**JAMES R. MUNCY,**

**Grievant,**

**v.** **Docket No. 96-29-211**

**MINGO COUNTY BOARD OF EDUCATION,**

**Respondent.**

## D E C I S I O N

James R. Muncy (Grievant), an employee of Respondent Mingo County Board of Education (MCBE), initiated this grievance pursuant to W. Va. Code §§ 18-29-1, et seq., on March 26, 1996, alleging that MCBE effected his transfer in violation of W. Va. Code §§ 18A-2-2, 18A-2-7, 18A-4-7a, and 18A-2-12. The grievance was denied at Levels I and II. As permitted by W. Va. Code § 18-29-4(c), Grievant waived Level III and appealed to Level IV on May 30, 1996. Following a series of continuances, each of which was granted for good cause, a Level IV hearing was conducted in this Board's office in Charleston, West Virginia, on September 11, 1996. Thereafter, this matter became mature for decision upon receipt of written arguments from both parties on October 10, 1996.

Subsequently, on December 20, 1996, Respondent provided evidence that Grievant had resigned his position with MCBE, contending that the issues raised in this grievance were now moot. By Order dated December 26, 1996, Grievant was given until January 10,1997, to respond to the new issue raised by Respondent subsequent to the close of the Level IV record. Grievant did not file a response.

## DISCUSSION

During the 1995-96 school year, Grievant was employed as a one-half time band director at Tug Valley High School and as a one-half time music teacher at Lenore Grade School. On February 15, 1996, MCBE Superintendent Everett Conn notified Grievant, in writing, that he would be recommending Grievant's transfer within the county for the ensuing (1996-97) school year at a future

meeting of the Board of Education to be held prior to April 1, 1996. Superintendent Conn told Grievant that the reason for his proposed transfer was "the reorganization of staff in the music department county-wide." G Ex A. Thereafter, following a hearing requested by Grievant to contest his proposed transfer, MCBE voted to approve Grievant's transfer and reduced his employment term from 210 days to 200 days for the 1996-97 school year. G Ex B.

In this grievance, Grievant claimed that the "reorganization" was merely a "sham" to discipline him and another band instructor whose bands had not participated in county band activities as expected under state standards. As relief, Grievant sought reinstatement to his previous position and to have any lost benefits or privileges restored. Grievant did not establish that he had lost any compensation or benefits as a result of his transfer. (See footnote 1) Grievant did demonstrate that the drive from his home to his new position covered a greater distance and required more time than his previous commute. However, such incidental costs are not recoverable in a grievance before this Grievance Board. As Grievant is no longer employed by MCBE, whether or not his transfer should be rescinded is now a moot question. Thus, a decision on the merits of his grievance would be a meaningless exercise, and would merely constitute an advisory opinion. Brightwell v. Tyler County Bd. of Educ., Docket No. 96-48-255 (Nov. 22, 1996). See Harrison v. Cabell County Bd. of Educ., 177 W. Va. 257, 351 S.E.2d 606 (1986); Miraglia v. Ohio County Bd. of Educ., Docket No. 92-35-270 (Feb. 19, 1993); Fratto v. Harrison County Bd. of Educ., Docket No. 89-17-294 (Nov. 30, 1989). This Grievance Board does not render advisory opinions. Procedural Rules of the West Virginia Education & State Employees Grievance Bd. § 4.20 156 C.S.R. 1 (1996).

Consistent with the foregoing discussion, the following findings of fact and conclusion of law are appropriately made in this matter.

## FINDINGS OF FACT

1. During the 1995-96 school year, Grievant was employed by the Mingo County Board of Education (MCBE) as a half-time band director at Tug Valley High School and as a half-time music teacher at Lenore Grade School.

2. On February 15, 1996, MCBE Superintendent Everett Conn notified Grievant that he was being recommended for transfer within the county. The notice indicated that the transfer was being recommended due to a "reorganization of staff in the music departments county-wide." G Ex A.

3. MCBE conducted a transfer hearing on March 11, 1996, and voted to transfer Grievant per

Superintendent Conn's recommendation, and to reduce his teaching contract for the 1996-97 school year from 210 days to 200 days of employment. G Ex B. 4. Grievant was placed in a teaching position at Gilbert Middle School at the beginning of the 1996-97 school year.

5. Grievant resigned his position with MCBE, effective November 1, 1996.

## CONCLUSION OF LAW

1. Grievant's complaint became moot with respect to all issues contained in the grievance when he left MCBE's employ on November 1, 1996. See Harrison v. Cabell County Bd. of Educ., 177 W. Va. 257, 351 S.E.2d 605 (1986); Brightwell v. Tyler County Bd. of Educ., Docket No. 96-48-255 (Nov. 22, 1996); Fratto v. Harrison County Bd. of Educ., Docket No. 89-17-294 (Nov. 30, 1989).

Accordingly this Grievance is hereby **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Mingo 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.

**LEWIS G. BREWER**

**ADMINISTRATIVE LAW JUDGE**

**Dated: March 28, 1997**

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*Footnote: 1*

*According to a preponderance of the evidence, the 10-day reduction in Grievant's employment term would not reduce Grievant's compensation until sometime in 1997.*