SUSAN BOSSIE-MADDOX,

Grievant,

v. **Docket No. 05-20-285D**

KANAWHA COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Susan Bossie-Maddox, filed a motion for default with her employer, the Kanawha County Board of Education ("KCBOE" or "Board"), on August 12, 2005, claiming KCBOE defaulted on her grievance at Level I. The underlying grievance deals with failure to select her for a principal's position.

On August 15, 2005, the Grievance Board received a written request for a Level IV default hearing from Respondent. On August 30, 2005, a default hearing was scheduled for September 26, 2005. On September 6, 2005, Respondent filed a Motion to Dismiss. A pre-hearing conference on the Motion to Dismiss was held on October 5, 2005, but little was resolved. After several continuances, the Level IV default hearing and the hearing on the Motion to Dismiss were held on October 31, 2005. This case was to become mature for decision on November 18, 2005, but Grievant's attorney requested an extension that was granted, and the new mature date was December 16, 2005. On that date, Grievant's attorney wrote stating she, "had not received proper authorization to go forward with her brief" and requested Grievant be allowed time to file her own proposals. Accordingly, the undersigned Administrative Law Judge gave Grievant until January 17, 2006, to file herproposed Findings of Fact and Conclusions of Law, and Respondent until January 25, 2006, to submit a reply brief. (See footnote 1) No further submissions were received.

Issues and Arguments

Grievant claims she has prevailed by default because KCBOE failed to issue a Level I Decision within the required time frame. KCBOE notes the grievance was not properly filed with Grievant's immediate supervisor, and Grievant waited over a year to file this default which should result in this

dismissal of this default.

In the Motion to Dismiss, Respondent asserts the issue is moot as the relief sought, placement into the position, is not available because Grievant resigned from KCBOE in August 2005, shortly after she raised the issue of default. Respondent also notes Grievant signed a settlement agreement on May 20, 2004, in which she agreed she would be placed only as an Assistant Principal or Dean of Students during the 2004 - 2005 and 2005 -2006 school years. Accordingly, Grievant could not receive the principal position in question. Neither Grievant's attorney nor Grievant responded to the issues raised in the Motion to Dismiss.

After a detailed review of the entire record, the undersigned Administrative Law Judge makes the following Findings of Fact. It should be noted that Grievant, who had the burden of proof on the default issue, did not appear at the hearing, nor did Grievant's attorney call any other witnesses. There was no testimony given on any of the issues raised, but the parties agreed to submit several documents in lieu of testimony. Accordingly, the evidence is very limited.

Findings of Fact

1. On May 20, 2004, Grievant negotiated a settlement agreement over her removal as Principal at Andrew Jackson Middle School. This settlement changed Grievant's evaluation to satisfactory, removed her Improvement Plan, and placed her as an Assistant Principal at South Charleston Middle School for the 2004 - 2005 school year. Her pay and benefits were not changed. Jt. Exhs. 1 & 4. This settlement agreement stated Grievant would be placed only in an Assistant Principal's or Dean of Students' position for the 2004 - 2005 school year. This settlement agreement also stated that prior to the beginning of the 2005 - 2006 school year, Grievant would seek and receive a permanent position as an Assistant Principal at either a middle school or high school, and Grievant's new compensation would be commensurate with whatever administrative position she received. Jt. Exhs. 1 & 4.

2. Shortly thereafter, probably sometime in July or August 2004, Grievant applied for the Principal's position at Cedar Grove Community School. She was not selected.

3. On August 18, 2004, Grievant filed a grievance over her non-selection. On that same date, an informal conference was held with Melanie Vickers. At the time of this filing, Ms. Vickers was no longer Grievant's immediate supervisor. By that same date, Ms. Vickers informed Grievant she did

not have the authority to resolve the grievance.

4. On August 20, 2004, Grievant filed a formal Level I grievance over her non- selection with Ms. Vickers. Although KCBOE believes Ms. Vickers gave a response, there was no written response in the grievance file. 5. Grievant did not ask about this grievance until May 31, 2005, when Grievant called William Courtney, Esq., an administrator in KCBOE's central office. It appears the purpose of that call to Mr. Courtney was to request a Level II hearing.

6. On June 24, 2005, Grievant's attorney, Belinda Morton, informed KCBOE she had been retained as counsel for Grievant in the grievance filed in June 2004. (This grievance was filed in August 2004). (The undersigned Administrative Law Judge requested the grievance form numerous times from Grievant's attorney, and finally received it at the Level IV hearing.) A Level II hearing was scheduled for June 30, 2005. At KCBOE's request, and with Grievant's agreement, this hearing was continued and rescheduled for July 2005. The July hearing was continued at Grievant's attorney's request and rescheduled for August 12, 2005.

7. At the August 12, 2005 hearing, Grievant asserted, for the first time, that KCBOE was in default and asked for placement into the principal's position due to KCBOE's failure to comply with the time lines.

