

**THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD**

**DEBRA HANDY,**

**Grievant,**

**v.**

**Docket No. 2017-2059-McDED**

**MCDOWELL COUNTY BOARD OF EDUCATION,**

**Respondent.**

**DISMISSAL ORDER**

Grievant, Debra Handy, submitted a grievance dated April 11, 2017, against her employer, Respondent, McDowell County Board of Education, stating "I was improperly transferred from my current assignment as a kindergarten aide at Southside K-8 in violation of WV Code 18A-4-8b. I am not the least senior aide within my job classification." As relief sought, "I request that the transfer I received from my job classification as a kindergarten aide at Southside K-8 be rescinded and I continue as a kindergarten aide at Southside K-8 for the 2017-2018 school year."

A level one conference was held on May 10, 2017, and denied by decision dated May 17, 2017. Grievant appealed to level two of the grievance process on May 26, 2017. Grievant is represented by Joe Spradling, Esq., counsel for the West Virginia School Service Personnel Association ("WVSSPA"). Respondent is represented by Howard E. Seuffer, Jr., Esquire, Bowles Rice LLP.

**Synopsis**

Grievant was employed by Respondent as an Kindergarten Aide. Grievant filed this grievance alleging an improper transfer. Grievant sought only the rescission of her

transfer, and no back pay, or other compensation. Grievant is now deceased. Accordingly, the issues raised are now moot, and any ruling thereon would result in an advisory opinion. Therefore, the grievance is DISMISSED.

The following Findings of Fact are made based upon a complete and thorough review of the record of this matter, and the representations of counsel for the parties.

### **Findings of Fact**

1. At the time of the filing of this grievance, Grievant, Debra Handy, was employed by Respondent as a Kindergarten Aide at Southside K-8. In her statement of grievance, Grievant alleged that she had been improperly transferred from her position, and she sought the rescission of her transfer.

2. On December 4, 2017, the Grievance Board received an email from counsel for Respondent's office stating that Grievant passed away over that previous weekend. Counsel for Grievant and counsel for Respondent were copied on this communication. However, counsel for Grievant did not confirm the same, or otherwise contact the Grievance Board about her death.

3. On December 6, 2017, during a telephone call with Grievance Board staff, a staff member from the WVSSPA confirmed that Grievant had passed away.

4. The Grievance Board has received no request to withdraw or dismiss the Grievance from either party as of this date. The Grievance Board has received no further communications from counsel for Grievant or the WVSSPA regarding this matter as of this date.

5. A level two mediation in this grievance is scheduled to be held on January 23, 2018, at 1:00 p.m. in Beckley, West Virginia.

6. Grievant has not made a request for back pay or other compensation in this grievance.

### **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 (2008). “A grievance may be dismissed, in the discretion of the administrative law judge, if no claim on which relief can be granted is stated or a remedy wholly unavailable to the grievant is requested.” W. VA. CODE ST. R. § 156-1-6.11 (2008). When there is no case in controversy, the Grievance Board will not issue advisory opinions. *See Brackman v. Div. of Corr./Anthony Corr. Center*, Docket No. 02-CORR-104 (Feb. 20, 2003); *Gibb v. W. Va. Div. of Corr.*, Docket No. 98-CORR-152 (Sept. 30, 1998). In addition, 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. 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 and Human Res.*, Docket No. 2008-0812-CONS (May 30, 2008).

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).

As Grievant is now deceased, this matter is moot. As such, any ruling on the merits of Grievant’s claims would amount to nothing more than an advisory opinion, which is prohibited. Accordingly, this grievance is dismissed.

### **Conclusions of Law**

1. “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 (2008).

2. “A grievance may be dismissed, in the discretion of the administrative law judge, if no claim on which relief can be granted is stated or a remedy wholly unavailable to the grievant is requested.” W. VA. CODE ST. R. § 156-1-6.11 (2008). When there is no case in controversy, the Grievance Board will not issue advisory opinions. See *Brackman v. Div. of Corr./Anthony Corr. Center*, Docket No. 02-CORR-104 (Feb. 20, 2003); *Gibb v. W. Va. Div. of Corr.*, Docket No. 98-CORR-152 (Sept. 30, 1998).

3. 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. 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 and Human Res.*, Docket No. 2008-0812-CONS (May 30, 2008).

4. “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).

5. Grievant’s claim is moot as she is now deceased. As such, any ruling issued by the undersigned regarding the merits of this grievance would be nothing more than an advisory opinion.

Accordingly, the grievance is **DISMISSED**. The mediation scheduled for January 23, 2018, is hereby **CANCELED**.

Any party may appeal this Dismissal Order to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Dismissal Order. See 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 so named. However, the appealing party is required by W. VA. CODE § 29A-5-4(b) to serve

a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Board with the civil action number so that the certified record can be prepared and properly transmitted to the Circuit Court of Kanawha County. See *also* 156 C.S.R. 1 § 6.20 (2008).

**DATE: December 20, 2017.**

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**Carrie H. LeFevre**  
**Administrative Law Judge**