



Members
James Paul Geary
Orton A. Jones
David L. White

**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

ARCH A. MOORE, JR.
Governor

Offices
240 Capitol Street
Suite 508
Charleston, WV 25301
Telephone 348-3361

CAROL A. SNYDER

v.

Docket No. 20-86-162-1

KANAWHA COUNTY BOARD OF EDUCATION

DECISION

On April 9, 1986 the above styled grievance was received in this office and by letter dated April 10, 1986 the representative of the grievant and counsel for the board of education were advised to inform this office as soon as possible as to the necessity of an evidentiary hearing or if the case could be submitted and decided on the record. No response was received by this office to that inquiry.

Accordingly, on September 3, 1986 another letter was directed to the parties regarding the disposition of this grievance and on September 5, 1986 a copy of the transcript of the level two hearing was forwarded to this office by counsel for the board of education with the notation that the board would defer to the grievant on whether the grievance would

be pursued on the record or by evidentiary hearing.¹

By letter dated September 11, 1986 the representative for the grievant advised this office that this grievance had become moot with the close of the 1985-86 school year but that he "...had requested by phone shortly after appealing to Level IV that the grievance be decided on the record." The representative requested that the grievance be dismissed.²

In addition to the foregoing factual recitation the following specific findings of fact are appropriate.

FINDINGS OF FACT

1. Grievant filed a grievance dated April 7, 1986 which was hand delivered to the Education Employees Grievance Board office on April 9, 1986.

¹ By letter dated September 9, 1986 counsel for the board also forwarded a copy of the level two decision dated March 5, 1986 and an excerpt from the board meeting on March 27, 1986 denying the grievance.

² In the letter it is stated that the issue involved was a matter of excessive enrollment in a special education class and that the enrollment for the present school year was within limits.

The administrative assistant in this office records all telephone messages concerning grievances and files these records with the grievance; there is no recollection of a telephone request that this grievance be submitted on the record and no written memorandum thereof in the file of this grievance or elsewhere.

2. By letter dated April 10, 1986 the administrative assistant to the Education Employees Grievance Board requested that the parties advise this office as to the manner in which they wished to proceed and no response thereto was received by this office.

3. On September 3, 1986 the administrative assistant again inquired by letter as to the manner the parties desired to proceed and counsel for the board of education responded by letter dated September 5, 1986, deferring to the wishes of the grievant. The transcript of the evidence of the level two hearing was also transmitted to this office on that date and a copy of the transmittal letter was sent to grievant's representative.

4. By letter dated September 11, 1986, after the level two transcript had been prepared and filed by the board of education, grievant's representative advised this office that the grievance had become moot at the close of the 1985-86 school year; that he had made a telephone request that the grievance be decided on the record shortly after it had been filed. Grievant's representative requested that the grievance be dismissed but did not notify counsel for the board of education.

5. There is no indication or record that the grievant or her representative made a request that the transcript of the level two hearing be prepared or that the grievance be submitted to the hearing examiner on the record of the level two hearing for decision.

CONCLUSIONS OF LAW

1. Code, 18-29-6 contemplates that the evidence taken at a grievance hearing will be transcribed by the board of education at the request of a party to the grievance. This request must be in writing with notice to all parties of record.

2. A party seeking to submit a grievance to the hearing examiner on the basis of the record made at previous levels of the grievance procedure is responsible for requesting, in writing, that the record be prepared and transmitted to the hearing examiner.

3. A party seeking to submit a grievance to the hearing examiner on the basis of the record shall advise the hearing examiner and other parties of record in writing of the intent to submit the grievance on the record.

4. Code, 18-29-3(d) provides that an employee may withdraw a grievance at any time by notice, in writing, to the level wherein the grievance is then current. This provision contemplates notice, in writing, to all parties of record. It is incumbent upon parties wishing to withdraw or dismiss a grievance to do so promptly to avoid incurring needless expense and costs incident to preparation of transcripts, etc.³

The grievance is dismissed from the docket of this Board.



LEO CATSONIS

Chief Hearing Examiner

Dated: Sept. 30, 1986

³ Code, 18-29-5(b) authorizes hearing examiners to allocate costs among parties to a grievance in accordance with Code, 18-29-8, which provides that expenses incurred relative to the grievance procedure at levels one through three shall be borne by the party incurring such expenses.