JOAN C. WAGNER

v. DOCKET NO. 95-16-504

HARDY COUNTY BOARD OF EDUCATION

DECISION

Grievant, Joan C. Wagner, is employed by the Hardy County Board of Education (Respondent) as a preschool teacher at Moorefield Elementary. Grievant filed her grievance on October 13, 1995, alleging "a violation of state policy 2419 and Federal Code IDEA when she requested a[n] IEP Review and was denied that request." As relief, Grievant seeks the ability to schedule Individual Educational Program (IEP) Reviews and a set of clear county policies on the proper procedure for scheduling an IEP Review.

Grievant's immediate supervisor denied relief at Level I, because she did not have the authority to grant the relief sought. At Level II, a hearing was held on November 2, 1995, and Superintendent John V. Miller, Jr., denied the grievance by a decision datedNovember 9, 1995. Pursuant to W.Va. Code §18-29-4(c), Grievant bypassed Level III and appealed the Level II decision directly to Level IV. At Level IV, the parties agreed to submit the case on the record developed at the lower levels of the grievance procedure, with the right to file briefs. On January 11, 1995, the case became mature upon receipt of supporting documents concerning action which occurred at Levels I and II.

The following Findings of Fact were derived from the record developed at the lower levels of the grievance procedure.

FINDINGS OF FACT

1. Grievant is a pre-school teacher at Moorefield Elementary School.

2. During the summer, an IEP Review for Student X (See footnote 1) was held and Grievant, while given notice of the meeting, was unable to attend. (See footnote 2)

3. After school started in the fall, Grievant set an IEP Review (See footnote 3) because she thought that the goals that had been set for Student X in his IEP were totally inappropriate.

4. Ms. Juanita Hoover, Director of Special Education and Title I Services at Moorefield Elementary School, canceled the IEP Review which Grievant scheduled after school started. (See footnote 4)

5. Eventually, Grievant rescheduled the IEP review and it did occur. (See footnote 5)

6. Respondent hired a new teacher and Grievant's students were divided among the new teacher and Grievant. Grievant was directed to retain and choose three students from her morning class. Grievant chose not to retain Student X. Therefore, on or before November 2, 1995, Student X was transferred out of Grievant's class and assigned to a different teacher.

DISCUSSION

While the record is sparse and devoid of any important dates, it appears, from the chronology of the testimony during the Level II hearing, that the IEP Review for Student X occurred before the transfer of Student X out of Grievant's class. This grievance must fail based on legal concepts which are tied to both of these events and the order of occurrence is irrelevant. However, the Undersigned will address these issues in the order they are perceived to have occurred.

Once Grievant rescheduled the IEP Review and the review was conducted, this grievance became moot. "In general a case becomes moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." (See footnote 6)

On page 11 of the transcript from Level II, the following colloquy occurs:

> Mr. Fragale (See footnote 7): Did your IEP review take place?
>
> Grievant: Eventually, yes. This meeting was canceled, but I later scheduled another one.

Furthermore, the Grievance Board does not issue advisory opinions. (See footnote 8) Nor does it address potential problems or give advice on matters: that is the function of legal counsel. In addition, the Grievance Board does not order county boards of education to adopt policies.

Furthermore, in order to proceed in any action one must be a proper party. To be a proper party, one must have standing. Standing, defined simply, is a legal requirement that a party must have a personal stake in the outcome of the controversy, and one

person cannot prosecute a grievance on behalf of another person. (See footnote 9) Grievant ceased to have standing, in this case, after the transfer of Student X to another teacher's class because Grievant was no longer responsible for the IEP's of Student X. (See footnote 10) Because this case is moot and Grievant does not have standing to challenge the IEP of a student in another teacher's classroom, discussing any remaining issues would be solely advisory.

In addition to the foregoing findings of fact and narration, it is appropriate to make the following formal conclusions of law.

