

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**ASHLEY ROLLINS,
Grievant,**

v.

Docket No. 2025-0476-LogED

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

DISMISSAL ORDER

Grievant, Ashley Rollins, was employed as an Aide by Respondent Logan County Board of Education. On January 3, 2025, Grievant filed a grievance directly to level three, stating, "I was suspended for detaining a violent special needs child. The child had a documented history of violent behavior and I was placed in a position that required me to restrain him. This has resulted in my unpaid suspension." She sought to be "[r]einstated to my position as a special needs aide or reinstate[d] to paid administrative leave."

Respondent filed a motion to dismiss on March 20, 2025, asserting that the matter is moot because Grievant has since been terminated pursuant to West Virginia Code § 18A-2-8(c) (2024), which is not grounds for a grievance proceeding. Grievant did not file a response. A hearing on the motion to dismiss is not necessary. The matter is now ripe for decision.

Synopsis

Grievant's request for relief has been rendered moot by the fact that she has been terminated by Respondent and, so, the requested relief cannot be granted. Because Grievant was terminated pursuant to West Virginia Code § 18A-2-8 (2024), she cannot grieve her termination. The Grievance Board cannot entertain moot questions or enter

advisory opinions. Accordingly, Respondent's Motion to Dismiss is GRANTED, and this 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 filed a grievance directly to level three on January 3, 2025, alleging, essentially, that she was wrongfully placed on unpaid suspension. She sought to be returned to paid administrative leave or restored to her position as an Aide.
2. Respondent filed a motion to dismiss on March 20, 2025, asserting that Grievant had been terminated from her position on February 26, 2025, and, thus, this matter is moot.
3. Attached to the motion¹ is a November 14, 2024, letter from Respondent to Grievant informing her that she had been placed on unpaid suspension in light of both a criminal investigation and Child Protective Services ("CPS") investigation related to Grievant's alleged battery and maltreatment of a disabled child.
4. Grievant's suspension was ratified by State Superintendent of Schools Michele L. Blatt, on behalf of Respondent,² on December 10, 2024.
5. On January 17, 2025, the West Virginia Department of Human Services and its Bureau for Social Services substantiated three counts of abuse.

¹ The Grievance Board may properly consider exhibits attached to a grievance form or motion. See Syl. Pt. 1, *Forshey v. Jackson*, 222 W. Va. 743, 671 S.E.2d 748 (2008).

² The West Virginia Department of Education has intervened in the operations of Logan County Schools.

6. By letter dated January 30, 2025, Grievant was advised that the Superintendent of Schools was going to advise Respondent that she be terminated, pursuant to West Virginia Code § 18A-2-8 (2024).

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 moot because Grievant is no longer employed by Respondent, and because Grievant was terminated pursuant to West Virginia Code § 18A-2-8 (2024), she cannot grieve her termination. Therefore, the relief she requested in the instant grievance cannot be granted. Grievant did not respond to the motion to dismiss.

Neither the West Virginia Public Employees Grievance Procedure outlined in West Virginia Code § 6C-2-1 *et seq.* nor the Grievance Board's Rules of Practice and

Procedure set forth in § 156 CSR 1 *et seq.* require that a hearing be conducted on the Motion to Dismiss. In fact, § 156-1-6.6.1 puts the onus on the parties to request a hearing on a motion, but it does allow the Administrative Law Judge to hold a hearing even if neither party requests one. Here, neither party requested a hearing on the motion. Based upon the motion and the attachments, the Grievance Board has determined that there is no need for a hearing. The matter is ripe for disposition.

Pursuant to West Virginia Code § 18A-2-8(c) (2024), when an employee of a county board of education is dismissed for a finding of abuse, his or her dismissal “is not by itself a grounds for a grievance proceeding.” Grievant’s termination was based upon a CPS finding that she had abused a minor student in her charge. Therefore, her termination is not grievable.

Likewise, because Grievant is no longer employed by Respondent, the Grievance Board cannot grant her the requested relief. Thus, the matter is 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].” *Pritt, et al., v. Dep’t of Health & Human Res.*, Docket No. 2008-0812-CONS (May 30, 2008); *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).

Furthermore, 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. *Spence v. Div. of Natural Res.*, Docket No. 2010-0149-CONS (Oct. 29, 2009); *Smith v. Lewis County Bd. of Educ.*, Docket No. 02-21-028 (June 21, 2002). “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). “The purpose of [the grievance statute] is to provide a procedure for the resolution of employment grievances raised by the public employees of the State of West Virginia, except as otherwise excluded in this article.” W. VA. CODE § 6C-2-1(a).

Because the relief requested cannot be granted for the aforementioned reasons, the grievance must be dismissed as moot. 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]." *Pritt, et al., v. Dep't of Health & Human Res.*, Docket No. 2008-0812-CONS (May 30, 2008); *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).

3. 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. *Spence v. Div. of Natural Res.*, Docket No. 2010-0149-CONS (Oct. 29, 2009); *Smith v. Lewis County Bd. of Educ.*, Docket No. 02-21-028 (June 21, 2002). The Grievance Board does not issue advisory opinions. See *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); *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); *Priest v. Kanawha Cnty. Bd. of Educ.*, Docket No. 00-20-144 (Aug. 15, 2000).

Accordingly, the Respondent's Motion to Dismiss is **GRANTED**, and it is hereby **ORDERED** that this matter be **DISMISSED** and STRICKEN from the Grievance Board's docket.

Any party may appeal this decision to the Intermediate Court of Appeals in accordance with W. VA. CODE § 51-11-4(b)(4) 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) (2024).

DATE: April 3, 2025

Lara K. Bissett
Administrative Law Judge