ROBIN CHAFIN,

Grievant,

v. Docket No. 96-03-201

BOONE COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Robin Chafin, grieves her transfer from her Madison Elementary School ("MES") Chapter I Math position and states:

> **Transfer for 1996-97 violates 18A-4-7a of West Virginia code [sic].**

She requests, as relief, that her transfer be rescinded, and she be reinstated to her former position.

This grievance was denied at Levels I and II and waived at Level III. The parties agreed to submit the case on the record at Level IV. This grievance became mature for decision on September 27, 1996, the deadline for the parties' submission of proposed findings of fact and conclusions of law.

The facts in this case are not in dispute, and the issue before this Grievance Board is a question of law.

Findings of Fact

1. During the 1995-1996 school year, Grievant was a Chapter I math teacher at MES. As a Chapter I teacher, Grievant was not assigned to a specific grade level; rather she rotated through the classrooms, working with groups of eligible students.

2. Grievant's seniority date is November 4, 1989, and she is certified in Multi- subjects, 1-6, only.

3. During the first part of 1996, the Boone County Board of Education ("BCBOE")

realized that MES would not qualify for Chapter I funding for the 1996-1997 school year.

4. Apparently, Grievant received a transfer notice in March 1996, stating her position at MES would be eliminated for the 1996-1997 school year because of the lack of federal funding.

5. Grievant requested and received a transfer hearing, and on March 27, 1996, BCBOE voted to place Grievant on the transfer list for the 1996-1997 school year.

6. Another unspecified, less senior teacher in Grievant's area of certification, but not in Grievant's school, was to be RIF'd to provide a place for Grievant.

7. Grievant was not the least senior teacher at MES. Ms. Rose Ladoto, a fourth grade teacher, was the least senior teacher.

Discussion

Grievant seeks to be allowed to "bump" Ms. Ladoto, and be placed in her fourth grade teaching position. She relies on Paragraph 12 of W. Va. Code §18A-4-7a, and this Board's ruling in Cline v. Mingo County Board of Education, Docket No. 95-29-24 (Sept. 29, 1996). Paragraph 12 of the above-cited Code Section states:

> **When the total number of classroom teaching positions in an elementary school needs to be reduced, such reduction shall be made on the basis of seniority with the least senior classroom teacher being recommended for transfer: Provided, That a specified grade level needs to be reduced and the least senior employee in the school is not in that grade level, the least senior classroom teacher in the grade level that needs to be reduced shall be reassigned to the position made vacant by the transfer of the least senior classroom teacher in the school without that position being posted: Provided, however, That the employee is certified and/or licensed and agrees to the reassignment.**

The above-stated Code Section does not appear to apply to Grievant's situation or support her position. The first part of the statute states "[w]hen the total number of classroom teaching positions . . . needs to be reduced" this process is accomplished on the basis of seniority. The outcome of this grievance, with this set of facts, is controlled by the holding in Lloyd, et al. v. Kanawha County Board of Education, Docket No. 91-20-327 (Oct. 29, 1991). (See footnote 1) **"Under [W. Va. Code §18A-4-7a ¶12], only a teacher in a `grade level' position in an elementary school may be moved into a vacant `grade level' position in that school when the total number of classroom teaching positions in that school is reduced. Neither a `Chapter**

I' teacher nor a Special Education teacher is considered to have a `grade level' position." Lloyd supra. Although this ruling was the result of a Kanawha County Circuit Court Civil Action (See footnote 2) , this holding was subsequently adopted by this Grievance Board. Thus, a Chapter I teacher, such as Grievant, does not have a "grade level" position and cannot "bump" a less senior, grade level teacher. The next portion of the Code Section discusses what happens in an elementary school when "a specified grade level needs to be reduced and the least senior employee in the school is not at that grade level." The least senior teacher in the grade to be reduced is reassigned to the position made vacant by the transfer of the least senior classroom teacher. Again, a grade level teacher was not reduced, and the number of grade level teachers remained the same. The only change in positions was Grievant's, and she was not a grade level teacher.

Grievant's reliance on Cline is also misplaced in this instance. In Cline, the grievant was a Chapter I teacher, who was the least senior educator at Gilbert Grade School ("GGS"). Although the facts were somewhat unclear, apparently a sixth grade position at GGS was being reduced. The least senior sixth grade teacher was transferred to the grievant's Chapter I position. The grievant in Cline argued she should not be transferred, and the sixth grade teacher should not be allowed to take her position because she was a special program teacher and was exempt from the statute. See Lloyd supra. This Board held that as the grievant was the least senior teacher at GGS, she could be placed on transfer or "bumped" by a more senior classroom teacher, who's grade level was reduced. This decision dealt with two issues. First, the fact the grievant was the least senior teacher at GGS and second, the statutory right of the sixth grade teacher to "bump" and stay at her assigned school without a posting. This grievance did not focus on the grievant's status as a special program teacher. (See footnote 3) The above-discussion will be supplemented by the following Conclusions of Law.

Conclusions of Law

1. **Grievant has the burden of proving her case by a preponderance of the evidence. Sanders v. Brooke County Bd. of Educ., Docket No. 93-05-173 (Aug. 27, 1993).**
2. **Paragraph 12 of W. Va. Code § 18A-4-7a was not triggered because the total number**

of "grade level" teachers at MES was not reduced.

Accordingly, this grievance is DENIED.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Boone 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: January 31, 1997

Footnote: 1

To the extent that this ruling disagrees with the holding in Cline v. Mingo County Bd. of Educ., Docket No. 95-29-24 (Sept. 29, 1996), Cline is specifically overruled.

Footnote: 2

W. Va. Federation of Teachers, AFL-CIO/Lloyd, et al. v. Kanawha County Bd. of Educ., Civil Action No. 91-C-823 (Kanawha County Cir. Ct., Mar. 13, 1991).

Footnote: 3

Paragraph 12 of W. Va. Code §18A-4-7a does not specifically discuss the rights of elementary special education or special program teachers. As previously stated in note 1, to the extent that Cline disagrees with this holding it is overruled.