WILLIAM GUY REDMAN,

Grievant,

v. **Docket No. 04-18-100**

JACKSON COUNTY
BOARD OF EDUCATION,

Respondent.

DECISION

The grievant, William Guy Redman ("Grievant") was employed by the respondent, the Jackson County Board of Education ("BOE"), as a bus operator serving special needs students during the 2003-2004 school year. Grievant claims that, during that school year, BOE engaged in discrimination, harassment, favoritism and reprisal, all in violation of the respective provisions of West Virginia Code sections 18-29-2(m), (n), (o) and (p). Initially, Grievant's request for relief was simply "compensation." It was subsequently amended to state that he sought "cessation of harassment, retaliation and discrimination." He further sought "appropriate disciplinary action against employees responsible for these actions."

Grievant's written statement of grievance was dated September 25, 2003. Relief was denied at Level I on October 9, 2003. After a hearing was conducted on November 10, 2003, the grievance was denied at Level II. (See footnote 1) This appeal (See footnote 2) ensued on March 8, 2004, after BOE waived Level III proceedings. A Level IV hearing was conducted on December 7, 2004. Attorney John Everette Roush, of the West Virginia School Service Personnel Association, represented Grievant. Attorney Howard E. Seufer, Jr., represented BOE. This grievance matured for decision on January 4, 2005, upon submission by the parties of their respective proposed findings of fact and conclusions of law.

As discussed more fully below, this grievance will be dismissed as moot. A lengthy recitation of the pertinent facts is not necessary to establish the basis for this determination. However, even if it

were not moot, this grievance is so lacking in merit that it verges on being frivolous and, as such, would be denied in any event. To the extent that the recitation of facts exceeds those solely relating to the mootness issue, they are set forth herein to illustrate the lack of merit from which this grievance suffers.

Although the grievance process protects important rights held by employees, it was not intended to be used by an employee as an outlet for his anger when he disagrees with otherwise appropriate actions on the part of his employer. This seems to have been the underlying motive for filing this grievance. This is not to suggest that Grievant should not avail himself of the grievance procedure in the appropriate circumstances. However, Grievant is encouraged to review, and keep in mind, the statutory definition of a grievance, which is set forth below as the first conclusion of law. Upon review of the entire record, including the proceedings at Level IV, the undersigned finds that the following facts were proven by a preponderance of the credible and relevant evidence:

Findings of Fact

1 1. Grievant was employed by BOE as a regular bus operator serving special needs students in the Ripley area during the 2003-2004 school year. (See footnote 3) This was his sixth year as a bus operator for BOE.

2 2. Grievant's immediate supervisor was Jennings “Jim” Stewart, Jr., Supervisor of Transportation (“Supervisor Stewart”).

3 3. Supervisor Stewart's immediate supervisor was Gary Samples, Assistant Superintendent and Director of Transportation (“Assistant Superintendent Samples”).

4 4. As the Director of Special Education, Lisa Martin (“Director Martin”) was responsible for identifying students who required “Special Education transportation” and for ensuring that special needs students were receiving the requisite amount of instructional time. Tr.17. To that end, she works with Assistant Superintendent Samples and Supervisor Stewart to ensure that the special education buses arrive at school on time. Tr.36.

5 5. When special education buses are late delivering students to school, those students may not receive the requisite amount of instructional time. Tr.17.

6 6. This was a problem identified by a monitoring team during an earlier audit by the State Department of Education. At that time, BOE was deemed to be out ofcompliance for failing to provide

a full instructional day to four special education students due to transportation problems. Tr.17-18, Exh.3 at Level II.

7 7. Accordingly, Director Martin began monitoring the arrival times of all of the buses carrying special needs students. Tr.17.

8 8. Grievant was offended by the fact that Director Martin positioned herself where she could observe the buses, including Grievant's, arriving at school in the morning. Tr.4-5.

9 9. During early September 2003, Director Martin received complaints from teachers and from parents of students riding Grievant's bus about late arrivals at school. Tr.19, Exh.4 at Level II.

10 10. Director Martin did not receive complaints from parents about any other special education bus operators. Based on her own observations, Director Martin had concerns about the arrival times of some of the other buses, as well. Tr.19.

11 11. As of the Level II hearing, Director Martin and Supervisor Stewart had worked on making adjustments to four of the six special education runs and two supplemental runs. (See footnote 4)

12 12. When there was a problem with a particular run, Supervisor Stewart would sometimes follow the bus on its route and/or ride on the bus so that he could identify the source of the problem and develop a solution. Tr.25. These actions were not limited to Grievant's bus. Tr.25-26, 29-30, 34, Exh.6 at Level II.