CONCLUSIONS OF LAW

1. Moot questions or abstract propositions, the decision of which would avail nothing in the determination of controverted rights of persons or property are not properly cognizable by a court. Harrison v. Cabell County Bd. of Educ., 351 S.E.2d 604 (W.Va. 1985). See also, Dunleavy v. Kanawha Co. Bd. of Educ., Docket No. 20-87-102-1 (June 30, 1987); State ex rel. M.C.H. v. Kinder, et al., 317 S.E.2d 150, 152, (W.Va. 1984); Murphy v. Hunt, 455 U.S. 478, 481 102 S.Ct. 1181, 1182-83, 71 L.Ed.2d 353, 356 (1982); and Powell v. McCormack, 395 U.S. 486, 496, 89 S.Ct. 1944, 1950, 23 L.Ed.2d 491, 502 (1960).

2. This grievance is moot. 3. Standing, defined simply, is a legal requirement that a party must have a personal stake in the outcome of the controversy, and one person cannot prosecute a grievance on behalf of another person. Hall v. Mercer Co. Bd. of Educ., Docket No. 94-27-1099 (March 20, 1995); Lewis v. Mercer Co. Bd. of Educ., Docket No. 94-27-603 (Feb. 23, 1995); Pomphrey v. Monroe Co. Bd. of Educ., Docket No. 94-31-183 (July 1, 1994); Relihan v. Greenbrier Co. Bd. of Educ., Docket No. 90-13-189 (Aug. 27, 1990); and Lyons v. Wood Co. Bd. of Educ., Docket No. 89-54-601 (Feb. 28,1990).

4. Grievant does not have standing.

5. The Grievance Board does not issue advisory opinions. Dunleavy v. Kanawha Co. Bd. of Educ., Docket No. 20-87-102-1 (June 30, 1987).

Accordingly, the grievance must be DENIED.

DATED: 2/23/96 JEFFREY N. WEATHERHOLD, ADMN. LAW JUDGE

Footnote: 1

The parties at Level II, citing generally federal statutory prohibitions against using the child's name, did not identify the child or use the child's name.

Footnote: 2

The record is unclear as to the date the summer IEP Review occurred.

Footnote: 3

The record is unclear as to the date the IEP Review, which Grievant scheduled after school started, was scheduled to occur.

Footnote: 4

The record is unclear as to the date Ms. Hoover canceled the IEP Review.

Footnote: 5

The record is unclear as to the date the IEP Review occurred.

Footnote: 6

State ex rel. M.C.H. v. Kinder, et al., 317 S.E.2d 150, 152, (W.Va. 1984), citing Murphy v. Hunt, 455 U.S. 478, 481 102 S.Ct. 1181, 1182-83, 71 L.Ed.2d 353, 356 (1982); and Powell v. McCormack, 395 U.S. 486, 496, 89 S.Ct. 1944, 1950, 23 L.Ed.2d 491, 502 (1960). Also see, Harrison v. Cabell County Bd. of Educ., 351 S.E.2d 604 (W.Va. 1985), which held "[m]oot questions or abstract propositions, the decision of which would avail nothing in the determination of controverted rights of persons or property are not properly cognizable by a court."

Footnote: 7

Mr. Fragale is Grievant's counsel.

Footnote: 8

See, Dunleavy v. Kanawha Co. Bd. of Educ., Docket No. 20-87-102-1 (June 30, 1987).

Footnote: 9

See, Hall v. Mercer Co. Bd. of Educ., Docket No. 94-27-1099 (March 20, 1995); Lewis v. Mercer Co. Bd. of Educ., Docket No. 94-27-603 (Feb. 23, 1995); Pomphrey v. Monroe Co. Bd. of Educ., Docket No. 94-31-183 (July 1, 1994); Relihan v. Greenbrier Co. Bd. of Educ., Docket No. 90-13-189 (Aug. 27, 1990); and Lyons v. Wood Co. Bd. of Educ., Docket No. 89-54-601 (Feb. 28,1990).

Footnote: 10

This decision should not be read to mean that a teacher can grieve the propriety of a student's IEP.