CLAUDETTE ELLIS,

Grievant,

v. **Docket No. 99-50-353**

WAYNE COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Claudette Ellis, filed this grievance when the Wayne County Board of Education ("WBOE") decided to transfer her from her special education teaching position at Buffalo Middle School. She was subsequently placed in a special education teaching position at Ceredo-Kenova Middle School. She alleged the transfer violated W. Va. Code § 18A-2-7, asserting the reasons given for her transfer were not valid, in that there was a need for her position and student enrollment has decreased in sixth grade, which should not have affected her position. She requested as relief that she be returned to her position at Buffalo Middle School. (See footnote 1) The following Findings of Fact are made from the evidence presented at Levels II and IV.

FINDINGS OF FACT

1. Grievant is employed by WBOE as a special education teacher, and has been teaching in Wayne County two years. She was most recently employed at Buffalo Middle School. Her certification is in multi-subjects K through 8, and M.I./Mild-Moderate K-12. She has 15 hours toward a Masters Degree, which will give her special education multi-categorical certification upon completion. During the 1998-99 school year, Grievant taught mentally impaired as a team teacher and learning disabilities ("LD").

2. When Grievant accepted her position at Buffalo Middle School, her contract gave her five years to become certified in LD and behavior disorders.

3. By letter dated December 23, 1998, David Stewart, the Assistant State Superintendent of

Schools, notified Wilts Salmons, Superintendent of Wayne County Schools, that Wayne County was over the state formula for funding by 90 positions.

4. WBOE reduced the number of teaching positions county-wide for the 1999-2000 school year.

5. Projections show a decline in enrollment at Buffalo Middle School for the 1999-2000 school year of 20 to 25 students, primarily in the sixth grade. 6. Glenna Plymale, Principal of Buffalo Middle School, was told by Carter Chambers, Director of Middle School Education, that she needed to reduce her teaching staff by one position. In addition, another teaching position at Buffalo Middle School was not filled when a teacher left to accept a position at another school. Ms. Plymale determined that elimination of the Health/Technology class would have the least impact on the students. The employee teaching that class, Pamela Hill, an 18-year employee, was also certified in MI, K-12. Ms. Plymale recommended Grievant for transfer because Ms. Hill could teach Grievant's MI classes, and Grievant was the least senior teacher at the school. She believed this was fair. In addition, the schedule at Buffalo Middle School was rearranged so that one of the sixth grade teachers was moved to language arts instruction, and the remaining health classes were made larger.

7. By letter dated March 23, 1999, Superintendent Salmons notified Grievant she was being considered for transfer. The reason given in that letter for Grievant's transfer was, "the number of personnel employed is in excess of the number allowed for funding under the public school support program. Because of the excess in personnel, certain positions in the county must be shifted to meet pupil/teacher ratio and support personnel guidelines."

8. James Ross, WBOE's Personnel Director, stated at Grievant's transfer hearing before Wayne County's board members, held on April 29, 1999, "[w]e did transfer Ms. Ellis because of the overage at Buffalo Middle School and we will replace that position within the school." He later stated "the reasons we gave were becauseof an overage in the special education department and through the middle school education department. . . . there are a number of people at the school who are presently certified similarly to Ms. Ellis."

9. Grievant was placed in a special education teaching position at Ceredo- Kenova Middle School.

10. WBOE does not have a written policy requiring that seniority be considered in transfer

decisions. It is the practice of WBOE to discuss reductions in force and transfers with the principal of each affected school, and allow the principals to recommend positions to be cut and personnel to be transferred.

11. At Wayne Middle School, one sixth grade teaching position was eliminated, and the least senior sixth grade teacher was recommended for transfer. The transferred teacher was not certified to teach any subject outside sixth grade offered at Wayne Middle School.

DISCUSSION

Grievant bears the burden of proving the elements of her grievance by a preponderance of the evidence. Tibbs v. Mercer County Bd. of Educ., Docket No. 96- 27-074 (Oct. 31, 1996). Grievant contends that she should not have been transferred because her position was still needed, and it was a sixth grade teacher who should have been transferred as that is where the lack of need was; she already held a permit to teach multi-categorical special education, and had earned 15 hours of education beyond her bachelor's degree as required by her contract in pursuit of multi-categorical special education certification; that WBOE did not have to considerseniority in making its transfer decision; seniority was not a consideration in a transfer decision at another county school; and the reasons given for her transfer at the transfer hearing were not valid.

Respondent argued it has substantial discretion in transfer decisions. Respondent admitted there is still a need for Grievant's position; however, it pointed out Grievant's transfer was in connection with a countywide reduction in force.

"County boards of education have broad discretion in personnel matters, including transfers, but must exercise that discretion in a manner which is not arbitrary or capricious." Dodson v. McDowell County Bd. of Educ., Docket No. 93- 33-243 (Feb. 15, 1994). The Supreme Court of Appeals of West Virginia has "repeatedly held that the power to transfer teachers must be exercised in a reasonable manner and in the best interests of the school." Townshend v. Bd. of Educ. of County of Grant, 183 W. Va. 418, 396 S.E.2d 185, 188 (1990). See Dillon v. Bd. of Educ. of County of Wyoming, 177 W. Va. 145, 351 S.E.2d 58 (1986).

