or health and safety." *Rice v. Dep't of Transp./Div. of Highways*, Docket No. 96-DOH-247 (Aug. 29, 1997). *See also* W. Va. Code § 6C-2-2(g)(1)(iv). (See footnote 1) Grievant has presented nothing to the undersigned either in his grievance forms or in subsequent pleadings that leads to any other conclusion than the relief requested by Grievant is wholly unavailable.

The following conclusions of law support the decision reached.

Conclusions of Law

1. Pursuant to the Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 156-1-6 6.11(2007), "[a] grievance may be dismissed, in the discretion of the administrative law judge, if no claim upon which relief can be granted is stated or a remedy wholly unavailable to the grievant is requested." [Previously codified at W. Va. 156 C.S.R. 1 § 4.12 (2004).]

2. The remedy of a public apology is not available as relief from this Grievance Board. *Emrick v. Wood County Bd. of Educ.*, Docket No. 03-54-300 (Mar. 9, 2004); *Hall v. W. Va. Div. of Corr.*, Docket No. 89-CORR-687 (Oct. 19, 1990).

3. "[R]elief which entails declarations that one party or the other was right or wrong, but provides no substantive, practical consequences for either party, is illusory, and unavailable from the Grievance Board." *Miraglia v. Ohio County Bd. of Educ.*, Docket No. 92-35-270 (Feb. 19, 1993).

4. This Grievance Board has continuously refused to address issues when the relief sought is "speculative or premature, or otherwise legally insufficient." *Stepp v. Dep't. of Trans./Div. of Highways,* Docket No. 06-DOH-215 (Oct 27, 2006) citing *Dooley v. Dep't. of Trans./Div. of Highways*, Docket No. 94-DOH-255 (Nov. 30, 1994); *Pascoli & Kriner v. Ohio County Bd. of Educ.*, Docket No. 91-35-229/239 (Nov. 27, 1991).

Based upon the foregoing, the "Motion to Dismiss" is **GRANTED** and the above- styled action is **DISMISSED** due to Grievant requesting a remedy which is wholly unavailable.

Any party may appeal this Order to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Order. *See* W. Va. Code §6C-2-5. Neither the West Virginia Public 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 Civil Action number should be included so that the certified record can be properly filed with the circuit court. *See also* 156 C.S.R. 1 § 6.19 (eff. Dec. 27, 2007).

Date: June 19, 2008

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Ronald L. Reece

Administrative Law Judge

Footnote: 1

It should also be noted that this claim came about as a result of an amendment to the substance of the grievance after level one, and as such, was not raised appropriately.