

**THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD**

**PATICIA BAKER,  
Grievant,**

**v.**

**Docket No. 2022-0469-logED**

**LOGAN COUNTY BOARD OF EDUCATION and  
DEPARTMENT OF EDUCATION,  
Respondent.**

**DISMISSAL ORDER**

Grievant was employed by Respondent, Logan County Board of Education, as a math teacher for the 2021-2022 and 2022-2023 school terms. On December 16, 2021, Grievant filed a level one grievance against Respondent stating as follows:

Violation of WV§ 6C-2-2 Harassment, Discrimination, Hostile Work Environment, WV ADA Lack of Accommodation. WVBOE Policies on Professional Code of Conduct, Skills for Principals, Evaluation. Grievant suffers PTSD from an attack by a parent of a student from the school. Grievant requested to keep room assignment same for an accommodation to the PTSD but was denied. This has caused other issues. Also, "job coach" is unprofessional and exhibiting poor coaching skills. All this while the county has unfilled positions due to lack of substitute teachers calling into question the proper allocation of available staff.

As relief, Grievant requests, "Room Assignment returned to 2019-2020 assignment. "Job Coach" removed or reassigned. Observation and classroom interruption back to the minimum requirement. New supervisory chain of command." See *Grievance*. While not listed in her statement for relief, Grievant in her Response to Dismiss Motion, stated some of her personal belongings were discarded and is now requesting payment for those lost items. See *Grievant's Response*.

A level one conference was held and failed to resolve the Grievant's issues. The WV Public Employees Grievance Board was notified by mail on August 10, 2022, of the

failed level one conference. A level two mediation was held on October 17, 2022. A level three appeal was filed by the Grievant on November 7, 2022.

On or about Oct 27, 2022, the Logan County Board of Education was taken over by the State Department of Education. On November 16, 2022, Grievant, by representative, filed a request to join the State Department of Education as a party. On November 29, 2022, the State Department of Education was joined as a party. On April 20, 2023, the State Department of Education through its counsel, Anthony D. Eates, Deputy Attorney General, stated via email that it does not intend to appear or participate separately from Logan County. Mr. Eates stated that after conferring with Superintendent Jeff Huffman, who was appointed by the State Board of Education to serve as superintendent in Logan County, it has been determined that the State's interest is adequately represented by Mr. Huffman and counsel engaged by the county. The State Department of Education did not respond to Respondent's<sup>1</sup> Motion to Dismiss.

On May 5, 2022, Respondent, by counsel, filed Respondent's Motion to Dismiss alleging the grievance is moot. Respondent asserts Grievant is no longer employed by Respondent due to her failure to maintain certification and there are no longer issues raised in the Grievance that may be resolved in Grievant's favor. On May 19, 2022, Grievant filed her Response to Dismiss Motion.

In her response, Grievant admits she received a notice of non-renewal and has not contested the same. Grievant asserts she was advised her non-renewal was related to her not gaining the required certification<sup>2</sup> within the required timeframe. Grievant was

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<sup>1</sup> The term "Respondent" refers only to the Logan County Board of Education due to Mr. Eates' email that the State Board of Education does not intend to appear or participate separately from Logan County.

<sup>2</sup> Neither party discussed the type or the timeframe of certification Grievant was required to obtain.

advised she is eligible for reemployment should she gain the necessary certification. Grievant did not discuss whether she was in the process of gaining certification or not. Grievant is now requesting payment for discarded items and asserts her request is valid regardless of her employment status. Grievant argues her grievance is valid in its propensity to be replicated if the grievant should become reemployed by the respondent. Grievant appears by her representative, Ben Barkey of the West Virginia Education Association. Respondent appears by counsel, Donald C. Wandling of Wandling Law Office L.C.

### **Synopsis**

Grievant was previously employed by Respondent but received a notice of non-renewal due to not gaining the required certification within the required time frame. Respondent moved to dismiss the grievance as moot because she is no longer employed by Respondent. As Grievant is no longer employed by Respondent, her claims relating to conditions of her employment regarding harassment, discrimination hostile work environment, WV ADA Lack of Accommodation, WVBOE Polices on Professional Code of Conduct, Skills for Principals Evaluation are moot. Grievant's assertion that her grievance is still valid should she become reemployed by Respondent is speculative and premature. The Grievance Board will not decide matters that are speculative or premature, or otherwise legally insufficient. Grievant's claims regarding payment for lost items are unavailable to Grievant as requested due to being tort-like claims. The Grievance Board is not authorized by statute to hear tort claims or award tort-like damages. Accordingly, the grievance is dismissed.

