KATHLEEN DICKENS,

Grievant,

v. **Docket No. 01-41-356**

RALEIGH COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

This grievance was initiated on or about April 9, 2001, by Grievant, Kathleen Dickens, against her employer, the Raleigh County Board of Education ("RBOE"), contesting the "termination of the ex[tra]-curricular secretary position at Marsh Fork High School." As relief she sought reinstatement of the position. (See footnote 1) Grievant is a full-time secretary at Marsh Fork High School. It was not her extra-curricular position which was eliminated; it was the position which assisted her two days a week.

Respondent argued this grievance should be dismissed, because the issues in this grievance are the same as the issues raised by Grievant in a grievance filed by her in 1996, which was denied at Level II and not appealed.

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.

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). However, this Grievance Board recently decided that the doctrine is applicable to decisions issued at the lower levels of the grievance procedure which have not been appealed within the statutory time

periods to the next level of the grievance procedure. Ashley v. W. Va. Bureau of Senior Services, Docket No. 00-BSS-506 (Aug. 1, 2000). Although the factual situation was slightly different in the earlier grievance, this is the very same matter about which Grievant complained in her prior grievance. The first grievance was filed in June of 1996. At that time, a secretary assisted Grievant one day a week, and Grievant was seeking to have her work hours increased to two days a week. The statement of grievance reads:

> There is not enough time in a day for one secretary to do all the work that is required at Marsh Fork High School. Since the school is now grades 7-12, the number of teachers has increased from 19 to 36. More financial account[s] have been added plus additional sports accounts for both Jr. High and senior high. We now have two lunch periods to to [sic] scan and record. Also, a new attendance system was added to the school which requires more time, in addition to phone calls because [of] the increased student enrollment.

As relief she sought:

> To get relief for all the additional work, (illegible) full-half time secretary to help do (illegible) such as 2 full days a week or 5 - 31/2 days a week.

The grievance was denied in a Level II decision issued on July 26, 1996, which noted that Grievant had not demonstrated a violation of any rule, regulation, policy, or statute, and that the Board of Education had the authority to assign personnel. The decision included a footnote, however, which stated, consistent with the discussion of the parties at the Level II hearing, that the superintendent, who was the author of the Level II decision, would “recommend to the Board of

Education for part-time services for 1996-97 school year but with the expectation that certain efficiencies be installed concerning the secretarial position at Marsh Fork High School as discussed in the hearing." The Level II decision was not appealed.

In this grievance, Grievant again contends that there is too much work for one secretary, and for this reason, RBOE should be required to retain an assistant for her. Grievant testified she did not feel she could do her job like she should without some help. She stated parents are constantly calling, and students are in the office waiting to use the telephone, and it is hard for one person to monitor the office. She testified about the verysame reasons for the increased work volume which are listed in the 1996 statement of grievance. This was the same complaint Grievant had in 1996.

The issues raised in this grievance were already decided at Level II in 1996. The parties are the same and the relevant factual situation is the same. The requested relief is not identical, but it is essentially the same, as Grievant requested secretarial help in both grievances. The footnote in the 1996 decision essentially represents an offer made by the superintendent to ask the Board of Education to provide Grievant with additional help on a temporary basis, while Grievant and the principal of Marsh Fork High School made some changes which would allow Grievant more quiet time so she could concentrate on her financial duties. While this no doubt satisfied Grievant at the time, and was a consideration in her decision not to appeal the Level II decision, the Level II decision denied the grievance for the reasons stated above, Grievant chose not to appeal this decision, and it became a final, binding decision. The legal doctrine of res judicata precludes the undersigned from addressing the very same issues again.

Even were the merits to be addressed, Grievant has once again in this grievance failed to demonstrate any violation of law, rule, or policy. "Further, a board of education has substantial discretion in determining the number of positions needed, the number of positions it can afford to fund, and where its limited resources are best used. Milosicevic v. Hancock County Bd. of Educ., Docket No. 99-15-281 (Feb. 14, 2000); Miller v. Lincoln County Bd. of Educ., Docket No. 97-22-083 (July 23, 1997)." Amick v. Greenbrier County Bd. of Educ., Docket Nos. 01-13-143/234 (Aug. 1, 2001). As have many other counties, RBOE had to cut personnel due to a lack of funding. While it would certainly be nice if RBOE could continue to provide Grievant with some assistance with her duties, it has decided that it simply does not have the money to do so, and the undersigned cannot overturn RBOE's personnel decision and order RBOE to provide this assistance simply because

Grievant does not know how she will get all the work done. This discussion is hereby supplemented by the following findings of fact and conclusions of law.

Findings of Fact

1. Grievant has been employed by RBOE as a secretary at Marsh Fork High School for 39 years.

2. Approximately 287 students, in grades 7 through 12, attend Marsh Fork High School. These grade levels have attended Marsh Fork High School since the 1995-96 school year.

3. Grievant filed a grievance in 1996, asking for additional secretarial support, because she did not believe she could get all her work done after grades 7 and 8 were added to the school. A Level II decision was issued on July 26, 1996, denying the grievance. That decision was not appealed.

4. At some point after the 1996 grievance, RBOE did provide additional secretarial support to Marsh Fork High School, by employing a person in an extra- curricular position two days a week. Prior to the grievance, this person had worked at Marsh Fork High School one day a week. In the Spring of 2001, RBOE decided to eliminate this extra-curricular position.

5. The facts, parties, issues, and relief sought are the same in this grievance as in the grievance filed by Grievant in 1996.

Conclusions 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;

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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 in a grievance filed by her in 1996, and decided at Level II of the grievance procedure on July 26, 1996. The parties are the same, the relevant facts are the same, and the requested relief is essentially the same. That decision was not appealed. The legal doctrine of res judicata precludes the undersigned from addressing the very same issues again.

Grievant's claim has already been fully adjudicated, 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 RaleighCounty. 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 29, 2001

Footnote: 1

Grievant's supervisor responded at Level I on April 12, 2001, that he was without authority to grant the relief sought. Grievant appealed to Level II on April 25, 2001. A Level II hearing was held on May 1, 2001, and a Level II decision denying the grievance was issued on May 16, 2001. Grievant waived Level III, appealing to Level IV on May 21, 2001. A Level IV hearing was held on July 24, 2001. Grievant was represented by Steve Angel, and Respondent was represented by Erwin L. Conrad, Esquire. This matter became mature for decision on August 8, 2001, upon receipt of the last of the parties' written arguments. Grievant's written argument was submitted by Sidney Fragale.