

**THE WEST VIRGINIA PUBLIC EMPLOYEES  
GRIEVANCE BOARD**

**S. O.,**

**Grievant,**

**v.**

**Docket No. 2019-0745-BerED**

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

**DISMISSAL ORDER**

Grievant, S.O., hired by Respondent as a Guidance Counselor, filed her first grievance on December 28, 2018. In this action, Grievant alleged that she was harassed by the school principal after she failed to timely report allegations of child abuse and neglect to the West Virginia Department of Health and Human Resources. Grievant filed an additional grievance alleging that she should not have been placed on a Corrective Action Plan. On January 28, 2019, a Level One hearing was conducted in the above styled grievance and it was denied as untimely. Thereafter, the Grievance Board was in the process of scheduling a Level Two mediation session for this grievance. Respondent filed a Motion to Dismiss this case on or about April 5, 2019, due to Grievant's resignation from employment. Grievant was provided with an opportunity to respond on at least two occasions; however, no response was received. This case was given to the undersigned for a ruling on the Motion to Dismiss on September 6, 2019. Grievant appears *pro se*. Respondent appeared by its counsel, Laura Sutton, Bowles Rice LLP.

## **Synopsis**

Grievant, S.O., was employed by Respondent, Berkeley County Board of Education, as a Guidance Counselor. Grievant is no longer employed by Respondent. Grievant's resignation from her employment with Respondent rendered this grievance moot. Accordingly, this Grievance is dismissed.

The following Findings of Fact are based upon the undisputed record of this case.

### **Findings of Fact**

1. Grievant was employed by the Berkeley County Schools as a Counselor.
2. On November 7, 2018, a student reported that she had been sexually assaulted by a family member to Grievant.
3. On November 8, 2018, another teacher made Principal Katherine Worthington aware of the student's report. Ms. Worthington was unaware that a student had reported being sexually assaulted.
4. Ms. Worthington contacted Grievant on November 8, 2018, and asked if Child Protective Services had been contacted. Grievant informed Ms. Worthington that she did not contact them or any police department.
5. Although these events took place in November 2018, Grievant did not file a grievance until late December.
6. Grievant resigned from her employment with Respondent on March 24, 2019.

### **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 (2018). When the employer asserts an affirmative defense, it must be established by a preponderance of the evidence. *See, Lewis v. Kanawha County Bd. of Educ.*, Docket No. 97-20-554 (May 27, 1998); *Lowry v. W. Va. Dep’t of Educ.*, Docket No. 96-DOE-130 (Dec. 26, 1996); *Hale v. Mingo County Bd. of Educ.*, Docket No. 95-29-315 (Jan. 25, 1996). *See generally, Payne v. Mason County Bd. of Educ.*, Docket No. 96-26-047 (Nov. 27, 1996); *Trickett v. Preston County Bd. of Educ.*, Docket No. 95-39-413 (May 8, 1996). “The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not.” *Leichliter v. W. Va. Dep’t of Health and Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

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. Dept. 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).

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).

Grievant is no longer employed by Respondent thus, there is no remedy to grant Grievant. Therefore, the grievance is moot. Accordingly, this grievance is dismissed.

The following Conclusions of Law support the dismissal of this grievance.

### **Conclusions of Law**

1. “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. Dept. 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).

2. 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).

3. Since Grievant is no longer an employee of Respondent, the issues raised in this grievance are moot.

Accordingly, this 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* 156 C.S.R. 1 § 6.20 (2018).

**DATE: September 25, 2019**



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**Ronald L. Reece**  
**ADMINISTRATIVE LAW JUDGE**