

GWENDOLYN BRIGHTWELL,

Grievant,

v. DOCKET No. 96-48-255

TYLER COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Gwendolyn Brightwell, Grievant, was employed by the Tyler County Board of Education (TCBE) as a full-time learning disabilities teacher at A.I. Boreman Elementary School. On March 28, 1996, a notice was sent to Ms. Brightwell advising her of the possibility of transfer for the next school year. Pursuant to W.Va. Code §18A-2-7, the letter explained that the decision was based upon "a reassignment of some of the existing staff due to a reorganization caused by changes in enrollment." The notice further advised her that she could request a hearing regarding her transfer before the Board of Education. The request was made. [\(See footnote 1\)](#) Grievant appeared in person and presented arguments against a transfer at the scheduled May 6, 1996, hearing. Subsequently, TCBE advised Ms. Brightwell that she would be transferred on a half-time basis. Grievant now asserts that she was denied due process of law in that she was not allowed representation, not able to present witnesses on her behalf, and for the irregularities at the executive session. Her grievance form of May 15, 1996, states:

My grievance is comprised of issues which relate to my recent transfer hearing. They include: a violation of my due process right to representation; an unfair transfer hearing; improper procedure in the ensuing executive session of the Tyler County Board of Education called to address issues related to my hearing.

A level two hearing was held May 30, 1996, with the grievance being denied. Grievant appealed to level four wherein the matter was submitted for decision based on the lower level record. The case became mature for decision on August 5, 1996, with the receipt of the parties' fact/law proposals.

On August 19, 1996, Ms. Brightwell resigned her position at TCBE. Inasmuch as her remedy would be a more complete and full transfer hearing, Grievant's resignation moots the issues she raised in this grievance. Such a hearing could only benefit someone whose employment would be affected by the results. She is not an employee and would no longer be concerned with a potential transfer. A decision on the merits would be a meaningless exercise. Harrison v. Cabell County Bd. of

Educ., 177 W.Va. 257, 351 S.E.2d 605 (1986); Miraglia v. Ohio County Bd. Of Educ., Docket No. 92-35-270(Feb. 19, 1993). That Grievant cannot receive a favorable decision is evident, for the Grievance Board has consistently denied grievances when the remedy sought brings only de minimus relief, Carney v. W.Va. Div'n of Rehab. Svcs., Docket No. VR-88-055 (Mar. 28, 1989); when the grievant seeks an advisory opinion, Wilburn v. Kanawha County Bd. of Educ., Docket No. 20-88-089 (Aug. 29, 1988);when "relief, if provided, would have no practical effect," Parsons v. Hancock County Bd. of Educ., Docket No. 15-88-249 (July 31, 1989); or when the grievance has become moot, Fratto v. Harrison County Bd. of Educ., Docket No. 89-17-294 (Nov. 30, 1989).

Findings of Fact

1. Grievant was employed as a full-time learning disabilities teacher at A.I. Boreman Elementary for Respondent Tyler County Board of Education.
2. On March 28, 1996, Grievant received a proposed transfer letter advising her of a potential transfer and further notifying her of her right to a hearing before TCBE. In response, Grievant requested a hearing. Prior to the hearing, Grievant further requested the right to have representation and to call witnesses at the hearing, both denied by the Superintendent.
3. A transfer hearing was held before the Board of Education on May 6, 1996, at which time Grievant presented her arguments against the proposed transfer. Subsequently, the Board voted to transfer the grievant on a half-time basis.
4. Grievant contends that her rights to a fair hearing by the Board were compromised due to improper procedure in the executive session, and when a list of proposed transferees was provided to them prior to the hearing.
5. Grievant resigned her employment with the Tyler County School Board on August 19, 1996.

Conclusions of Law

1. Grievant's complaint became moot when she left TCBE's employ on August 19, 1996, Harrison v. Cabell County Bd. of Educ., 177 W.Va. 257, 351 S.E.2d 605 (1986) with respect to all issues contained within the grievance.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Tyler 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 appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate Court.

JAMES D. TERRY

Administrative Law Judge

Date: November 22, 1996

[Footnote: 1](#) By letter dated April 4, 1996, Grievant requested a transfer hearing. Prior to the scheduled hearing, Grievant's request to have representation and to call witnesses was denied.