

**THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD**

**COLIN SPROUSE,**  
**Grievant,**

**v.**

**Docket No. 2020-0886-GiLED**

**GILMER COUNTY BOARD OF EDUCATION,**  
**Respondent,**

**and**

**TYSON PRICE,**  
**Intervenor.**

**DISMISSAL ORDER**

Grievant, Colin Sprouse, is employed by Respondent, Gilmer County Board of Education. On January 31, 2020, Grievant filed this grievance against Respondent alleging nepotism, favoritism, and discrimination. For relief, Grievant seeks Respondent

[B]e directed to correct the biased personnel situation that exists at Glenville Elementary School. This could be done by transferring personnel within the system to ensure that nepotism does not exist and that the ill effects of nepotism are avoided for all personnel. Furthermore, Gilmer County Schools needs to be directed to follow WV Code and local policy in regard to the issue of nepotism with all hiring of personnel.

Following the March 16, 2020 level one conference, an undated level one decision received by the Grievance Board on April 2, 2020, was rendered denying the grievance. Grievant appealed to level two on April 8, 2020. Following mediation, Grievant appealed to level three of the grievance process on August 3, 2020. On September 3, 2020, the parties were notified that a level three hearing would be held on November 12, 2020. On October 29, 2020, the Grievance Board granted Tyson Price's October 21, 2020 motion to intervene. On November 2, 2020, Respondent, by counsel, filed *Respondent's Motion*

*to Dismiss* asserting the grievance must be dismissed as moot due to Grievant's retirement. Grievant, by representative, filed *Grievant's Motion in Opposition to Dismiss* on November 8, 2020. On November 11, 2020, Respondent, by counsel, filed *Respondent's Reply to Grievant's Response to Respondent's Motion to Dismiss*. The level three hearing was converted to a hearing on the motion to dismiss, which was held on November 12, 2020, before Administrative Law Judge Carrie H. LeFevre<sup>1</sup> at the Grievance Board's Charleston, West Virginia office via video conference. Grievant appeared personally and by representative, Susan Lattimer Adkins, West Virginia Professional Educators. Respondent appeared by Superintendent Patricia Lowther and by counsel, Richard S. Boothby, Bowles Rice, LLP. Intervenor appeared personally and by representative, Don Bucher.

### **Synopsis**

Grievant was employed by Respondent as an academic coach. Grievant alleges nepotism, favoritism, and discrimination and seeks Respondent "be directed to correct the biased personnel situation" and "be directed to follow WV Code and local policy." Grievant has now retired from employment. Respondent moved to dismiss the grievance as moot. As Grievant is retired, he is no longer subject to the conditions of employment he grieves. Grievant did not allege an economic injury that could be remedied. The grievance is moot. 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:

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<sup>1</sup> The matter was reassigned to the undersigned for administrative reasons on December 22, 2020.

### **Findings of Fact**

1. Grievant was employed by Respondent as an academic coach.
2. Grievant filed the instant grievance on January 31, 2020 alleging nepotism, favoritism, and discrimination and seeking Respondent “be directed to correct the biased personnel situation” and “be directed to follow WV Code and local policy.”
3. Grievant alleges that the principal and vice principal of Gilmer Elementary School are brothers-in-law and that their wives are both teachers at the school. Grievant alleges this creates favoritism and discrimination because the wives are evaluated by the central office and are not subject to “walk-throughs” to evaluate performance.
4. Grievant retired from employment effective October 30, 2020.

### **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 must be dismissed as moot as Grievant has retired and grieves only conditions of employment. Grievant argues that the grievance should be allowed to go forward because he was forced to retire due to the pandemic and that there were cases in which the Grievance Board had permitted grievances to go forward following the retirement of the grievant.

“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).

That Grievant feels he was forced to retire due to the pandemic, while unfortunate, is not relevant to whether the relief he requested is moot. As Grievant is retired, he is no longer subject to the conditions of employment he grieves. The grievances cited by Grievant in the response to the motion to dismiss involved claims of economic injury for which money could be awarded if the grievant prevailed. There is no claim of economic injury in this case. Therefore, any decision by the Grievance Board on this issue would now be advisory and have no practical effect, rendering the grievance moot.

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. “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.

2. “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).

3. As Grievant is retired, he is no longer subject to the conditions of employment he grieves and there is no claim of economic injury in this case.

4. Any decision by the Grievance Board on this issue would now be advisory and have no practical effect, rendering the grievance moot.

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: December 29, 2020**

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**Billie Thacker Catlett**  
**Chief Administrative Law Judge**