

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**JOHN PUTNAM,
Grievant,**

v.

Docket No. 2023-0585-GIED

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

DISMISSAL ORDER

Grievant, John Putnam was employed by Respondent, Gilmer County Board of Education. On January 25, 2023, Grievant filed this grievance against Respondent protesting his placement on a Focus Support Plan. For relief, Grievant sought for the “Focus Support Plan suggestion to be eliminated; Dr. Minney take no further negative action against John Putnam’s position.

The grievance was denied at level one by decision dated February 21, 2023. Grievant appealed to level two on March 2, 2023. On March 17, 2023, Respondent, by counsel, filed *Respondent’s Motion to Dismiss the Grievance as Moot* asserting the grievance must be dismissed as moot due to Grievant’s resignation. Grievant, by representative, filed Grievant’s *Response to Respondent’s Motion to Dismiss* on April 5, 2023. Grievant appears by representative, Catricia Martin, West Virginia Education Association. Respondent appears by counsel, Howard E. Seuffer, Jr., Bowles Rice, LLP.

Synopsis

Grievant was employed by Respondent as the Principal of Gilmer County High School. Grievant challenges his placement on a focused support plan. Grievant has now resigned from employment. Respondent moved to dismiss the grievance as moot.

As Grievant has resigned, the focused support plan he grieves has no practical consequences for Grievant, so a decision on the propriety of the plan would be merely advisory. As the Grievance Board does not issue advisory opinions, the grievance is moot and must be dismissed. 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

Grievant was employed by Respondent as the Principal of Gilmer County High School.

On January 25, 2023, Grievant filed this grievance against Respondent protesting his placement on a Focus Support Plan.

By letter dated February 22, 2023, Grievant submitted to the Respondent his resignation from employment, effective March 7, 2023.

Respondent accepted Grievant's resignation on February 24, 2023.

Grievant is no longer employed by Respondent.

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 must be dismissed as moot as Grievant is no longer employed by Respondent and focused support plans are not disciplinary. Respondent asserts that, as Grievant is no longer subject to the focused support plan, any decision regarding the same would be advisory. Grievant admits he is no longer employed by Respondent but argues that the grievance should be allowed to go forward because the plan was based on false allegations, Respondent “was determined to remove him from employment, and because Board members sought access to private information about Grievant and made negative comments about him in public meetings.

“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). “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). “Relief 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). *Baker v. Bd. of Directors*, Docket No. 97-BOD-265 (Oct. 8, 1997).

A focused support plan is not disciplinary in nature but is simply a documented and supported improvement process. W. VA. CODE ST. R. § 126-142-9. As Grievant is no longer employed by Respondent, the focused support plan has no practical consequences for Grievant, so a decision on the propriety of the plan would be merely advisory. As the Grievance Board does not issue advisory opinions, the grievance is moot and must be 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. “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.

2. “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).

3. “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). “Relief 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). *Baker v. Bd. of Directors*, Docket No. 97-BOD-265 (Oct. 8, 1997).

4. As Grievant has resigned, the focused support plan he grieves has no practical consequences for Grievant, so a decision on the propriety of the plan would be merely advisory.

5. As the Grievance Board does not issue advisory opinions, the grievance is moot and must be dismissed.

Accordingly, the grievance is **DISMISSED**.

Any party may appeal this decision to the Intermediate Court of Appeals.¹ 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: May 18, 2023

¹ 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.

**Billie Thacker Catlett
Chief Administrative Law Judge**