CLYDE PETERS,

Grievant,

v. **DOCKET NO. 95-41-035**

RALEIGH COUNTY BOARD OF EDUCATION

AND WEST VIRGINIA DEPARTMENT OF EDUCATION,

Respondents.

D E C I S I O N

This grievance was initiated November 2, 1994, by Clyde Peters ("Grievant") against the Raleigh County Board of Education and the West Virginia Department of Education, alleging the following:

> The WV State Bd. of Ed. as well as the Raleigh County Board of Education ha[ve] violated WV Code 18-29-2 by discriminating against Clyde Peters (Park Jr. High Guidance Counselor) in the application of WV Policy 5310 pertaining to the evaluation procedure and application of Guidance Counselor's positions. It is a fallacy within the policy itself that Policy 5310 contains no job description or criteria whereby to evaluate a counselor's position. Guidance Counselors should not be evaluated under the job description of Administrative Personnel and thus, in resolution the Raleigh County Federation of Teachers (AFL-CIO) (See footnote 1) requests that the Guidance Counselors have a job description and criteria established, so as they can be evaluated under the intent of Policy 5310.

The grievance was denied at Levels I and II. The Level II denial was based upon the principles of res judicata and stare decisis, citing to this Board's decision in Peters v. Raleigh County Bd. of Educ. and W. Va. Dept. of Education, Docket No. 94-DOE-043 (September 27, 1994). (See footnote 2) Level III was waived, and appeal was made to Level IV on January 27, 1995. The transcript of the Level II hearing held December 22, 1994, indicates Grievant asked to submit this grievance to Level IV on the record developed in Docket No. 94-DOE-043, with no evidence presented by any party at the Level II hearing held in the instant proceeding. At the Level II hearing Grievant alleged a continuing violation.

This matter is not only similar to Docket No. 94-DOE-043, it is the same case. Not one of the

facts has changed. Although Grievant asserted a continuing violation, no evidence was presented to support even a finding that the matter complained of by Grievant in Docket No. 94-DOE-043 had continued after the ruling in that case. (See footnote 3)

The Level II grievance evaluator correctly applied the legal doctrine of stare decisis in this matter. The Supreme Court of Appeals of West Virginia has explained the doctrine of stare decisis as follows:

> A simple statement of this rule will be found in Black's Law Dictionary, 3d Ed., wherein it is stated that it means: 'To stand by decided cases; to uphold precedents; to maintain former adjudications, * * *. The doctrine of stare decisis rests upon the principle that law by which men are governed should be fixed, definite, and known, and that, when the law is declared by court of competent jurisdiction authorized to construe it, such declaration, in absence of palpable mistake or error, is itself evidence of the law until changed by competent authority.' Its further purpose is 'To adhere to precedents, and not to unsettle things which are established.'

In re Proposal to Incorporate Town of Chesapeake, 130 W.Va. 527, 536, 45 S.E.2d 113 (1947).

This Board has very recently ruled upon the issues presented in this case, as well as upon the very same evidence, in Docket No. 94-DOE-043. Not only does this Board reaffirm its recent ruling, the doctrine of stare decisis precludes this Board from changing its ruling rendered so recently on the very same evidence and issues, and requires that this grievance be dismissed.

This discussion is hereby supplemented by the following finding of fact and conclusion of law.

Finding of Fact

The parties, facts and issues presented in this proceeding are exactly the same as in Peters v. Raleigh County Bd. of Educ. and W. Va. Dept. of Education, Docket No. 94-DOE-043 (September 27, 1994), which is on appeal to the Raleigh County Circuit Court.

Conclusion of Law

This Board has already decided this matter, and is precluded by the doctrine of stare decisis from changing its decision so recently rendered on the very same facts and issues. In re Proposal to Incorporate Town of Chesapeake, 130 W.Va. 527, 536, 45 S.E.2d 113 (1947).

Grievant's claim has already been fully adjudicated by this Board in Docket No. 94-DOE-043, and it is appropriate that this matter be, and the same hereby is, **ORDERED DISMISSED AND**

STRICKEN from this Board's Docket.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Raleigh 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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BRENDA L. GOULD

Administrative Law Judge

Date: March 15, 1995

Footnote: 1 There is no other indication that there are grievants other than Mr. Peters in this matter.

Footnote: 2 That decision was appealed by Mr. Peters to the Raleigh County Circuit Court, which has not yet issued its decision.

Footnote: 3 Grievant is, in essence, asking this Board to reconsider its decision rendered September 27, 1994, in Docket No. 94-DOE-043. It has not been this Board's practice to reconsider its decisions, and this Board's procedural rules do not provide for reconsideration of its decisions. The law in West Virginia does not favor rehearing or reconsideration by administrative bodies absent explicit statutory language allowing for such, or at a minimum, agency regulations providing for such. See Atlantic Greyhound Corp. v. Public Service Commission, 132 W. Va. 650, 659-661, 54 S.E.2d 169 (1949); Hubbard v. SWCC, 295 S.E.2d 659, 666 (W. Va. 1981); Alfred S. Neely, IV, Administrative Law in West Virginia §§5.49, 5.50 (1982). This is especially true when no new evidence has been presented. See Mustard v. City of Bluefield, 130 W. Va. 763, 766-67, 45 S.E.2d 326 (1947). Grievant's remedy was to appeal this Board's decision to the circuit court, which he did. This matter is now out of this Board's hands.