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**WEST VIRGINIA EDUCATION AND
STATE EMPLOYEES GRIEVANCE BOARD**

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JUDY MABE, and JENNIFER HOLLEY

v.

Docket No. 89-22-323

LINCOLN COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievants, all employed by Respondent Lincoln County Board of Education as teachers at Pleasant View Elementary School (PVES), initiated the following complaint at Level I on April 3, 1989:

Violation of. . . [W.Va. Code §] 18A-4-14 in regard to the lack of one planning period within each regular school day for [G]rievants. Relief sought is to be granted a regular planning period each day.

After denials at Levels I, II and III,¹ Grievants on July 6 advanced their claim to Level IV, where it was heard August 9. Post-hearing submissions having been waived, the matter is mature for disposition.

¹ The Level II decision and hearing transcript are part of the record in this case. The Level III decision, which was rendered without hearing at that plane per Code §18-29-4(c), is also included.

It is not disputed by Grievants that the challenged schedule was in place at the outset of the 1988-89 school term,² and that it was not until Spring 1989 that they initiated these proceedings, even though dissatisfied as early as August or September 1988. Respondent contends their grievance is thus untimely, and in support of that argument, cites W.Va.Code §18-29-4(a).³

While it is noted that Grievants' timeliness herein is questionable, the more striking point is that the claim they press is moot. Grievants concede the remedy they seek

² At least one Grievant, and perhaps others, testified to orally-expressed agreement to the schedule at the start of the school year.

³ That statute provides, in pertinent part:

[W]ithin fifteen days following the occurrence of the event upon which the grievance is based, or within fifteen days of the date on which the event became known to the grievant or within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance, the grievant. . .shall schedule a conference with the immediate supervisor to discuss the nature of the grievance and the action, redress or other remedy sought.

. . .
Within ten days of receipt of the response from the immediate supervisor following the informal conference, a written grievance may be filed [at Level I] with said supervisor by the grievant.

Code §18-29-3(a) is related and provides, in pertinent part:

A grievance must be filed within the times specified in. . .[W.Va. Code §18-29-4].

directly relates only to the 1988-89 PVES schedule.⁴ It was established at the Level IV hearing that none of Grievants are working during this Summer 1989, and it is noticed by the undersigned that the 1988-89 school year ended June 30, 1989. Further, Respondent presented uncontroverted information that the 1989-90 PVES daily schedule has not yet been formulated.

The remainder of this Decision will be presented as formal findings of fact and conclusions of law.

FINDINGS OF FACT

1. Grievants, all teachers in Respondent's employ at Pleasant View Elementary School (PVES), filed this grievance at Level I prior to the end of school year 1988-89.
2. School year 1988-89 ended June 30, 1989.
3. The only relief sought herein by Grievants is a change in their 1988-89 PVES schedule.

CONCLUSIONS OF LAW

1. "Moot questions or abstract positions, the decision of which would avail nothing in the determination of controverted rights, are not properly cognizable in the

⁴ April 3, 1989, the date Grievants commenced this action at Level I, was prior to the close of school term 1988-89. At Level IV, their representative stated she was not contending impropriety in the amount of time taken to process this claim at any of the procedural levels.

grievance procedure. . .and this [Grievance] Board will therefore not issue advisory opinions." Wilburn v. Kanawha Co. Bd. of Educ., Docket No. 20-88-089 (Aug. 29, 1988).

2. School year 1988-89 has passed, and the specific issue introduced by this grievance is therefore moot.

Accordingly, this grievance is DENIED.⁵

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Lincoln County and such appeal must be filed within thirty (30) days of receipt of this decision. W.Va. Code §18-29-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Hearing Examiners is a party to such appeal, and should not be so named. Please advise this office of any intent to appeal so that the record can be prepared and transmitted to the appropriate Court.


M. DREW CRISLIP
HEARING EXAMINER

Dated: August 21, 1989

⁵ After the Level IV hearing, the undersigned was advised that one Grievant may have resigned employment with Respondent. If this is indeed true, she is technically no longer a party to the instant case.