13 13. After both riding on Grievant's bus and following Grievant's bus, Supervisor Stewart ascertained that Grievant was “doing great” on the back roads. Tr.27. However, he noted that Grievant appeared to be driving too slowly on the interstate. Tr.27.

14 14. Supervisor Stewart suggested that Grievant could drive faster on the interstate. Tr.3, 27, 31. Supervisor Stewart has had occasion to make this same suggestion to other bus operators. Tr.30-31.

15 15. To test Supervisor Stewart's theory that Grievant was driving too slowly on the interstate, Assistant Superintendent Samples placed a substitute bus operator on Grievant's run on September 16 and 17, 2003. Tr.11, 34. Grievant was required to ride on the bus, as well, so that he could see that the substitute was not being subjected to any pressure to drive faster. Tr.28.

16 16. When Assistant Superintendent Samples told Grievant about the plan to have a substitute bus operator drive his run, Grievant was “agitated.” Tr.34. Grievant told Assistant

Superintendent Samples that it was fine “if that driver could made the run in the time that was on his schedule” but Grievant “wasn't going to change anything he was doing. He would drive it the same regardless.” (See footnote 5) Tr.34.

17 17. Assistant Superintendent Samples acknowledged that this was the only instance in which a substitute bus operator was given a run to determine the amount of time that run would take. Tr.36-37.

18 18. This admittedly unusual step was considered appropriate by Assistant Superintendent Samples because he “had never had a driver ever tell” him “I will not makeany changes in the way I do things. And, 'it doesn't matter what you do - - you can do whatever you want to, I'm not going to change my behavior.'” (See footnote 6) Tr.37.

19 19. Assistant Superintendent Samples thought that this procedure would give Grievant “an opportunity to see how someone else does it, and to improve his performance because it was already well established that he was coming in too late.” Tr.37.

20 20. Grievant claims to have been humiliated by having to ride on the bus while it was being driven by the substitute bus operator. Tr.3-4.

21 21. Grievant does not dispute the fact that he was arriving at school late. Nonetheless, he asserts that the administration was paying “undue attention” to his schedule. Tr.5.

22 22. Grievant filed two other grievances near the beginning of the 2003-2004 school year.

23 23. Grievant claims that after he filed this grievance and the two other grievances, Supervisor Stewart began to subject him to pressure to drive faster in order to complete his bus route on time. Tr.3.

24 24. There is some ambiguity about the date Grievant submitted his grievance forms for this and the other two grievances. Tr.31-32. The date on the grievance form for each was September 25, 2003. Tr.10. The informal conferences that preceded the filing of the written grievances took place on September 12, 2003. Tr.11.

25 25. Grievant also claims that his schedule was subjected to “undue scrutiny” as a result of his “questioning of the posting of a temporary route.” Tr.5. Grievant thought theroute in question should be a permanent route. Tr.28. Grievant did not apply for the temporary route. Tr.28-29.

26 26. Grievant changed to a regular bus route rather than a special education bus route for the 2004-2005 school year. This resolved all of the problems about which he complained and that

formed the predicate for this grievance.

27 27. At Level II, the relief sought by Grievant was to have BOE fire Supervisor Stewart and Assistant Superintendent Samples. As of Level IV, he asked that they be disciplined and, further, sought “cessation of harassment, retaliation and discrimination.”

Discussion

Grievant contends that he was subjected to “a number of acts of harassment” directed at him by his supervisor, such as “harassing him about the amount of time he spent on his bus, following his bus, riding” on his bus, and constantly “questioning” his schedule. In other words, Grievant complains about every effort that his supervisors made to help Grievant do his job properly. Neither Supervisor Stewart, Assistant Superintendent Samples, nor anyone else did anything untoward to Grievant. They were merely doing their jobs by trying to get special education students transported to school on time. Grievant transferred to a regular bus route for the 2004-2005 school year. According to Grievant's testimony at Level IV, there have not been any problems with Grievant's current bus run. None of the complaints that Grievant raised with respect to his treatment during the 2003-2004 school year appear to apply to Grievant's current situation. Therefore, depending upon the relief sought, this grievance may well be moot.

