DEBRA BUCKLEY,

Grievant,

v. **Docket No. 99-DOE-226**

WEST VIRGINIA SCHOOLS FOR THE DEAF AND BLIND,

Respondent.

DECISION

This grievance was initiated on or about February 5, 1999, by Grievant Debra Buckley against her employer, the West Virginia Schools for the Deaf and Blind, alleging her regular seniority was in error, and requesting as relief that her regular seniority date be changed to September 5, 1990. (See footnote 1)

Respondent pointed out in its argument that this grievance has already been decided at Level IV, in Buckley v. West Virginia Schools for the Deaf and Blind, Docket No. 98-DOE-174 (September 30, 1998). In that decision, Administrative Law Judge Sue Keller ruled in Conclusion of Law 10:

> Because Grievant's substitute position was not posted and filled pursuant to statute, she could not earn regular employment seniority. W. Va. Code §18A-4-8g. Lambert v. Lincoln County Bd. of Educ., Docket No. 93-22-547 (Sept. 29, 1994).

In her discussion in that decision, Judge Keller pointed out that the position Grievant had filled since 1990 should have been posted and filled according to statute 30 days after the regular employee went on Workers' Compensation. This was not done. Grievant had received the benefit of being employed in that position for a number of years, without having to compete for it. (See footnote 2)

Grievant did not indicate why she should be allowed to renew her argument that she should be credited with regular seniority back to 1990. She did present a memorandum dated January 5, 1999, which showed a fellow employee's (Linda Davis) regular seniority date as February 27, 1994, and testified that Ms. Davis was placed in a regular position for which Grievant had also applied sometime after March 1, 1995. From this she concluded that Ms. Davis' regular seniority date should have been sometime in 1995, not 1994. She stated, "That means that she should have aseniority date of '95, not '94, unless they counted her date that she started working full-time in the position." Level II

Transcript at page 12. This evidence does not affect the ruling made in Grievant's other grievance on the very same issue.

First, Grievant did not indicate why this evidence of Ms. Davis' regular seniority date was not presented in her previous grievance, if indeed it was not. Second, the undersigned cannot draw the conclusion from this scant evidence that Ms. Davis had not properly acquired regular seniority in another position prior to March of 1995. Finally, even if Ms. Davis had been improperly awarded regular seniority for a period during which she was serving as a substitute called off the substitute seniority list, that does not mean Grievant may likewise be improperly awarded regular seniority from 1990. As Grievant was previously told by this Grievance Board, she is not legally entitled to regular seniority from 1990 through 1998, when she served in a position as a substitute without going through the competitive posting process.

The doctrine of res judicata may result in the dismissal of a grievance when a party seeks to relitigate "matters about which the parties have already had a full and fair opportunity to litigate and which were in fact litigated." Liller v. W. Va. Human Rights Comm'n, 180 W. Va. 433, ___, 376 S.E.2d 639, 646 (1988); Peters v. Raleigh County Bd. of Educ., Docket No. 95-41-035 (Mar. 15, 1995). Four conditions must be met in order to apply the doctrine of res judicata:

(1) identity in the thing sued for;

(2) identity of the cause of action;

(3) identity of persons, and of parties to the action; and

(4) identity of the quality in the persons for or against whom the claim is made.

Woodall v. W. Va. Dep't of Transp., Docket No. 93-DOH-393 (Feb. 2, 1994), citing Wolfe v. Forbes, 159 W. Va. 34, 217 S.E.2d 899 (1975). "The identicality of issues litigated is the key component to the application of administrative res judicata." Liller, supra.

