THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

BRENDA H. WELLS,
Grievant,

v. **Docket No. 2009-1490-UpsED**

UPSHUR COUNTY BOARD OF EDUCATION,
Respondent.

DISMISSAL ORDER

Grievant, Brenda Wells, was employed by the Respondent as principal of Buchannon Upshur High School. In April of 2009, Grievant filed this grievance challenging an action of her employer which placed her on an improvement plan. Grievant asks that this Board rescind the improvement plan and remove from all files any documentation which refers to the plan. The grievance form reflects that Grievant requested a conference at level one, however, it does not appear from the record that a conference was conducted. The record does indicate that the Grievance Board was later notified that this grievance was being mediated by a private mediator. A level two mediation session was conducted on January 12, 2010, and February 23, 2010, before Brenda Waugh, Attorney-at-Law, L.C. An Order of Unsuccessful Mediation was entered on March 11, 2010. Appeal to level three was perfected on March 19, 2010. Prior to this appeal, Grievant filed a challenge to the termination of her employment by grievance filed on August 6, 2009. The Grievance Board placed 2009-1490-UpsED in abeyance on January 20, 2011, pending the outcome of the grievance challenging the termination of her employment. On December 9, 2010, the undersigned Administrative Law Judge issued an order dismissing the grievance

challenging Respondent's termination of Grievant's employment. During the proceedings, Grievant appeared in person and by her counsel, Andrew J. Katz, The Katz Working Families' Law Firm, L.C. Respondent appeared by its counsel, Rebecca M. Tinder, Bowles Rice McDavid Graff & Love LLP.

Synopsis

The issue of Grievant being placed on a plan of improvement is a moot point since Grievant is no longer an employee of Respondent. Under these circumstances, there is no additional relief that could be granted by the Grievance Board even if Grievant were to prevail on the merits. Accordingly, the grievance is dismissed.

The following findings of fact are based upon the record of this grievance.

Findings of Fact

1. Grievant was employed by Respondent until July 21, 2009, when the Upshur County Board of Education ratified the Superintendent's recommendation that her employment be terminated.

2. Prior to being dismissed from her employment, Grievant filed this challenge to being placed on an improvement plan.

3. On December 9, 2010, the Grievance Board issued an order dismissing Grievant's challenge to the termination of her employment.

Discussion

The undersigned, *sua sponte*, considers the issue of whether this grievance should be dismissed because the relief requested by the Grievant is moot due to the termination of her employment with Respondent. "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]." *Pritt, et al., v. Dep't of Health & Human Res.*, Docket No. 2008-0812-CONS (May 30, 2008). The Grievance Board will not hear issues that are moot. *Cobb, et al. v. Div. of Highways*, Docket No. 2009-1017-CONS (Dec. 31, 2009).

This Board has found that where a grievant is no longer an employee, "a decision on the merits of her grievance would be a meaningless exercise, and would merely constitute an advisory opinion." *Muncy v. Mingo County Bd. of Educ.*, Docket No. 96-29-211 (Mar. 28, 1997). "Because it is not possible for any actual relief to be granted, any ruling issued by the undersigned regarding the question raised by this grievance would merely be an advisory opinion. 'This Grievance Board does not issue advisory opinions. *Dooley v. Dep't of Transp.,* Docket No. 94-DOH-255 (Nov. 30, 1994); *Pascoli & Kriner v. Ohio County Bd. of Educ.,* Docket No. 91-35-229/239 (Nov. 27, 1991).' *Priest v. Kanawha County Bd. of Educ.,* Docket No. 00-20-144 (Aug. 15, 2000)." *Smith v. Lewis County Bd. of Educ.*, Docket No. 02-21-028 (June 21, 2002).

Any decision addressing the challenge to being placed on a plan of improvement would be meaningless since Grievant is no longer employed by Respondent. Because Grievant would gain no concrete remedy from this grievance, it is now moot and any ruling would amount to an advisory opinion.

The Procedural Rules for the West Virginia Public Employees Grievance Board state in part that:

> A grievance may be dismissed, in the discretion of the administrative law judge, if no claim on which relief can be granted is stated or a remedy wholly unavailable to the grievant is requested.[1]

Because Grievant is no longer employed by the Upshur County Board of Education, any prospective relief that might be available is moot. Accordingly, the grievance fails to raise a claim on which relief can be granted and is dismissed.

The following conclusions of law support the decision reached in this Order.

Conclusions of Law

1. "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]." *Pritt, et al., v. Dep't of Health & Human Res.*, Docket No. 2008-0812-CONS (May 30, 2008). The Grievance Board will not hear issues that are moot. *Cobb, et al. v. Div. of Highways*, Docket No. 2009-1017-CONS (Dec. 31, 2009).

2. "This Grievance Board does not issue advisory opinions. *Dooley v. Dep't of Transp.,* Docket No. 94-DOH-255 (Nov. 30, 1994); *Pascoli & Kriner v. Ohio County Bd. of Educ.,* Docket No. 91-35-229/239 (Nov. 27, 1991).' *Priest v. Kanawha County Bd. of Educ.,* Docket No. 00-20-144 (Aug. 15, 2000)." *Smith v. Lewis County Bd. of Educ.*, Docket No. 02-21-028 (June 21, 2002).

3. When it is not possible for any actual relief to be granted, any ruling issued by the undersigned regarding the questions raised by this grievance would merely be an advisory opinion.

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[1] 156 C.S.R. 1 § 6.11.

4. Because Grievant is no longer employed by Respondent, any prospective relief that might normally be available to her is moot.

Accordingly, the grievance is **DISMISSED**.

Any party may appeal this Order to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. *See* W. VA. CODE § 6C-2-5. Neither the West Virginia Public 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 W. VA. CODE § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The Civil Action number should be included so that the certified record can be properly filed with the circuit court. *See also* 156 C.S.R. 1 § 6.20 (eff. July 7, 2008).

Date: January 24, 2012

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Ronald L. Reece
Administrative Law Judge