During his Level IV testimony, Grievant stated that the relief he was seeking in connection with his complaints about the 2003-2004 school year was for “all these guysto be reprimanded.” Grievant did not specify the individuals to whom he was referring. However, it is clear that he wants to have disciplinary action taken against fellow BOE employees. Regardless of which other employees Grievant wants to have disciplined, such relief is not available from this forum. There are no outstanding claims for any sort of monetary relief. The conduct of which Grievant complained is not on-going. Therefore, this grievance is moot.

Based upon the foregoing findings of fact, a review of the applicable law, and the arguments of the parties, the undersigned hereby concludes as follows:

Conclusions of Law

1 1. A grievance is defined in West Virginia Code section 18-29-2(a) as follows:

> [A]ny claim by one or more affected employees of the governing boards of higher education, state board of education, county boards of education, regional educational

> service agencies and multi-county vocational centers alleging a violation, a misapplication or a misinterpretation of the statutes, policies, rules, regulations or written agreements under which such employees work, including any violation, misapplication or misinterpretation regarding compensation, hours, terms and conditions of employment, employment status or discrimination; any discriminatory or otherwise aggrieved application of unwritten policies or practices of the board; any specifically identified incident of harassment or favoritism; or any action, policy or practice constituting a substantial detriment to or interference with effective classroom instruction, job performance or the health and safety of students or employees.

2 2. This is not a disciplinary grievance. Therefore, if it were to be decided on the merits, Grievant would bear the burden of proof. W. VA. CODE ST. R. § 156-1-4.21(2004); *Holly v. Logan County Bd. of Educ.*, Docket No. 96-23-174 (Apr. 30, 1997); *Hanshaw v. McDowell County Bd. of Educ.*, Docket No. 33-88-130 (Aug. 19, 1988).

3 3. "This Grievance Board is without authority, statutory or otherwise, to order that disciplinary action be taken against an employee[.]." *Graley v. W. Va. Parkways Econ. Dev. & Tourism Auth.*, Docket No. 99-PEDTA-406 (Oct. 31, 2000)(citing *Daugherty v. Bd. of Directors*, Docket No. 93-BOD-295 (Apr. 27, 1994); *Daggett v. Wood County Bd. of Educ*., Docket No. 91-54-497 (May 14, 1992)). Therefore, to the extent that Grievant's request for relief included the imposition of disciplinary action upon other BOE employees, such relief is not available from this forum.

4 4. There has already been a "cessation" of the actions Grievant characterized as "harassment, retaliation and discrimination." There is no additional relief that could be granted by the Grievance Board, even if Grievant were to prevail on the merits. "Under these circumstances, any ruling on the merits of this issue where no meaningful relief can be granted would constitute an inappropriate advisory opinion." *Kochalka, v. Marshall County Bd. of Educ*., Docket No. 02-25-173 (Nov. 15, 2002)(citations omitted).

5 5. "[T]he Supreme Court gave this definition of mootness, quoting from *Powell v. McCormack,* 395 U.S. 486, 496 . . . (1960): '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.'" *State ex rel. M.C.H. v. Kinder*, 173 W. Va. 387, 389 n.2, 317 S.E.2d 150, 152 n.2 (1984)(quoting *Murphy v. Hunt,* 455 U.S. 478, 481 (1982)(internal quotation marks omitted)).

6 6. "'Moot questions or abstract propositions, the decisions of which would avail nothing in the determination of controverted rights of persons or property, are not properly cognizable issues.'" *Sergent v. Reg'l Jail & Corr. Facility Auth*., Docket No. 03-RJA-188(Dec. 30, 2003)(quoting

Burkhammer v. Dep't of Health & Human Res., Docket No. 03- HHR-073 (May 30, 2003)).

7 7. There being nothing further to be determined or resolved, this grievance is moot.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Jackson County. Any 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. However, the appealing party is required by West Virginia Code section 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

Date: February 25, 2005

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JACQUELYN I. CUSTER

Administrative Law Judge

Footnote: 1

References to the pages of the Level II transcript shall appear herein as "Tr._."

Footnote: 2

This is something of a misnomer in that the Level IV proceeding is not an appellate review of the underlying decision by the agency. Rather, the Level IV proceeding results in a decision on the merits based on the underlying record, as supplemented at the Level IV evidentiary hearing.

Footnote: 3

Grievant also testified about events that occurred during the prior school year, 2002-2003. However, they were not part of this grievance.

Footnote: 4

Supplemental runs take students to other locations for other programs.

Footnote: 5

Nothing in the record suggests that Grievant was disciplined for these remarks.

Footnote: 6

See note 5, above.