CHRISTINA THOMAS

v. **Docket No. 94-20-1123**

KANAWHA COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Christina Thomas, was selected for a Special Education teaching position at Pinch Elementary ("PE"). She contends Kanawha County Board of Education ("KCBOE") incorrectly identified the position in the posting, and the position she received was not the position stated on the posting. She seeks reinstatement to her former position as a multi-categorical teacher with full inclusion students at Clendenin Middle School ("CMS"). The grievance was denied at Level II and waived at Levels I and III. The parties agreed to submit the case on the record, and it became mature for decision on March 30, 1995, after the submission of proposed findings of fact and conclusions of law. (See footnote 1)

Findings of Fact

The undisputed facts are as follows:

1. Grievant was employed for the 1993-94 school year at CMS as a multi-categorical support teacher. She was assigned to all the special education students in the seventh grade, and provided support to the teachers who had these students in their classrooms. CMS's system was a full inclusion one, and all Grievant's students were placed in regular classrooms.

2. Grievant has a Masters +45, nineteen years experience in special education, and is certified in elementary education, behavior disorders, mentally impaired, and learning disabled.

3. Grievant received additional training about the inclusion of special education students.

4. In Spring, 1994, KCBOE posted numerous special education positions, many of which were listed as "Support" positions. The position Grievant applied for at PE was labelled "Support BD/MI."

5. Grievant liked her position at CMS, but applied for the one at PE because it was much closer to home.

6. Special education students are taught in different settings depending on what their Individualized Education Program ("IEP") requires. These students may be "Full Inclusion," usually or always in a regular classroom; "Partial Inclusion," sometimes in a regular classroom and sometimes in a special education classroom; or "Self-Contained," always or usually in a separate classroom.

7. When Grievant interviewed for the position she asked if it was a support position where she would work with children in regular classrooms, and was told by Principal Matter and theResource Room teacher that the position was a support position, not a self-contained position.

8. Based on the posting and the principal's assurance Grievant applied for and received the PE position.

9. On the first day of school, Grievant was placed in a self-contained classroom with special education students. Grievant also received a class list that day, and these students were listed as self-contained as required by their IEPs.

10. That evening Grievant called Ms. Ellen Chiambotti, the special education specialist for her area, and Ms. Chiambotti confirmed the position had always been planned as a self-contained classroom position. Ms. Chiambotti stated Principal Matter did not know what type of class the students were to have. Ms. Chiambotti told Grievant she should have called her before accepting the position.

11. The second day of school Grievant discussed the situation with Principal Matter and the Resource Room Teacher, and Principal Matter agreed that the situation was "wrong." The Resource Room Teacher appeared to be unaware of the self-contained students and their needs.

12. The Resource Room Teacher could share the self-contained time with Grievant for these four students, but does not wish to do so.

13. Ms. Sandra Barkey, Director of the Office of Exceptional Students, stated the term "Support" in the posting was not intended to mean working with inclusion students. The term was to mean thespecial education teacher was part of the team, like an aide. She then stated she could understand how this terminology might be misinterpreted, and that problems have been created by the use of this terminology. She stated all the special education positions in the posting were supposed to be designated as "Support."

14. Twenty-two of the positions in the posting were not designated as "Support."

15. The role of a special education teacher may vary during the year depending on the IEP's of

the schools special education students.

16. When children at PE need a support special education teacher, one is called in from outside the school. Grievant is not asked to provide this service even though her position is labelled as such, and she possesses expertise and training in this area.

Issues

Grievant argues KCBOE violated W. Va. Code §18A-4-7a when it did not properly post the position at PE. Grievant also argues she was misled during the interview about the position. She avers KCBOE knew the position was a self-contained one. Because of the posting and the misinformation, Grievant asked to be transferred from the support position she liked at CMS, to the position at PE. Grievant is very clear in her testimony that she would not have taken the position at PE if she had known she would work full-time in a self-contained classroom.

Apparently, Respondent's position is the Grievant proved no statutory violation. Additionally, KCBOE argues "'a support'teacher is not precluded from providing services to students in a variety of instructional settings, including self-contained, resources and [a] regular classroom." Level II Decision. Respondent also argues KCBOE needs to maintain maximum flexibility in meeting the needs of the student population.

