BRENDA MAHON, .

.

Grievant, .

.

v. . DOCKET NO. 94-29-305

.

MINGO COUNTY BOARD OF EDUCATION, .

.

Respondent. .

D E C I S I O N

This is a grievance by Brenda Mahon (Grievant), currently employed by the Mingo County Board of Education (MCBE) as a classroom teacher, submitted on September 7, 1993. A hearing was held at Level II on June 8, 1994. (See footnote 1) **Sometime thereafter, an undated Level II decision was issued by Everett Conn, MCBE Superintendent of Schools, denying her grievance. Grievant appealed to Level III on June 29, 1994. No action was taken at Level III and Grievant's appeal to Level IV was received on July 20, 1994. An evidentiary hearing was conducted in this Board's office in Charleston, West Virginia on September 9, 1994. The parties elected to make written post-hearing arguments and thismatter became mature for decision on November 14, 1994, following receipt of the parties' submissions.**

BACKGROUND

Grievant's original grievance set forth the following complaint:

> **Brenda Mahon was employed by the Mingo Co. Board of Ed. under a continuing contract. On Aug. 9, 1993 she was informed by letter that her full-time employment was being terminated. Ms. Mahon claims a violation of WV Code 18A-2-2 and asked (sic) to be reinstated to a full-time teaching job and be given back pay and benefits.**

The record indicates that Grievant was hired by MCBE during the 1990-91 school year as a long-term substitute teaching mathematics at Matewan Junior High School (MJHS). The terms of Grievant's hiring stipulated that Grievant was to perform those duties until the status of the regular employee filling that position was determined. Accordingly, on August 9, 1993, Superintendent Conn notified Grievant that the incumbent of her position, Henry C. Moore, would be returning to MJHS as a result of recent court rulings. J Ex 1. Mr. Conn went on to advise Grievant that she was being placed on the preferred recall list, thus generating the original grievance stated above.

It is apparent from the record that by the Level II hearing, MCBE revised its stance and recognized Grievant as a regular employee who had been displaced from her temporary assignment. The evidence indicates that MCBE awarded Grievant a continuing contract of employment retroactive to 1990. MCBE's records further demonstrate that Grievant did not lose any pay, seniority or benefits as a result of being displaced upon Mr. Moore's return.

However, Grievant amended her grievance and relief sought at the Level II hearing to include a request that she receive a lateral transfer to a full-time position in her field of certification at the secondary level. In addition, Grievant sought assignment to a self-contained classroom which included the chalkless markerboard which MCBE had previously purchased to accommodate her allergy to chalk dust. Finally, Grievant sought restoration of 24 days of sick leave which she claimed she was forced to take because of stress and other conditions brought on by being required to teach out of her field of certification. After carefully reading the Level II decision, the undersigned finds that the Level II Grievance Evaluator consented to these amendments as permitted under W. Va. Code § 18-29-3(j). **(See footnote 2)**

Grievant is certified to teach multiple subjects in grades K through 8 and mathematics through algebra I in grades 5 through 12. Subsequent to being displaced by the return of Mr. Moore in September 1993, Grievant first worked at MJHS as an eighth grade reading teacher, then as a Chapter One reading teacher. Grievant filled in for various absent teachers as a day-to-day substitute and, in late October 1993, was reassigned to a position as a music teacher at Delbarton and Varney Grade Schools. In order to teach classes associated with this position, Grievant was required toobtain an out-of-field authorization from the State

Department of Education. See J Exs 2 & 3.

Thereafter, Grievant was reassigned to a Chapter One reading position at MJHS in mid-January 1994. She held this position until the 1993-94 school year when she was transferred to a Chapter One math position at MJHS. Although this math position is clearly within Grievant's certification, she is not assigned to a self-contained classroom, being required to move from classroom to classroom within the school.

Grievant testified that the stress associated with teaching out of her field, particularly in the music position, as well as dealing with elementary school children instead of secondary students, resulted in her having to take approximately 24 days of sick leave. Grievant presented a November 1993 "diagnosis" from Dr. W.C. Camomot:

> **Working with Elementary Students has made Ms. Mahon very nervous, unlike her previous assignment of working with the secondary level. It may be beneficial for her to be transferred back to the secondary level.**

G Ex 2 at L II.

