DAVID E. BELL,

Grievant,

v. DOCKET NO. 94-22-236

LINCOLN COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, David E. Bell, is employed by the Lincoln County Board of Education ("Board") as Principal of Duval High School. Mr. Bell filed a grievance at Level I on November 30, 1993, asserting:

> Violation of WV Code 18-29-2, section a, in regard to a substantial detriment to or interference with job performance and State Bd. of Ed. Policy 5300 in regard to due process. Relief sought is removal, retractment, and a (sic) explanatory letter to parent regarding Mr. Larry Prichard's letter to grievant dated November 1, 1993.

A hearing was held at Level II on February 3, 1994, and a decision rendered on April 28, 1994. The Board adopted the findings of fact and conclusions of law of the Level II hearing examiner and denied the grievance at Level III on May 16, 1994. The Level IV appeal was received on June 9, 1994, and a hearing held on July 13, 1994, at which time this case became mature for decision.

The following findings of fact are derived from the evidence presented at the Level II and Level IV hearings.

Findings of Fact

1. Grievant is currently employed as Principal of Duval High School.

2. Larry Prichard is currently employed as Assistant Superintendent for the Lincoln County Board of Education.

3. Assistant Superintendent Prichard is grievant's immediate supervisor under the

organizational structure of the Board.

4. Mrs. Laura Gillenwater had contacted Theresa Wilson at the State Board of Education regarding problems her son, Danny Preece, was having at Duval High School.

5. Ms. Wilson called Assistant Superintendent Prichard and advised him to talk to Mrs. Gillenwater. Mr. Prichard's secretary scheduled an appointment with Mrs. Gillenwater for November 1, 1993.

6. Mr. Prichard met with Mrs. Gillenwater and she expressed certain concerns about her son's performance at Duval High and about Mr. Bell. Mrs. Gillenwater requested that Mr. Prichard relay her concerns and suggestions for her son's improvement to Mr. Bell in writing.

7. Mr. Prichard communicated by memorandum dated November 1, 1993 with grievant, addressing the concerns expressed by Mrs. Gillenwater regarding her son, with several suggestions as to how to remedy the situation.

8. Copies of the November 1, 1993 memorandum were sent to Theresa Wilson at the State Board of Education, Dallas Kelly, Superintendent of Lincoln County Schools, and Mrs. Gillenwater.

9. Grievant objected to certain language contained in the November 1, 1993 memorandum and did so by written letter to Mr. Prichard dated November 5, 1993.

10. Grievant and Mr. Prichard did not communicate by telephone or in person with regard to this matter.

11. The November 1, 1993 memorandum is not, and was never intended to be, a letter of reprimand. The letter was not placed in Mr. Bell's personnel file.

12. Sometime after the November 1, 1993 communication, and after the initial filing of this grievance, Mrs. Gillenwater signed a citizen's complaint with other parents asking for the removal of Mr. Bell as Principal of Duval High School.

Discussion

Grievant asserts that the November 1, 1993 memorandum was a "reprimand" or disciplinary in nature and has harmed his reputation as Principal and interfered with his ability to perform his job. Specifically, grievant alleges that by copying Ms. Wilson and Mr. Kelley on the November 1, 1993 memorandum, Mr. Prichard harmed his reputation as Principal. Further, he asserts that Mrs. Gillenwater signed the citizen's complaint asking for his removal as a result of being copied on the

November 1, 1993 memorandum.

The basis of grievant's complaint is that Mr. Prichard did not call him or talk to him first about the situation before writingthe memorandum, and that a policy should be developed which requires such a step. Grievant requests that a letter of retraction be written and a policy developed detailing how administrators should handle parent complaints in the future.

The Board responds that the letter is not, and was never intended to be, a letter of reprimand and is not in Mr. Bell's personnel file. The Board argues that it was merely a memorandum of communication between the Assistant Superintendent and his subordinate regarding a parent complaint.

Mr. Prichard testified that the reason he copied Ms. Wilson at the State Department of Education was because she had initially referred Mrs. Gillenwater to him. He copied Dallas Kelly, the Superintendent, because he is Mr. Prichard's immediate superior, and he copied Mrs. Gillenwater because she requested that he do so.

With regard to the citizen's complaint, Grievant testified that he has not spoken with Mrs. Gillenwater and has no idea why she signed the citizen's complaint, other than his speculation that it was because of the November 1, 1993 memorandum.

Further, aside from the citizen's complaint, which apparently arose out of circumstances entirely unrelated to this grievance, grievant has presented no evidence of how the November 1, 1993 letter interfered with his performance. As the November 1, 1993 memorandum was not placed in grievant's Personnel File, and is not and never has been intended to be a letter of reprimand or any other form of disciplinary action, grievant has failed to prove any violation of State Board of Education Policy 5300.

The grievant's request for relief is a demand that he receive a letter exonerating him of wrongdoing; wrongdoing of which he has never been accused. Such relief, if granted, would be at best illusory and of little practical effect on the parties and such matters are not properly cognizable in the grievance procedure. See, Smith v. Marshall University, Docket No. BOR2-87-229-1 (June 29, 1988); Dunleavy v. Kanawha County Bd. of Educ., Docket No. 20-87-102-1 (June 30, 1987).

Grievant's request that this Board advise the Lincoln County Board of Education to develop a policy on how to handle parent complaints is in essence a request for an advisory opinion which this Board will not entertain. This Board will not issue advisory opinions or anticipate issues not fairly

raised in the evidence. Dunleavy, supra.

Conclusions of Law

1. Grievant carries the burden of proof to prove all of the allegations contained in his grievance and to establish a violation of a law or policy. Shaver v. Jackson County Bd. of Educ., Docket No. 18-88-107 (Nov. 7, 1988).

2. Grievant has failed to present any evidence to show that the Board violated any rights guaranteed under State Board of Education Policy 5300 or that the Board has interfered with grievant's job performance.

3. Grievances in which the relief, if provided, would have no practical effect on either party are abstract propositions and are not properly cognizable in the grievance procedure contained inW. Va. Code § 18-29-1, et seq., and grievant has not shown any legal basis for granting such relief. Dunleavy v. Kanawha County Bd. of Educ., Docket No. 20-87-102-1 (June 30, 1987).

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Lincoln County and such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code § 18-29-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal, and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

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MARY JO ALLEN

Administrative Law Judge

Dated: September 7, 1994