Discussion

W. Va. Code §18A-4-7a requires school boards to post notices of all openings, and these notices "shall include the job description." A posting is expected to inform the applicant about the position and to give them at least an idea of the type of work to be performed. Accord Weaver v. Mason County Bd. of Educ., Docket No. 94-26-129 (Nov. 22, 1994).

Although an interview is not required to fill a position (See footnote 2), if one is conducted, the exchange of information must be honest and forthright on the part of both the interviewer and the interviewee. In other words, the applicant is expected to ask questions to elicit the information she seeks and not to assume the answers. On the other hand, the potential employer is expected to answer questions honestly and clearly, and to obtain or clarify information as needed.

In this case the position was posted as "Support BD/MI." A support position typically involves supporting or helping special education students to adapt to a regular classroom as part of a partial or

full inclusion program. Grievant applied for thissupport position because it was close to her home. In the interview Grievant clarified two points important to her: one, would the position require traveling; and two, was the position truly a support position where she would be assisting special education students to adapt to a regular classroom setting. She was assured by the principal and the resource room teacher that this position was a true support position, and she would work with children in the regular classroom. On the basis of the posting and confirmation by the principal, Grievant accepted the position when it was offered to her.

This Grievance Board has previously ruled in Barker v. Kanawha County Bd. of Educ., Docket No. 90-20-505 (Feb. 22, 1991), that if the information contained in the posting and given at the interview is "essentially" correct, a Grievant cannot complain she was misled. In Barker, the grievance was denied because the grievant, a junior high librarian, spent approximately four hours of her normal work week performing duties with sixth grade students. Thus, her position was "essentially" a junior high position. This Board has also recognized that a principal has the authority to adjust a teacher's schedule as long as the teacher remains in the same area of certification and discipline and in the same department or grade level. This authority does not extend to changing a teacher's entire assignment. Midkiff v. Wayne County Bd. of Educ., Docket No. 90-50-406 (Mar. 13, 1991).

Grievant's unrebutted testimony is that she spends all of her time in a self-contained classroom, has consulted on only one childoutside that classroom, and was not utilized as a support teacher when a child at PE required such assistance. The posting listed the position she applied for as "Support". When she inquired during the interview, the principal and resource room teacher assured Grievant the position was a "Support" position. Clearly, Grievant was misled by the posting and the interview. She would not have accepted the position if she had known what the assignment would be. While KCBOE and a principal must have some flexibility, and must be allowed to adjust a teacher's schedule and assignments to some degree, to allow them to post and interview for one position, and then once an applicant is in the school setting, change it to something completely different cannot be allowed. Otherwise, the purpose of the statute would be thwarted and employees would be deprived of the benefits of their employment rights. Accordingly, this grievance must be granted.

The foregoing discussion will be supplemented by the following conclusions of law.

Conclusions of Law

1. A job posting is to provide information helpful to the employee in understanding the duties and responsibilities of the position. Accord Weaver v. Mason County Bd. of Educ., Docket No. 94-26-129 (Nov. 22, 1994).

2. If a grievant can demonstrate by a preponderance of the evidence that she was misled by the posting and subsequent interview as to the essential duties and responsibilities of the position which she accepted, she will be granted appropriaterelief. Barker v. Kanawha County Bd. of Educ., Docket No. 90-20-505 (Feb. 22, 1991).

3. Grievant has proven KCBOE improperly posted the position, and thus violated W. Va. Code §18A-4-7a.

4. Grievant has met her burden of proof and demonstrated by a preponderance of the evidence that she was substantially misinformed about the essential nature of the position prior to her acceptance.

Accordingly, this grievance is **GRANTED**. The KCBOE is directed to instate Grievant into her former position as a "Support" teacher at CMS at the end of the 1994-95 school year.

Any party may appeal this decision to the Circuit Court of Kanawha 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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JANIS I. REYNOLDS

Administrative Law Judge

Dated: May 17, 1995

Footnote: 1The Respondent elected to rely on the findings of fact and conclusions of law set forth in the Level II Decision.

Footnote: 2Floren v. Kanawha County Bd. of Educ., Docket No. 93-20-176 (July 14, 1993).