

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**RICHARD R. CAMPBELL,
Grievant,**

v.

Docket No. 2018-1456-PutED

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

DISMISSAL ORDER

Grievant, Richard R. Campbell, was employed by Respondent, Putnam County Board of Education, as a Principal. By form dated June 30, 2018, Mr. Campbell filed a level one grievance alleging, "Grievant received an unsatisfactory rating on his evaluation due to two listed reasons: 1) an incident the Grievant was unaware of wherein a school booster club paid a custodian without his knowledge or permission: 2) an untrue allegation that the grievant had failed to focus on addressing items noted in the school's internal audit report. The grievant denies the allegations. The grievant alleges discrimination in violation of W. VA. CODE." For relief sought, "To have the evaluation rating standard 7: Operations to Promote Learning changed from unsatisfactory to emerging. To receive training regarding WVDE Policy 1224.1". The grievance was denied in a Level One decision dated July 20, 2018.

Grievant appealed to level two of the grievance process on July 25, 2018. A level two mediation was scheduled to be held on September 14, 2018. On September 12, 2018, the parties, by electronic mail, provided that this matter had been settled, but needed time to execute the agreement. By order dated September 13, 2018, the undersigned agreed to place this grievance in abeyance until October 26, 2018, to allow additional time to finalize the agreement.

On October 2, 2018, Respondent, by counsel, Jason S. Long, filed a Motion to Dismiss, alleging the grievance is moot due to Grievant's resignation from employment. On October 5, 2018, the Grievance Board notified Grievant that any response to the motion to dismiss must be made, in writing, no later than October 22, 2018. Grievant did not provide any response.

Synopsis

Grievant alleged an employee evaluation he received while he was employed by Respondent was improper. Following the filing of his grievance, Grievant resigned. Respondent moved to dismiss the grievance asserting mootness due to Grievant's resignation. Grievant did not file a response to the Motion to Dismiss. Respondent proved the grievance is now moot. Accordingly, Respondent's motion to dismiss should be granted, and this grievance, dismissed.

The undersigned makes the following Findings of Fact:

Findings of Fact

1. Grievant was employed by Respondent, Putnam County Board of Education, as a Principal.
2. Grievant challenged an employee evaluation he received while he was employed by Respondent.
3. Grievant resigned from employment with Respondent effective September 21, 2018.

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.” Rules of Practice and Procedure of the West Virginia Public Employees Grievance, 156 C.S.R. 1 § 6.2 (2018). “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. “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.

Respondent asserts as an affirmative defense that the grievance is moot because Grievant has now resigned and he did not suffer any loss of pay or benefits. “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 (2008).

“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 & Human Res.*, Docket No. 2008-0812-CONS (May 30, 2008). 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. *Smith v. Lewis County Bd. of Educ.*, Docket No. 02-21-028 (June 21, 2002); *Spence v. Div. of Natural Res.*, Docket No. 2010-0149-CONS (Oct. 29, 2009). "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). "Relief which entails declarations that one party or the other was right or wrong, but provides no substantive, practical consequences for either party, is illusory, and unavailable from the [Grievance Board]." *Baker v. Bd. of Directors*, Docket No. 97-BOD-265 (Oct. 8, 1997) (citing *Miraglia v. Ohio County Bd. of Educ.*, Docket No. 92-35-270 (Feb. 19, 1993)).

As Grievant is no longer employed by Respondent, any decision in this matter would merely be a declaration that one party is right or wrong, would have no substantive consequence, and would merely be advisory in nature. The grievance is moot.

Therefore, the Respondent's motion to dismiss is GRANTED, and this grievance, 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." Rules of

Practice and Procedure of the West Virginia Public Employees Grievance, 156 C.S.R. 1 § 6.2 (2018).

2. “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. “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.

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 (2008).

4. “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 & Human Res.*, Docket No. 2008-0812-CONS (May 30, 2008).

5. 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. *Smith v. Lewis County Bd. of Educ.*, Docket No. 02-21-028 (June 21, 2002); *Spence v. Div. of Natural Res.*, Docket No. 2010-0149-CONS (Oct. 29, 2009). “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).

6. “Relief which entails declarations that one party or the other was right or wrong, but provides no substantive, practical consequences for either party, is illusory, and unavailable from the [Grievance Board].” *Baker v. Bd. of Directors*, Docket No. 97-BOD-265 (Oct. 8, 1997) (citing *Miraglia v. Ohio County Bd. of Educ.*, Docket No. 92-35-270 (Feb. 19, 1993)).

7. Respondent proved the grievance is now moot due to Grievant’s resignation from employment.

Accordingly, this Grievance is **DISMISSED**.

Any party may appeal this Order to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this 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 Civil Action number should be

included so that the certified record can be properly filed with the circuit court. See *also* 156 C.S.R. 1 § 6.20 (eff. July 7, 2018).

DATE: OCTOBER 26, 2018

**WILLIAM B. MCGINLEY
ADMINISTRATIVE LAW JUDGE**