The following Findings of Fact are based upon a complete and thorough review of the record created in this grievance:

### **Findings of Fact**

1. Grievant was employed by Respondent as a math teacher for the 2021-2022 and 2022-2023 school terms.
2. Grievant's employment contract ran until July 1, 2023.
3. As part of her employment as a math teacher, Grievant was required to obtain the required certification within a required time frame.
4. Grievant did not obtain the required certification within the required time frame.
5. Grievant received notice of non-renewal and has not contested the same.
6. Grievant is no longer an employee of the Logan County Board of Education.
7. Grievant is eligible for reemployment should she gain the necessary certification.
8. Grievant's complaint was centered around the forced relocation of the Grievant's classroom while employed.
9. During the relocation of Grievant's classroom, some of Grievant's personal belongings were discarded.
10. Grievant alleged harassment, discrimination, hostile work environment, violations of WV ADA lack of accommodation, and WVBOE Polices on Professional Code of Conduct, Skills for Principals Evaluation.
11. While not initially included in Grievant's statement for relief, Grievant now is requesting payment for lost items that were discarded.

## Discussion

“Grievances may be disposed of in three ways: by decision on the merits, nonappealable dismissal order, or appealable dismissal order.” W. VA. CODE ST. R. § 156-1-6.19 (2018). “Nonappealable dismissal orders may be based on grievances dismissed for the following: settlement; withdrawal; and, in accordance with Rule 6.15, a party's failure to pursue.” W. VA. CODE ST. R. § 156-1-6.19.2. “Appealable dismissal orders may be issued in grievances dismissed for all other reasons, including, but not limited to, failure to state a claim or a party's failure to abide by an appropriate order of an administrative law judge. Appeals of any cases dismissed pursuant to this provision are to be made in the same manner as appeals of decisions on the merits.” W. VA. CODE ST. R. § 156-1-6.19.3. “Any party asserting the application of an affirmative defense bears the burden of proving that defense by a preponderance of the evidence.” W. VA. CODE ST. R. § 156-1-3.

Respondent asserts the grievance is now moot as Grievant has resigned from employment with Respondent. Respondent further asserts there are no issues raised in the grievance that may be resolved in Grievant's favor. Grievant does not contest receiving her notice of non-renewal for not receiving the required certification within the required time frame. Grievant asserts her grievance is still valid should she be reemployed by the Respondent. Grievant also argues her grievance is valid regardless of her employment status because of Respondent's ongoing harassment due to her personal belongings being discarded. Grievant is now requesting payment for the lost items.

“Moot questions or abstract propositions, the decisions of which would avail nothing in the determination of controverted rights of persons or property, are not properly cognizable [issues].” *Bragg v. Dep’t of Health & Human Res.*, Docket No. 03-HHR-348 (May 28, 2004); *Burkhammer v. Dep’t of Health & Human Res.*, Docket No. 03-HHR-073 (May 30, 2003); *Pridemore v. Dep’t of Health & Human Res.*, Docket No. 95-HHR-561 (Sept. 30, 1996); *Pritt, et al., v. Dep’t of Health & Human Res.*, Docket No. 2008-0812-CONS (May 30, 2008). When it is not possible for any actual relief to be granted, any ruling issued by the Grievance Board would merely be an advisory opinion. *Smith v. Lewis County Bd. of Educ.*, Docket No. 02-21-028 (June 21, 2002), *aff’d*, Kanawha Cnty. Cir. Ct. Civil Action No. 02-AA-87 (Aug. 14, 2003); *Spence v. Div. of Natural Res.*, Docket No. 2010-0149-CONS (Oct. 29, 2009). The Grievance Board does not issue advisory opinions. *Priest v. Kanawha Cnty. Bd. of Educ.*, Docket No. 00-20-144 (Aug. 15, 2000); *Biggerstaff v. Mingo Cnty. Bd. of Educ.*, Docket No. 02-29-384D (Mar. 24, 2003), *aff’d*, Kanawha Cnty. Cir. Ct. Civil Action No. 03-AA-55 (Feb. 10, 2005); *Mitias v. Pub. Serv. Comm’n*, Docket No. 05-PSC-107R (Sept. 22, 2010), *aff’d*, Kanawha Cnty. Cir. Ct. Civil Action No. 10-AA-185 (Sept. 11, 2012).

Grievant brought claims relating to her conditions of her employment. The conditions of Grievant’s employment included alleged violations of harassment, discrimination, hostile work environment, WV ADA Lack of Accommodation, and WVBOE Policies on Professional Code of Conduct, Skills for Principals Evaluation. As Grievant is no longer employed, these claims are moot. Grievances regarding only the conditions of employment are moot when a grievant leaves employment. See *Stanley v. Div. of Highways*, Docket No. 2013-0758-CONS (May 2, 2014); *Sizemore v. Dep’t of Health &*

*Human Res.*, Docket No. 2017-0947-DHHR (Feb. 17, 2017); *Hutchinson v. Div. of Highways*, Docket No. 2018-0804-DOT (Mar. 14, 2018).

