PAMELA WARRINER,

Grievant,

v. **Docket No. 02-19-146**

JEFFERSON COUNTY BOARD OF EDUCATION,

Respondent,

and

RACINE LYNCH,

Intervenor.

D E C I S I O N

Grievant, Pamela Warriner, employed by the Jefferson County Board of Education (JCBE or Respondent) as a Supervisory Aide/Computer Operator, filed a level one grievance on April 29, 2002, in which she alleged that a position of Computer Lab Aide had been awarded to a less qualified applicant. For relief, Grievant requested instatement to the position. Grievant's immediate supervisor lacked authority to resolve the matter at level one. The matter was denied at level two, and Grievant elected to bypass consideration at level three, as is permitted by W. Va. Code § 18-29-4(c). The grievance was advanced to level four on May 28, 2002, at which time the parties agreed that a decision could be based on the lower-level record supplemented with proposed findings of fact and conclusions of law. (See footnote 1) The grievance became mature for decision upon receipt of the proposals on or before September 18, 2002. (See footnote 2) The following facts are derived from the record developed at level two.

Findings of Fact

1. Grievant has been employed by JCBE since May 30, 1995, and has been assigned as a Supervisory Aide/Computer Operator at Charles Town Middle/Junior High School since 1998.

2. On or about April 1, 2002, JCBE posted position #2120, “Computer Lab Aide” at the 9th Grade Complex. This position was to commence in the 2002-2003 school year.

3. Grievant bid on the Computer Lab Aide position which was subsequently awarded to Racine Lynch (Intervenor), the most senior applicant, having been employed by JCBE since November 10,

1987.

4. Grievant had successfully passed the competency test for the position of Computer Operator in 1998.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 §4.21 (2000); 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 argues that JCBE violated W. Va. Code § 18A-4-8b which requires that service personnel positions be filled “on the basis of seniority, qualifications and evaluation of past service.” Grievant asserts that her classification of Computer Operator requires that she be given first opportunity for promotion and filling vacancies. JCBE agrees that service personnel who are employed in a classification category of employment when a vacancyis posted in the same classification category shall be given first opportunity to fill the vacancy, and argues that it followed the law in this matter since the posted position was for an Aide, not a Computer Operator.

W. Va. Code § 18A-4-8b(b) defines qualifications to “mean that the applicant holds a classification title in his category of employment . . . .” The classification title “Aide”, is generally defined as “personnel selected and trained for teacher-aide classification such as monitor aide, clerical aide, classroom aide or general aide.” W. Va. Code § 18A-4- 8(i)(8). This grievance board has previously found that W. Va. Code § 18A-4-8 does not differentiate between types of aides, and "an aide may perform any duties assigned to him or her, as long as they are within the scope of the classification." Moore v. Mercer County Bd. of Educ., Docket No. 01-27-558 (Feb. 20, 2002); Buck v. Wood County Bd. of Educ., Docket No. 96-54-325 (Feb. 28, 1997).

Because Grievant holds a multiclassification which includes the job title Aide, she is qualified for the position of Computer Lab Aide, and would have been entitled to the appointment, but for the fact that another applicant had more seniority. The job posting was not for Aide/Computer Operator, and Grievant was not more qualified, as qualified is statutorily defined, than Intervenor.

In addition to the foregoing findings of fact and discussion, it is appropriate to make the following conclusions of law.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 §4.21 (2000); 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. W. Va. Code § 18A-4-8b requires that service personnel positions be filled “on the basis of seniority, qualifications and evaluation of past service.”

3. W. Va. Code § 18A-4-8b(b) defines qualifications to “mean that the applicant holds a classification title in his category of employment . . . .”

4. W. Va. Code § 18A-4-8 does not differentiate between types of aides, and "an aide may perform any duties assigned to him or her, as long as they are within the scope of the classification." Moore v. Mercer County Bd. of Educ., Docket No. 01-27-558 (Feb. 20, 2002); Buck v. Wood County Bd. of Educ., Docket No. 96-54-325 (Feb. 28, 1997).

5. Grievant has failed to prove that she was entitled to the position of Aide in the Computer Lab.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Jefferson 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: September 26, 2002 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

Grievant was represented by Harvey M. Bane of WVEA, and JCBE was represented by Claudia W. Bentley, Esq. of Bowles Rice McDavid Graff & Love.

Footnote: 2

Ms. Lynch filed a "Motion To Intervene" on September 23, 2002, but stated that she would not be submitting proposed findings of fact and conclusions of law as her intent was only to secure her right to appeal.