

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**BRIAN SCOTT AND JESSY SCOTT,
Grievants,**

v.

Docket No. 2018-1472-CONS

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

DISMISSAL ORDER

Grievants, Brian Scott and Jessy Scott, were employed by Respondent, Mason County Board of Education. On February 23, 2018, Grievants, by counsel, filed separate but identical grievances against Respondent alleging reprisal, retaliation, harassment and hostile work environment committed by their principal. For relief, Grievants sought “[i]mmediate action by school administration and school system to stop such actions with proper recourse and appropriate discipline of employee causing the harassment.”

On an unspecified date, level one conferences were held on the grievances and a level one decision was rendered on both grievances on October 6, 2017, denying the grievances. Grievants, by counsel, appealed to level two in both grievances on September 5, 2018, and moved to consolidate the grievances. *A Notice of Mediation Session* was issued on the consolidated grievances on October 16, 2018, scheduling the mediation session for November 30, 2018.

On November 28, 2018, Respondent, by counsel, filed *Respondent’s Motion to Dismiss*, asserting the grievance is moot due to Grievants’ resignation from employment. By email of the same date, the Grievance Board notified the parties that the mediation session was continued, that any response to the motion to dismiss must

be made in writing by December 12, 2018, and that “[f]ailure to respond may result in the grievance being dismissed.” The Grievance Board has received no response from Grievants to Respondent’s motion. Grievants are represented by counsel, Abraham J. Saad, Saad Dixon Law Offices PLLC. Respondent is represented by counsel, Leslie K. Tyree, Esquire.

Synopsis

Grievants were employed by Respondent as a Teacher/Coach and Counselor. Grievants filed consolidated grievances protesting the alleged improper conduct of their school principal. Grievants resigned their employment and are now employed by another county school board. Respondent moved to dismiss the grievance as moot. The grievance is moot due to Grievants’ resignation from employment and must be dismissed. Accordingly, the 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 Brian Scott was employed by Respondent as a Teacher and Coach. Grievant Jessie Scott was employed by Respondent as a Counselor.
2. Grievants alleged reprisal, retaliation, harassment and hostile work environment committed by their principal. For relief, Grievants sought “[i]mmediate action by school administration and school system to stop such actions with proper recourse and appropriate discipline of employee causing the harassment.”
3. Grievants resigned from their employment, which resignation was accepted by Respondent at a meeting on July 10, 2018.

4. Grievants are now employed by the Cabell County Board of Education.

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 now moot as Grievants have resigned from employment with Respondent and the grievance relates only to Grievants’ supervision by the principal, a decision upon which would be advisory in nature. Grievants did not respond to the motion to dismiss, but Grievant Brian Scott’s similar grievance, docket number 2017-2505-CONS, was previously dismissed on the same grounds.

“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), *aff'd*, Kanawha Cnty. Cir. Ct. Civil Action No. 02-AA-87 (Aug. 14, 2003); *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]. *Miraglia v. Ohio County Bd. of Educ.*, Docket No. 92-35-270 (Feb. 19, 1993)." *Baker v. Bd. of Directors*, Docket No. 97-BOD-265 (Oct. 8, 1997).

The allegations in the consolidated grievance are reprisal, retaliation, harassment and hostile work environment committed by their principal. For relief, Grievants sought "[i]mmediate action by school administration and school system to stop such actions with proper recourse and appropriate discipline of employee causing the harassment." These issues are clearly now moot. Grievants are no longer subject to the principal's supervision, and a decision on these issues would merely be a declaration that one party was right or wrong.

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.

2. "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.

3. “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).

4. 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), *aff'd*, Kanawha Cnty. Cir. Ct. Civil Action No. 02-AA-87 (Aug. 14, 2003); *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).

5. “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]. *Miraglia v. Ohio County Bd. of Educ.*, Docket No. 92-35-270 (Feb. 19, 1993).” *Baker v. Bd. of Directors*, Docket No. 97-BOD-265 (Oct. 8, 1997).

6. The grievance is moot due to Grievants’ resignation from employment and must be dismissed.

Accordingly, the grievance is **DISMISSED**.

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 Civil Action number should

be included so that the certified record can be properly filed with the circuit court. See *also* W. VA. CODE ST. R. § 156-1-6.20 (2018).

DATE: January 18, 2019

Billie Thacker Catlett
Chief Administrative Law Judge