However, this Grievance Board has applied this doctrine sparingly, "as the grievance process is intended to be a fair, expeditious, and simple procedure, and not a `procedural quagmire.'" Harmon v. Fayette County Bd. of Educ., Docket No. 98-10- 111 (July 9, 1998), citing Spahr v. Preston County Bd. of Educ., 182 W. Va. 726, 393 S.E.2d 739 (1990), and Duruttya v. Bd. of Educ., 181 W. Va. 203, 382 S.E.2d 40 (1989). "Generally, res judicata will be applied by the Grievance Board only when the grievance `involves the same parties, cause of action, relief requested, and factual situation as that of a prior matter' which has actually been decided by the Board. Woodall v. W.Va. Dept. of

Transportation, Docket No. 93-DOH-393 (Feb. 2, 1994)." Farley/Stover v. Mason County Bd. of Educ., Docket No. 94-26-639 (Feb. 28, 1995), footnote 3 (emphasis in original).

This is the very same matter about which Grievant complained in her prior grievance. The issues raised in this grievance were already decided in Buckley v. West Virgina Schools for the Deaf and Blind, Docket Number 98-DOE-174 (September 30, 1998), the parties are the same, the requested relief is the same, and the relevantfactual situation is the same. The legal doctrine of res judicata precludes the undersigned from addressing the very same issues again.

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

Finding of Fact

The parties, facts and issues presented in this proceeding are exactly the same as in Buckley v. West Virginia Schools for the Deaf and Blind, Docket No. 98-DOE-174 (September 30, 1998).

Conclusion of Law

1. The doctrine of res judicata may result in the dismissal of a grievance when a party seeks to relitigate "matters about which the parties have already had a full and fair opportunity to litigate and which were in fact litigated." Liller v. W. Va. Human Rights Comm'n, 376 S.E.2d 639, 646 (1988); Peters v. Raleigh County Bd. of Educ., Docket No. 95-41-035 (Mar. 15, 1995). Four conditions must be met in order to apply the doctrine of res judicata:

(1) identity in the thing sued for;

(2) identity of the cause of action;

(3) identity of persons, and of parties to the action; and

(4) identity of the quality in the persons for or against whom the claim is made.

Woodall v. W. Va. Dep't of Transp., Docket No. 93-DOH-393 (Feb. 2, 1994), citing Wolfe v. Forbes, 159 W. Va. 34, 217 S.E.2d 899 (1975). 2. The issues raised in this grievance were already raised by the Grievant and decided in Buckley v. West Virginia Schools for the Deaf and Blind, Docket Number 98-DOE-174 (September 30, 1998), the parties are the same, the relevant facts are the same, and the requested relief is the same. The legal doctrine of res judicata precludes the

undersigned from addressing the very same issues again.

Grievant's claim has already been fully adjudicated by this Board in Docket No. 98-DOE-174, 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 Hampshire County. Any 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. 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 appealing party must also provide the Grievance Board with the civil action number so that the record can be prepared and transmitted to the circuit court.

BRENDA L. GOULD

Administrative Law Judge

Dated: August 31, 1999

Footnote: 1

The grievance was denied at Level I on February 5, 1999. Grievant appealed to Level II on February 16, 1999, where a hearing was held on May 18, 1999. A Level II decision denying the grievance was issued on May 21, 1999. Grievant waived Level III, appealing to Level IV on June 7, 1999. The parties agreed to submit this grievance for decision on the record developed at Level II. Grievant was represented by Harvey Bane, and Respondent was represented by Katherine L. Dooley, Esquire. This matter became mature for decision on August 20, 1999, upon receipt of the last of the parties' written arguments.

Footnote: 2

From the testimony and argument made by the parties, it appears that neither party took Judge Keller's decision to heart. It appears that Respondent continues to believe that an employee off work on Workers' Compensation is not on a leave of absence, and possibly that an employee filling a properly posted long-term substitute position does not earn regular seniority. This Grievance Board has ruled on several occasions that neither of these perceptions is accurate. See Adkins v. Lincoln County Bd. of Educ., Docket No. 97-22-272 (Aug. 25, 1997); and W. Va. Code § 18A-4-8g, which provides, in pertinent part: "A substitute school service employee shall acquire regular employment status and seniority if said employee receives a position pursuant to subsections (2) and (5), section fifteen of this article: Provided, That a substitute employee who accumulates regular seniority while holding a position acquired pursuant to said subsections shall

simultaneously accumulate substitute seniority."