Grievant's argument that her claims are not moot is legally insufficient. The fact that Grievant could receive her certification and could become reemployed by the respondent is speculative and her claim is premature. The Grievance Board will not decide matters that are "speculative or premature, or otherwise legally insufficient." *Pascoli & Kriner v. Ohio County Bd. of Educ.*, Docket No. 91-35-229/239 (Nov. 27, 1991); *Dooley v. Dept. of Trans./Div. of Highways*, Docket No. 94-DOH-255 (Nov. 30, 1994).

Grievant, in her response, requested payment of discarded personal belongings. The Grievance Board has interpreted its authority to award relief to encompass such issues as back pay, travel reimbursement, and overtime, but not to include punitive or tort-like damages. *Dunlap v. Dep't of Environmental Protection*, Docket No. 2008-0808-DEP (Mar. 20, 2009). *Spangler v. Cabell County Board of Education*, Docket No. 03-06-375 (March 15, 2004); *Snodgrass v. Kanawha County Bd. of Educ.*, Docket No. 97-20-007 (June 30, 1997)." *Stalnaker v. Div. of Corrections*, Docket No. 2013-1084-MAPS (Mar. 26, 2014); *See Vest v. Bd. of Educ. of County of Nicholas*, 193 W. Va. 222, 225, 227 n. 11 (1995). The relief requested, which may be available in other forums, is unavailable within the grievance process due to being tort-like claims.

Grievant has no claim on which relief can be granted. "A grievance may be dismissed, in the discretion of the administrative law judge, if no claim on which relief can be granted is stated or a remedy wholly unavailable to the grievant is requested." W. VA. CODE ST. R. § 156-1-6.11 (2018). "Administrative agencies and their executive officers are creatures of statute and delegates of the Legislature. Their power is dependent upon

statutes, so that they must find within the statute warrant for the exercise of any authority which they claim. They have no general or common-law powers but only such as have been conferred upon them by law expressly or by implication." *Syl. Pt. 4, McDaniel v. W. Va. Div. of Labor*, 214 W. Va. 719, 591 S.E.2d 277 (2003) (citing *Syl. Pt. 3, Mountaineer Disposal Service, Inc. v. Dyer*, 156 W. Va. 766, 197 S.E.2d 111 (1973)). Accordingly, this grievance is dismissed.

The following Conclusions of Law support the decision reached.

### **Conclusions of Law**

1. "Grievances may be disposed of in three ways: by decision on the merits, nonappealable dismissal order, or appealable dismissal order." W. VA. CODE ST. R. § 156-1-6.19 (2018). "Nonappealable dismissal orders may be based on grievances dismissed for the following: settlement; withdrawal; and, in accordance with Rule 6.15, a party's failure to pursue." W. VA. CODE ST. R. § 156-1-6.19.2. "Appealable dismissal orders may be issued in grievances dismissed for all other reasons, including, but not limited to, failure to state a claim or a party's failure to abide by an appropriate order of an administrative law judge. Appeals of any cases dismissed pursuant to this provision are to be made in the same manner as appeals of decisions on the merits." W. VA. CODE ST. R. § 156-1-6.19.3.

2. "Any party asserting the application of an affirmative defense bears the burden of proving that defense by a preponderance of the evidence." W. VA. CODE ST. R. § 156-1-3.

3. "Moot questions or abstract propositions, the decisions of which would avail nothing in the determination of controverted rights of persons or property, are not properly cognizable [issues]." *Bragg v. Dep't of Health & Human Res.*, Docket No. 03-HHR-348



(May 28, 2004); *Burkhammer v. Dep't of Health & Human Res.*, Docket No. 03-HHR-073 (May 30, 2003); *Pridemore v. Dep't of Health & Human Res.*, Docket No. 95-HHR-561 (Sept. 30, 1996); *Pritt, et al., v. Dep't of Health & Human Res.*, Docket No. 2008-0812-CONS (May 30, 2008).

4. When it is not possible for any actual relief to be granted, any ruling issued by the Grievance Board would merely be an advisory opinion. *Smith v. Lewis County Bd. of Educ.*, Docket No. 02-21-028 (June 21, 2002), *aff'd*, Kanawha Cnty. Cir. Ct. Civil Action No. 02-AA-87 (Aug. 14, 2003); *Spence v. Div. of Natural Res.*, Docket No. 2010-0149-CONS (Oct. 29, 2009).

