BONNIE L. DAVIS,

Grievant,

v. **Docket No. 99-09-125**

DODDRIDGE COUNTY BOARD
OF EDUCATION,

Respondent.

DECISION

Bonnie L. Davis (Grievant) initiated this grievance on January 22, 1999, alleging she should have been selected for an Aide III position at West Union Grade School. Grievant's immediate supervisor was without authority to grant relief, and Grievant appealed to level two on January 28, 1999. A level two hearing was held on March 1, 1999, and the grievance was denied at that level in an undated decision. Level three consideration was bypassed, and Grievant appealed to level four on March 24, 1999. A level four hearing was held in this Grievance Board's office in Morgantown, West Virginia, on May 24, 1999. Grievant appeared pro se, and the Doddridge County Board of Education (DCBOE) was represented by counsel, Basil Legg. This matter became mature for consideration on July 6, 1999, upon receipt of the parties' fact/law proposals.

The following findings of fact are made from a preponderance of the evidence of record.

Findings of Fact

1. Grievant has been regularly employed by DCBOE as a Cook III for eleven years. 2. On January 8, 1999, DCBOE posted a vacancy for a Supervisory Aide III- Special Education at West Union Grade School. The deadline for applications was January 14, 1999, at 4:00 p.m.

3. The posting required the successful applicant to have a high school diploma or GED, six semester hours of college course credit or one year of experience as a special education aide, and first aid certification. In addition, to be qualified for the position, applicants had to be employed in the

Aide III classification or have passed the competency test for that classification.

4. Grievant applied for the Aide III position on January 11, 1999. As of that date, she had completed two three-hour courses at Fairmont State College, but had only received formal credit for three hours of college instruction.

5. In a telephone conversation on January 14, 1999, with Superintendent Ronald Nichols, Grievant informed him that she had completed another three-hour course during the fall semester of 1998 and would provide him with a transcript as soon as she contacted Fairmont State College.

6. On January 19, 1999, Grievant provided Mr. Nichols with an updated transcript from Fairmont State College, reflecting that she had completed six semester hours.

7. DCBOE selected Julie Todd to fill the Aide III position.

8. As of the date the posting closed, Ms. Todd had provided proof of having earned seven college credit hours, along with proof of the other minimum qualifications for the position. 9. Ms. Todd was employed by DCBOE as a Secretary III/Computer Operator. She has less seniority as a regular employee than Grievant.

10. Both Grievant and Ms. Todd passed the Aide competency test.

11. Neither Grievant nor Ms. Todd has ever been employed as an Aide by DCBOE.

12. The Aide III position was to last only through the end of the 1998-1999 school year.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving each element of her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 §4.19 (1996); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ. Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code §18-29-6. Grievant contends that she was the most senior, qualified employee who applied for the position in question, so she should have been selected over Ms. Todd. Respondent argues that, because Grievant had not actually been awarded six hours of college credit at the time the posting closed, she was not minimally qualified.

W. Va. Code § 18A-4-8b provides that “[a] county board of education shall make decisions affecting promotion and filling of any service personnel positions . . . on the basis of seniority, qualifications, and evaluations of past service.” The statute further defines “qualifications” as holding

the classification title in the particular category of employment. Applicants who do not hold the classification title can become qualified by successfulcompletion of competency testing, as provided by W. Va. Code § 18A-4-8e. The purpose of the competency tests is:

> to provide county boards of education a uniform means of determining whether currently employed service personnel who do not hold a classification title in a particular category of employment can meet the definition of the classification title in another category of employment and/or to determine the qualifications of new applicants seeking initial employment in a particular classification title.

Respondent does not dispute that both Grievant and Ms. Todd have passed the competency test for the Aide classification and that Grievant has more regular seniority than Ms. Todd. DCBOE only contends that, as of the date the posting closed, Grievant was not “minimally qualified” for the position, so she was not eligible for selection. Accordingly, Respondent selected the most senior, qualified applicant, i.e. Ms. Todd. W. Va. Code § 18A-4-8b requires a board of education to “show valid cause why an employee with the most seniority” is not selected to fill a vacancy. (See footnote 1) In the instant case, the only reason given by DCBOE for not selecting Grievant, the most senior applicant, was her alleged lack of six hours of college credit, as required by the posting.

This Grievance Board has previously held that bus operators, who are required to obtain various licenses and certifications in order to be qualified to operate school buses, are not qualified to fill positions, if they do not hold these certifications when they apply for vacancies. Chapman v. Putnam County Bd. of Educ., Docket No. 97-40-560 (June 10,1998); Harless v. Boone County Bd. of Educ., Docket No. 96-03-186 (Sept. 26, 1996); Yeager v. Kanawha County Bd. of Educ., Docket No. 20-88-050 (October 3, 1988). However, as noted by the administrative law judge in Chapman, supra, the Supreme Court has recently held that a board of education did not err in hiring a principal who had not yet received his principal's certificate, but who had completed all requirements necessary to receive it. Keatley v. Mercer County Bd. of Educ., 200 W. Va. 487, 490 S.E.2d 306 (1997). However, Chapman, supra, was distinguishable from Keatley, because the grievant in Chapman “was not simply waiting to receive official certification . . . [and] there was no assurance that he would be able [to complete the requirements necessary to obtain certification].”

The instant case, however, is similar to the situation presented in Keatley. Grievant testified that, as of the date the posting closed on January 14, 1999, she had completed six hours of college courses, but the last three hours had not yet been recorded by Fairmont State College. Then,

pursuant to Grievant's request for an expedited transcript, DCBOE was provided with proof of Grievant's six hours of credit within two working days after the posting closed. This is not a situation where it was questionable whether Grievant was going to receive the credits. She had completed the course during the fall semester of 1998, and it is common for higher education institutions to take several weeks to complete the process of recording credits. Accordingly, the undersigned finds that Grievant had completed the requirements for obtaining college credit at the time she applied for the Aide III position, making her the most senior, qualified applicant. Since DCBOE has not contested any of her other qualifications, she was entitled to placementin the position in question.

The following conclusions of law are appropriate in this matter.

Conclusions of Law

1. In non-disciplinary matters, a grievant has the burden of proving each element of her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.19 (1996); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ. Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code §18-29-6.

2. "[A] county board of education shall make decisions affecting promotion and filling of any service personnel positions . . . on the basis of seniority, qualifications, and evaluations of past service." W. Va. Code § 18A-4-8b.

3. Grievant was qualified for the posted position, because she had completed all necessary requirements to receive the required college credits at the time she applied for the position, and was merely waiting for the credits to be recorded. See Keatley v. Mercer County Bd. of Educ., 200 W. Va. 487, 490 S.E.2d 306 (1997).

Accordingly, this grievance is **GRANTED**, and Respondent is ORDERED to award Grievant all seniority, benefits and back pay she would have received if she had been placed in the Aide III position, from the date the position was filled through the end of the 1998-1999 school year.

Any party may appeal this Decision to the Circuit Court of Kanawha County or theCircuit Court of Doddridge 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. 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 Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

Date: August 9, 1999 _____

DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

However, it should be noted that the Supreme Court of Appeals has condoned school boards' hiring, under W. Va. Code § 18A-4-8b, of less senior applicants who possess qualifications superior to those of an applicant with more seniority. See Hancock County Bd. of Educ. v. Hawken, No. 25818 (W. Va. 1999); Hyre v. Upshur County Bd. of Educ., 186 W. Va. 267, 412 S.E.2d 265 (1991).