

**THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD**

**DANIEL SHANE PRICE,  
Grievant,**

**v.**

**Docket No. 2023-0485-JefED**

**JEFFERSON COUNTY BOARD OF EDUCATION,  
Respondent.**

**DISMISSAL ORDER**

Grievant, Daniel Shane Price, employed by Respondent as a Teacher, filed this grievance on December 13, 2023. In this action, Grievant alleged “Dangerous and hostile work environment: Respondent ignores or condones repeated acts of violence, harassment, sexual misconduct, retaliation, and other violations of law and policy by employee David Wright and directed toward Grievant, other employees, and students.” The relief sought is that “Respondent recognize and respond to violent and unlawful acts perpetrated at school by David Wright; respondent act to protect employees and students from David Wright; respondent address injuries to employees and students caused by David Wright, and all other relief deemed just and proper.” Respondent filed a Motion to Dismiss this case on or about April 25, 2023, due to addressing Grievant’s complaint in November of 2022. Grievant was provided with an opportunity to respond to the motion by June 30, 2023; however, no response was received by June 30, 2023. The case was pending scheduling for a level three hearing but is now mature for a ruling on the Motion to Dismiss. Grievant appears *pro se*. Respondent appeared by its counsel, Denise M. Spatafore, Dinsmore & Shohl, LLP.

## **Synopsis**

Grievant, Daniel Shane Price, is employed by Respondent, Jefferson County Board of Education, as a teacher. The primary allegation in this grievance is a hostile work environment due to the actions and behavior of a co-worker at the school. Respondent took specific steps in November of 2022 to limit any possible contact or interaction between the Grievant and the co-worker for the remainder of the semester. The undersigned, in a hostile work environment grievance, would only be authorized to direct the Respondent to address the behavior and to take measures to assure it longer occurs. That issue is now moot, and relief is not possible in this case. Accordingly, this grievance is dismissed.

The following Findings of Fact are based upon the undisputed record of this case.

## **Findings of Fact**

1. Grievant is employed by the Jefferson County Board of Education as a Teacher at Jefferson High School.
2. Grievant complains that a co-worker at the school created a hostile work environment through his behavior. Grievant seeks to have the Jefferson County Board of Education address the situation and remove him from the environment.
3. Grievant and David Wright are both teachers who have been assigned to Jefferson High School in the past. Prior to Mr. Wright's conclusion, of his assignment at Jefferson High School in December of 2022, Respondent took specific actions to limit any possible contact or interaction between the two teachers for the remainder of the semester.

4. As of December 2022, Mr. Wright only worked through Jefferson County's Virtual School program and is no longer employed at Jefferson High School. Grievant continues to be assigned full-time as a teacher at Jefferson High School.

5. There has been no interaction or harassing conduct between these two employees since December 2022.

### **Discussion**

"Each administrative law judge has the authority and discretion to control the processing of each grievance assigned such judge and to take any action considered appropriate consistent with the provisions of W. VA. CODE § 6C-2-1 *et seq.*" W.VA. CODE ST. R. § 156-1-6.2 (2018). When the employer asserts an affirmative defense, it must be established by a preponderance of the evidence. *See, Lewis v. Kanawha County Bd. of Educ.*, Docket No. 97-20-554 (May 27, 1998); *Lowry v. W. Va. Dep't of Educ.*, Docket No. 96-DOE-130 (Dec. 26, 1996); *Hale v. Mingo County Bd. of Educ.*, Docket No. 95-29-315 (Jan. 25, 1996). *See generally, Payne v. Mason County Bd. of Educ.*, Docket No. 96-26-047 (Nov. 27, 1996); *Trickett v. Preston County Bd. of Educ.*, Docket No. 95-39-413 (May 8, 1996). "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." *Leichliter v. W. Va. Dep't of Health and Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

The allegation in this grievance is a hostile work environment due to the actions and behavior of a co-worker at the school. The Grievance Board has long stated that "[t]o create a hostile work environment, inappropriate conduct must be sufficiently severe or pervasive to alter the conditions of an employee's employment." *Napier v. Stratton*,

204 W. Va. 415, 513 S.E.2d 463, 467 (1998). See *Hanlon v. Chambers*, 195 W. Va. 99, 464 S.E.2d 741 (1995). Whether a working environment is hostile or abusive can be determined only by looking at all of the circumstances. Certainly, any act might be construed by someone as harassing, hostile, disruptive, or offensive. In determining whether a hostile environment exists, the totality of the circumstances must be considered from the perspective of a reasonable person's reaction to a similar environment under similar or like circumstances. *Lanehart v. Logan County Bd. of Educ.*, Docket No. 97-23-088 (June 13, 1997).

The limited record established that any claim of harassment, hostile work environment, or other conduct directed toward Grievant by Mr. Wright is now moot and incapable of being addressed by the undersigned. As of December 2022, Mr. Wright only worked through Jefferson County's Virtual School program and is no longer employed at Jefferson High School. Grievant continues to be assigned full-time as a teacher at Jefferson High School. There has been no possible interaction or possibility of harassing conduct, or interaction of any kind, between these two employees since December 2022.

There is no possible relief to be granted in that the two employees are no longer assigned to the same workplace and will have no interaction for the foreseeable future. The remedy in a hostile work environment grievance would be a directive to Respondent to address the behavior and take steps to assure it no longer occurs, that issue is now moot, and relief is not possible in this case.

The Grievance Board will not hear issues that are moot. "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.*

*Dept. 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).

In situations where “it is not possible for any actual relief to be granted, any ruling issued by the undersigned regarding the question raised by this grievance would merely be an advisory opinion. ‘This Grievance Board does not issue advisory opinions. *Dooley v. Dep’t of Transp.*, 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).’ *Priest v. Kanawha County Bd. of Educ.*, Docket No. 00-20-144 (Aug. 15, 2000).” *Smith v. Lewis County Bd. of Educ.*, Docket No. 02-21-028 (June 21, 2002).

The following Conclusions of Law support the dismissal of this grievance.

### **Conclusions of Law**

1. “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. Dept. 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).

2. In situations where “it is not possible for any actual relief to be granted, any ruling issued by the undersigned regarding the question raised by this grievance would merely be an advisory opinion. ‘This Grievance Board does not issue advisory opinions. *Dooley v. Dep’t of Transp.*, 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).’ *Priest v. Kanawha*

*County Bd. of Educ.*, Docket No. 00-20-144 (Aug. 15, 2000).” *Smith v. Lewis County Bd. of Educ.*, Docket No. 02-21-028 (June 21, 2002).

3. The issue of a hostile work environment raised in this grievance is moot.

Accordingly, this grievance is **DISMISSED**.

Any party may appeal this Dismissal Order to the Intermediate Court of Appeals.<sup>1</sup> Any such appeal must be filed within thirty (30) days of receipt of this Dismissal Order. 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: August 4, 2023**

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**Ronald L. Reece**  
**Administrative Law Judge**

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<sup>1</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 W. VA. 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.