

**THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD**

**ART VOGEL,**  
**Grievant,**

**v.**

**Docket No. 2023-0321-JefED**

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

**DISMISSAL ORDER**

Grievant, Art Vogel, was employed by the Jefferson County Board of Education as a classroom teacher. After being dismissed from employment, Grievant filed this action on October 17, 2022, alleging wrongful dismissal and requested reinstatement of position, back pay, and all other related benefits. This grievance was filed directly to level three. This case was placed in abeyance at the request of the parties on December 27, 2022. The case was set for an evidentiary hearing on January 12, 2024, but was continued at the request of Grievant. Prior to being rescheduled for a level three hearing, Jefferson County Board of Education filed a motion to dismiss the case. Grievant was given an opportunity to respond to the motion and filed his response on March 14, 2024. The undersigned conducted a hearing on the motion to dismiss on March 27, 2024. Grievant appeared in person and *pro se*. Respondent appeared by Amy Loring, Jefferson County Schools' Human Resources Director, and by its' counsel, Denise M. Spatafore, Dinsmore & Shohl LLP. This matter became mature for consideration and ruling on the motion at the conclusion of the March 27, 2024, hearing.

## **Synopsis**

Grievant, a classroom teacher, was dismissed from employment by Respondent because of an incident that occurred on September 2, 2022. Grievant initially requested reinstatement to his position and back pay. Subsequently, Grievant communicated by email and confirmed at the hearing on the motion that he no longer seeks that relief. The undersigned grants Respondent's motion since no tangible relief is possible, and any decision would constitute an advisory opinion.

The following Findings of Fact are based on the limited record of this case.

## **Findings of Fact**

1. Grievant was dismissed from his position of employment as a classroom teacher for Respondent, as a result of misconduct, effective October 10, 2022.
2. After being dismissed, Grievant filed this grievance on October 17, 2022, alleging that he was wrongfully terminated and requesting reinstatement to the position, back pay, and all other related benefits.
3. In an email to the Grievance Board on March 14, 2024, Grievant stated that "I am uninterested in reinstatement of my position" with Jefferson County Schools and the complaint is about "the manner that Nicole Reed, principal of Charles Town Middle School and former superintendent Dr. Bondy-Shay Gibson conducted their investigation of the incident occurring on September 2<sup>nd</sup>, 2022."
4. Grievant affirmed this position before the undersigned at the hearing conducted on March 27, 2024.

## 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 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).

It is undisputed that Grievant no longer wishes to challenge his dismissal from employment and does not seek reinstatement, therefore, this grievance must be dismissed. Seeking an evidentiary hearing and requesting a “judgment” from the undersigned as to the nature and conduct of an investigation is beyond the jurisdiction of this agency. In addition, any such opinion as to whether the investigation was properly conducted, with no available statutory relief, would constitute an advisory opinion.

Accordingly, this grievance is **DISMISSED**.

“An appeal of the decision of the administrative law judge shall be to the Intermediate Court of Appeals in accordance with § 51-11-4(b)(4) of this code and the Rules of Appellate Procedure.” W. VA. CODE § 6C-2-5(b). Neither the West Virginia Public Employees Grievance Board nor any of its Administrative Law Judges is a party to such an appeal and should not be named as a party to the appeal. However, the appealing party must serve a copy of the petition upon the Grievance Board by registered or certified mail. W. VA. CODE § 29A-5-4(b).

**Date: May 7, 2024**

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