DOLORES JONES,

Grievant,

v.

DOCKET NO. 97-06-041

CABELL COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Dolores Jones, initiated this grievance pursuant to W. Va. Code §§ 18-29- 1, et seq, on August 16, 1996, alleging that the Cabell County Board of Education ("Board") effected her transfer in violation of W. Va. Code §§ 18A-4-8b and 18A-4-8g. 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 January 23, 1997. A hearing was conducted on April 2, 1997, and this case became mature for decision on May 2, 1997, the deadline for the parties' proposed findings of fact and conclusions of law.

Subsequently, on June 4, 1997, the Board provided evidence that Grievant had resigned her position with the Board, effective May 31, 1997, contending that the issues raised in this grievance were now moot, and moved for dismissal of the grievance. Grievant confirmed, by counsel, that she did resign her employment with the Board in orderto take advantage of the more liberal rules in effect prior to July 1, 1997, the effective date of new rules concerning insurance coverage. Thus, it does not appear that Grievant's decision to retire was in any way predicated on the transfer which is the subject of this grievance.

DISCUSSION

Grievant, a Secretary III for the Board, contended that her transfer in the Spring of 1996 from the

Board's Central Office was in violation of W. Va. Code §§ 18A-4-8b and 18A-4-8g, because a less senior Secretary III was retained in the Central Office. Grievant sought to be instated into a Secretary III position in the Board's Central Office. (See footnote 1) There was no evidence presented that Grievant ceased to be employed with the Board following her transfer, and, in fact, she had bid on and received another Secretary position at Johnston Elementary, which began on August 13, 1996.

As Grievant is no longer employed by the Board, and does not contest the reduction in her contract term, whether or not her transfer should be rescinded is now a moot question. Grievant has indicated she is interested in returning to work for the Board at some later date. However, Grievant severed her employment relationship with the Board when she retired. Any decision of the Board to reemploy her in some capacity is completely independent of the employment relationship she once had with the Board. The Board is not required to reemploy Grievant, but if it does, it is not required to instate her into her former position, or the position she sought through this grievance. Thus, a decision on the merits of her grievance would be a meaningless exercise, and wouldmerely constitute an advisory opinion. Muncy v. Mingo County Bd. of Educ., Docket No. 96-29-211 (Mar. 28, 1997); 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. Grievant was employed as a Secretary III for the Board during the 1995-96 school year, located in the Board's Central Office.

2. In the Spring of 1996, Grievant was properly notified that she was being recommended for transfer within the county, and that her 220-day contract was to be reduced to 210-days.

3. Grievant did not request a hearing before the Board, nor did she grieve her transfer or reduction in contract in the Spring of 1996.

4. Grievant bid on and received another Secretary position with the Board at Johnston

Elementary School, beginning August 13, 1996.

5. On or about the second week of August 1996, Grievant discovered a less senior Secretary III than she was working in the Board's Central Office.

6. Grievant filed this grievance on August 16, 1996.

7. Grievant is not contesting the reduction in her contract term. 8. Grievant resigned her position with the Board, effective May 31, 1997.

CONCLUSION OF LAW

Grievant's complaint became moot with respect to all issues contained in the grievance when she left the Board's employ on May 31, 1997. See Harrison v. Cabell County Bd. of Educ., 177 W. Va. 257, 351 S.E.2d 606 (1986); Muncy v. Mingo County Bd. of Educ., Docket No. 96-29-211 (Mar. 28, 1997); 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 **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Cabell 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 SWARTZ

Administrative Law Judge

Dated: August 6, 1997

Footnote: 1

Grievant's contract of employment had also been reduced from a 220-day to a 210-day contract. The reduction in contract term was not contested by Grievant.