The evaluation of a personnel decision under the arbitrary and capricious standard entails close examination of the process used to make the decision. Considerable deference must be afforded the professional judgment of those who made the decision. Cowen v. Harrison County Bd. of Educ., 195

W. Va. 377, 465 S.E.2d 648 (1995). Baird v. Kanawha County Bd. of Educ., Docket No. 95-20-445 (Sept. 16, 1996). "In applying the `arbitrary and capricious' standard, a reviewing body applies a narrow scope of review, limited to determining whether relevant factors were considered in reaching that decision and whether there has been a clearerror of judgment. Bowman Transp. v. Arkansas-Best Freight System, 419 U.S. 281, 285 (1974); Harrison v. Ginsberg, 169 W. Va. 162, 286 S.E.2d 276 (1982). Moreover, a decision of less than ideal clarity may be upheld if the agency's path in reaching that conclusion may reasonably be discerned. Bowman, supra, at 286." Hill and Cyrus v. Kanawha County Bd. of Educ., Docket No. 96-20-362 (Jan. 30, 1997).

Boards of education are not required by law to base transfer decisions on seniority, or to consider seniority as a factor in making transfer decisions. (See footnote 2) Transfer decisions "are based on the needs of the school, as decided in good faith by the superintendent and the board. Hawkins v. Tyler County Bd. of Educ., 166 W. Va. 363, 275 S.E.2d 592 (1979) and Post [v. Harrison County Bd. of Educ., Docket No. 89-17-355 (Feb. 20, 1990)]. See Jochum v. Ohio County Bd. of Educ., Docket No. 91-35-396 (Jan. 31, 1992)." Stewart, et al., v. Kanawha County Bd. of Educ., Docket No. 96-20-370 (Jan. 31, 1997). Classroom teachers have no vested right to be assigned to a particular school in the county. Hawkins, supra. W. Va. Code § 18A-2-7 "grants broad discretion to a superintendent, and gives him the authority to transfer school personnel subject only to the approval of the board. Post [supra]." Stewart, supra.

Upon review of the testimony, the undersigned finds the decision to transfer Grievant was made in good faith. Grievant, Ms. Hill, or any other teacher, could havebeen recommended for transfer - someone had to go. Just because the decline in enrollment occurred at the sixth grade level, and there was no reduction in the special education classes, does not affect whether Grievant could be transferred as these are not factors in a transfer decision. See Dial v. McDowell County Bd. of Educ., Docket No. 96-33-259 (Apr. 30, 1997). Ms. Plymale thought the fair method was to transfer the least senior teacher at the school. There is no evidence that Grievant's duties could not be absorbed by Ms. Hill and other personnel at Buffalo Middle School. The decision by WBOE to transfer Grievant was not arbitrary and capricious or an abuse of discretion.

While Grievant's contract required her to obtain additional certifications, there is no evidence that her contract gave her the right to remain in her position. This provision also did not mean that any teacher assuming Grievant's duties had to hold multi-categorical special education certification as

Grievant argues. Grievant does not even hold such certification - she had obtained a permit. There is no indication that the remaining special education teachers at Buffalo Middle School cannot also obtain a permit, if that is necessary.

Finally, it is unclear what Grievant's argument is regarding the reasons given for her transfer at the transfer hearing. Perhaps Mr. Ross could have better stated the reasons, but it is clear from the transfer letter, from Mr. Ross' statements at the hearing, and from the statements of Grievant's representative at the transfer hearing, that Grievant was informed that the reason for the transfer was the need to reducethe number of professional positions at Buffalo Middle School, and the resulting shift in personnel at the school. The reason given was valid.

The following Conclusions of Law support the Decision reached.

CONCLUSIONS OF LAW

1. The burden of proof is upon Grievant to prove the elements of her grievance by a preponderance of the evidence. Tibbs v. Mercer County Bd. of Educ., Docket No. 96-27-074 (Oct. 31, 1996).

2. "County boards of education have broad discretion in personnel matters, including transfers, but must exercise that discretion in a manner which is not arbitrary or capricious." Dodson v. McDowell County Bd. of Educ., Docket No. 93- 33-243 (Feb. 15, 1994). Dillon v. Bd. of Educ. of County of Wyoming, 177 W. Va. 145, 351 S.E.2d 58 (1986).

3. "There is no requirement in W. Va. Code §18A-2-7 that transfers be based on seniority or that the seniority requirements of W. Va. Code §18A-4-7a control transfers and subsequent assignments. Jochum v. Ohio County Bd. of Educ., Docket No. 91-35-396 (Jan. 31, 1992). See also Post v. Harrison County Bd. of Educ., Docket No. 89-17-355 (Feb. 20, 1990)." Stewart, et al., v. Kanawha County Bd. of Educ., Docket No. 96-20-370 (Jan. 31, 1997).

4. Classroom teachers have no vested right to be assigned to a particular school in the county. Hawkins v. Tyler County Bd. of Educ., 166 W. Va. 363, 275 S.E.2d 592 (1979)

5. Grievant failed to prove that the Wayne County Board of Education abused its broad discretion or acted in an arbitrary and capricious manner when it chose to transfer her from Buffalo Middle School.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or to the Circuit Court of Wayne 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: October 29, 1999

Footnote: 1

This grievance was filed at Level II on or about May 17, 1999. A Level II hearing was held on June 4, 1999, and a decision denying the grievance was issued on August 11, 1999. Grievant waived Level III, appealing to Level IV on August 17, 1999. A Level IV hearing was held on September 22, 1999. Grievant was represented by Susan Hubbard, and Respondent was represented by David Lycan, Esquire. The parties submitted post-hearing written argument on October 13, 1999,and this matter became mature for decision on October 25, 1999, upon receipt of Grievant's Exhibit 2, the transcript of Grievant's transfer hearing.

Footnote: 2

Some counties have adopted policies which require them to consider seniority in transfer situations. WBOE did not have such a policy. See Allen v. Harrison County Bd. of Educ., Docket No. 96-17-176 (July 31, 1996). See also, Dyer, et al., v. Lincoln County Bd. of Educ., Docket No. 95-22-494 (June 28, 1996).