Grievant also stated that her exposure to chalk dust as she went from classroom to classroom contributed to her being forced to take sick leave. In August 1991, Grievant presented MCBE with a statement from Dr. Matthew C. Wilson relating to her allergies:

> **This is to confirm that my patient, Brenda Mahon, was told that she has allergy problems which are related to chalk dust at school. I have instructed her to obtain a chalkless board for classroom use.**

G Ex 3 at L II.

Subsequently, on August 23, 1991, MCBE purchased a chalkless markerboard for Grievant's use. At that time, she was in a self-contained classroom teaching math in place of Mr. Moore. After Mr. Moore returned, Grievant's various teaching assignments required her to move from classroom to classroom and even school to school, making it impractical to move the large markerboard with her. Moreover, Grievant indicated that sharing a classroom with other teachers who used chalk was sufficient to activate her allergies, even if she only wrote on her markerboard. Grievant further presented a July 1994 doctor's statement from Dr. Joan

A. Lynch (an associate of Dr. Wilson):

> **Please be informed that my patient, Brenda Mahon, has allergy problems which are related to exposure to chalk dust at school. If (sic) would be beneficial if she obtained a portable chalkless board or that she have a self-contained classroom and not move from room to room.**

G Ex 2.

Noble Harper, MJHS Principal, testified that there were presently no vacant classrooms at MJHS to accommodate Grievant's request for a self-contained classroom. Mr. Harper also explained that, under the "inclusion" theory, Chapter One instruction should be presented in the regular classroom of those students requiring remedial assistance. Thus, Grievant's current duties essentially preclude her assignment to a self-contained classroom.

DISCUSSION

In order to prevail on claims of this nature, Grievant must prove the allegations in her case by a preponderance of the evidence. Williams v. Lincoln County Bd. of Educ., Docket No. 93-22-386 (Mar. 7, 1994); Steele v. Wayne County Bd. of Educ., Docket No. 89-50-260 (Oct. 19, 1989). Grievant is not contending that she is entitled to displace Mr. Moore. Moreover, this Board is without authority to overturn a court order reinstating Mr. Moore. See Gwinn v. Tucker County Bd. of Educ., Docket No. 92-47-281 (June 29, 1993).

A teacher does not have a vested right to be assigned to a particular school. State ex rel. Hawkins v. Tyler County Bd. of Educ., 275 S.E.2d 908, 911-12 (W. Va. 1981); Weaver v. Bd. of Educ., 128 W. Va. 42, 35 S.E.2d 679 (1945). Further, the continuing contract status which Grievant obtained by operation of W. Va. Code § 18A-2-2 does not entitle her to be assigned to any specific set of duties. In this particular case, Grievant obtained continuing contract status while performing an assignment that she was only authorized to maintain until the status of the incumbent was determined. In such circumstances, Grievant simply attains continuing contract status without entitlement to remain in any particular assignment. Given its options when the courts ordered Mr. Moore reinstated, there is no showing that MCBE acted arbitrarily or unreasonably in assigning Grievant to the various positions she has held. See State ex rel. Melchiori v. Bd. of Educ., 188 W. Va. 575, 425 S.E.2d 251 (1992).

In regard to Grievant's claim for reinstatement of sick leave, the record, including Grievant's medical evidence, simply supports the conclusion that the sick leave was taken for the purpose intended, i.e., Grievant was ill. See W. Va. Code § 18A-4-10; Moten v. Fayette County Bd. of Educ., Docket No. 10-86-303-4 (Jan. 7, 1987). While that illness may have been related to stress or allergies that arose from the circumstances of Grievant's employment, the evidence does not indicate that the illness was induced by any wrongful conduct by MCBE so as to warrant reinstatement of such benefits.

Grievant failed to establish any legal basis to support her request for assignment to a self-contained classroom. As previously discussed, W. Va. Code § 18A-2-2, while providing for continuing contract status, does not guarantee any particular conditions of employment to those teachers extended such status. Grievant established that she is allergic to chalk dust and her allergy is necessarily activated by being exposed to chalk dust as she moves from classroom to classroom. While MCBE accommodated Grievant's allergic condition by purchasing the markerboard, MCBE does not have sufficient classroom space available to provide Grievant with a self-contained classroom. Likewise, the preferred method of delivering Chapter One math education, Grievant's current teaching assignment, essentially requires that the teacher move from classroom to classroom. Under these circumstances, Grievant has neither demonstrated a legal entitlement to a self-contained classroom nor that such assignment constitutes a reasonable accommodation for her medical condition. **(See footnote 3)**

In addition to the foregoing discussion, the following findings of fact and conclusions of law are appropriate in this matter:

FINDINGS OF FACT

1. Grievant is employed by the Mingo County Board of Education (MCBE) as a classroom teacher under a continuing contract of employment.