5. The Grievance Board does not issue advisory opinions. *Priest v. Kanawha Cnty. Bd. of Educ.*, Docket No. 00-20-144 (Aug. 15, 2000); *Biggerstaff v. Mingo Cnty. Bd. of Educ.*, Docket No. 02-29-384D (Mar. 24, 2003), *aff'd*, Kanawha Cnty. Cir. Ct. Civil Action No. 03-AA-55 (Feb. 10, 2005); *Mitias v. Pub. Serv. Comm'n*, Docket No. 05-PSC-107R (Sept. 22, 2010), *aff'd*, Kanawha Cnty. Cir. Ct. Civil Action No. 10-AA-185 (Sept. 11, 2012).

6. Grievances regarding only the conditions of employment are moot when a grievant leaves employment. *Stanley v. Div. of Highways*, Docket No. 2013-0758-CONS (May 2, 2014); *Sizemore v. Dep't of Health & Human Res.*, Docket No. 2017-0947-DHHR (Feb. 17, 2017); *Hutchinson v. Div. of Highways*, Docket No. 2018-0804-DOT (Mar. 14, 2018).

7. Grievant's claims relating to conditions of her employment are moot as Grievant is no longer employed by Respondent and, thus, are not properly cognizable issues.

8. The Grievance Board will not decide matters that are “speculative or premature, or otherwise legally insufficient.” *Pascoli & Kriner v. Ohio County Bd. of Educ.*, Docket No. 91-35-229/239 (Nov. 27, 1991); *Dooley v. Dept. of Trans./Div. of Highways*, Docket No. 94-DOH-255 (Nov. 30, 1994).

9. Grievant’s argument that her claims are not moot is legally insufficient. The fact that Grievant could receive her certification and become reemployed by the respondent is speculative and her claim is premature.

10. The Grievance Board is not authorized by statute to hear tort claims or award tort-like damages. *Dunlap v. Dep't of Environmental Protection*, Docket No. 2008-0808-DEP (Mar. 20, 2009). *Spangler v. Cabell County Board of Education*, Docket No. 03-06-375 (March 15, 2004); *Snodgrass v. Kanawha County Bd. of Educ.*, Docket No. 97-20-007 (June 30, 1997).” *Stalnaker v. Div. of Corrections*, Docket No. 2013-1084-MAPS (Mar. 26, 2014); *See Vest v. Bd. of Educ. of County of Nicholas*, 193 W. Va. 222, 225, 227 n. 11 (1995).

11. The Grievant’s claims for discarded personal property are tort-like claims which the Grievance Board is not authorized by statute to hear.

12. “A grievance may be dismissed, in the discretion of the administrative law judge, if no claim on which relief can be granted is stated or a remedy wholly unavailable to the grievant is requested.” W. VA. CODE ST. R. § 156-1-6.11 (2018).

13. “Administrative agencies and their executive officers are creatures of statute and delegates of the Legislature. Their power is dependent upon statutes, so that they must find within the statute warrant for the exercise of any authority which they claim. They have no general or common-law powers but only such as have been conferred upon

them by law expressly or by implication." Syl. Pt. 4, *McDaniel v. W. Va. Div. of Labor*, 214 W. Va. 719, 591 S.E.2d 277 (2003) (citing Syl. Pt. 3, *Mountaineer Disposal Service, Inc. v. Dyer*, 156 W. Va. 766, 197 S.E.2d 111 (1973)).

14. Grievant has no claim on which relief can be granted.

Accordingly, the grievance is **DISMISSED**.

Any party may appeal this decision to the Intermediate Court of Appeals.<sup>3</sup> Any such appeal must be filed within thirty (30) days of receipt of this decision. 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 named as a party to the appeal. However, the appealing party is required to serve a copy of the appeal petition upon the Grievance Board by registered or certified mail. W. VA. CODE § 29A-5-4(b).

**DATE: July 5, 2023**

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**Wes White**  
**Administrative Law Judge**

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<sup>3</sup> On April 8, 2021, Senate Bill 275 was enacted creating the Intermediate Court of Appeals. The act conferred jurisdiction to the Intermediate Court of Appeals over “[f]inal judgments, orders, or decisions of an agency or an administrative law judge entered after June 30, 2022, heretofore appealable to the Circuit Court of Kanawha County pursuant to §29A-5-4 or any other provision of this code[.]” W. VA. CODE § 51-11-4(b)(4). The West Virginia Public Employees Grievance Procedure provides that an appeal of a Grievance Board decision be made to the Circuit Court of Kanawha County. W. VA. CODE § 6C-2-5. Although Senate Bill 275 did not specifically amend West Virginia Code § 6C-2-5, it appears an appeal of a decision of the Public Employees Grievance Board now lies with the Intermediate Court of Appeals.