8. On August 15, 2005, the Grievance Board received a request for a default hearing from Respondent.

9. On August 26, 2005, Grievant resigned from her position at KCBOE and is now working in Fayette County. (See footnote 2)

Discussion

The parties raise several issues: whether a default occurred, whether Grievant waited too long to request a default, and whether this grievance is rendered moot by thesettlement agreement signed by Grievant in August 2004 and/or her resignation. The Motion to Dismiss will be addressed first because if this Motion is granted the rest of the issues raised by the parties would be moot.

The law favors and encourages resolution of controversies by contracts of compromise and settlement rather than by litigation, and the law will uphold and enforce such contracts if they are fairly made and not in contravention of some law or public policy. McDowell County Bd. of Educ. v. Stephens, 191 W. Va. 711, 447 S.E.2d 912 (1994). This Grievance Board recognizes this principle,

and settlement agreements are upheld unless it is proven by a preponderance of the evidence that the settlement was not fairly made or was in contravention of some law or public policy. Hedrick v. Dep't of Health and Human Res., Docket No. 05-HHR-226 (Nov. 8, 2005); Adkins v. Logan County Bd. of Educ., Docket No. 97-23-216 (Sept. 29, 1997); Vance v. Logan County Bd. of Educ., Docket No. 95-23-190 (Mar. 15, 1996).

Here, since Grievant did not respond to the Motion to Dismiss, there is no issue of rescission of the settlement agreement. Additionally, it is clear from the face of the settlement agreement Grievant was given consideration for the relinquishment of her then- current principal position and for principal positions in the future. This consideration included a satisfactory evaluation, removal of an Improvement Plan, and compensation as a principal, even though she would be serving in an assistant principal's position. Further, Grievant was represented by an attorney during this negotiation process.

Respondent's assertion that the settlement agreement precludes Grievant from receiving a principal's position during the 2004 - 2006 and 2005 - 2006 school years is borne out by this document. The settlement agreement, clearly states Grievant would onlybe employed as an Assistant Principal or Dean of Students during the 2004-2005 school year and would only be considered for Assistant Principal or Dean of Students positions for the 2005 - 2006 school year. The language of the settlement agreement encompasses Grievant's current claims. Accordingly, she is not entitled to any relief in this grievance and the Motion to Dismiss is GRANTED. See Lowe v. W. Va. Div. of Corr., Docket No. 99- CORR-095 (June 10, 1999). (See footnote 3)

The above-discussion will be supplemented by the following Conclusions of Law.

Conclusions of Law

1. The law favors and encourages resolution of controversies by contracts of compromise and settlement rather than by litigation, and the law will uphold and enforce such contracts if they are fairly made and not in contravention of some law or public policy. McDowell County Bd. of Educ. v. Stephens, 191 W. Va. 711, 447 S.E.2d 912 (1994). See Strawser v. Dep't of Health and Human Res., Docket No. 99-HHR-414 (Mar. 6, 2000). 2. Because Grievant entered into a settlement agreement encompassing the claims asserted in this grievance, she is precluded from grieving her non-selection for the principal's position at issue. Strawser, supra.

Accordingly, Respondent's Motion to Dismiss is **GRANTED**, and this case is **DISMISSED** from the dockets of the Grievance Board .

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

JANIS I. REYNOLDS

ADMINISTRATIVE LAW JUDGE

Dated: March 22, 2006

Footnote: 1

Grievant was represented by Belinda Morton, Esq., and KCBOE was represented by James Withrow, Esq.

Footnote: 2

At the time of her resignation from KCBOE, Grievant was scheduled to start the 2005 - 2006 school year as an Assistant Principal at East Bank

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Footnote: 3

Although the issue of default will not be addressed in detail, the West Virginia Supreme Court of Appeals has held, "[i]n order to benefit from the 'relief by default' provisions contained in W. Va. Code § 18-29-3(a) . . . a grieved employee or his/her representative must raise the 'relief by default' issue during the grievance proceedings as soon as the employee or his/her representative becomes aware of such default." Hanlon v. Logan County Bd. of Educ., 201 W. Va. 305, 496 S.E.2d 447 (1997); Harmon and Chiles v. Fayette County Bd. of Educ., 205 W. Va. 125, 516 S.E.2d 748 (1999). See Malcolm v. Bureau of Employment Programs, Docket No. 03-BEP-313D (Jan. 29, 2004). "[T]his Grievance Board has held that an employee is allowed to raise a default claim, so long as he raises it as soon as he becomes aware of the default and submits the claim before a response to the grievance has been received. Harmon v. Fayette County Bd. of Educ., Docket No. 96-10-500 (Aug. 26, 1997), aff'd Harmon v. Fayette County Board of Education, No. 25323, March 12, 1999 (W. Va. S. Ct.)." Bell v. Northern Reg'l Jail and Corr. Facility, Docket No. 99-CORR-054D (Apr. 14, 1999). Since Grievant waited almost a year before filing her claim for default, this assertion is untimely.