2. During the 1990-91 school year, Grievant was selected to fill a mathematics teaching position at Matewan Junior High School until the status of the regular employee was determined.

3. During the Summer of 1991 Grievant learned that she was allergic to chalk dust. After

receiving medical evidence to that effect, MCBE purchased a chalkless markerboard for Grievant's use in the self-contained classroom where she was teaching mathematics.

4. In August 1993, MCBE received a court order to reinstate the incumbent of the position temporarily held by Grievant, Henry C. Moore.

5. Since the beginning of the 1993-94 school year, MCBE has treated Grievant as a regular employee receiving full seniority and benefits.

6. Since the beginning of the 1993-94 school year, Grievant has been assigned to various positions, none of which included a self-contained classroom where she can use her markerboard without being exposed to chalk dust.

7. During part of the 1993-94 school year, Grievant was assigned duties at Varney and Delbarton Elementary Schools teaching music, a subject outside Grievant's areas of certification.

8. During the 1993-94 school year, Grievant took 24 days of sick leave which she attributes to the stress of working outside her fields of certification and with elementary students below sixth grade.

CONCLUSIONS OF LAW

1. Grievant has the burden of proving each element of a grievance of this nature by a preponderance of the evidence. Stout v. Harrison County Bd. of Educ., Docket No. 93-17-081 (Apr. 12, 1994); Randolph v. Harrison County Bd. of Educ., Docket No. 17-88-001-2 (June 30, 1988).

2. Additional matters which Grievant raised at Level II were properly included in the scope of this grievance with the consent of the Level II Grievance Evaluator. W. Va. Code § 18-29-3(j).

3. Teachers who obtain continuing contract status under W. Va. Code § 18A-2-2 do not have a vested right to be assigned to a particular school nor to a particular set of duties. See State ex rel. Hawkins v. Tyler County Bd. of Educ., 275 S.E.2d 908, 911-12 (W. Va. 1981); Weaver v. Bd. of Educ., 128 W. Va. 42, 35 S.E.2d 679 (1945).

4. MCBE's temporary assignment of Grievant to various teaching positions, including one or more positions requiring her to teach outside her areas of certification, has not been shown to violate W. Va. Code § 18A-2-2, to be contrary to any other law,rule or regulation, or to be

arbitrary or unreasonable, given that MCBE had no vacancies in Grievant's primary areas of certification when the incumbent was reinstated by court order to the position Grievant had been assigned, pending resolution of his status. See State ex rel. Melchiori v. Bd. of Educ., 188 W. Va. 575, 425 S.E.2d 251 (1992).

5. Grievant has not demonstrated any legal entitlement to reinstatement of sick leave taken for illness related to the stress of her circumstances or an allergy to chalk dust activated when she was no longer permitted to teach in a self-contained classroom. See W. Va. Code § 18A-4-10; Moten v. Fayette County Bd. of Educ., Docket No. 10-86-303-4 (Jan. 7, 1987).

6. Grievant has not established any legal basis for requiring MCBE to assign her to a self-contained classroom in order to accommodate her allergy to chalk dust.

Accordingly, the grievance is DENIED.

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

LEWIS G. BREWER

Administrative Law Judge

Dated: March 17, 1995

Footnote: 1*The record does not explain the extensive delay between submission of this grievance and the Level II hearing. However, neither party raised any specific issue relating to this delay.*

Footnote: 2*Grievant filed a separate grievance relating to her non-selection for a reading teacher vacancy at MJHS. Any evidence relating to that grievance was not considered here. Likewise, Grievant's January 1994 request to be placed on the transfer list is a matter beyond the scope of the present grievance.*

Footnote: 3*It is noted that Grievant's evidence falls short of establishing that she suffers from a medical disability which prevents her from performing the essential duties of her position. See McMillen v. Bd. of Trustees, Docket No. 92-BOT-341 (Nov. 12, 1993).*