THE WEST VIRGINIA STATE AND EDUCATION EMPLOYEES GRIEVANCE BOARD

CYNTHIA BROWN, et al.

Grievants,

v. **Docket No. 06-52-292**

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

WETZEL COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Connie Frye and Cynthia Brown ("Grievants"), employed by the Wetzel County Board of Education ("WCBE") as teachers, filed a level one grievances on May 30, 2006, in which they alleged violations of *W. Va. Code* §§ 18A-4-7a and 18A-2-7a, when they were placed on the transfer list. For relief, Grievant Brown requested reinstatement as a Kindergarten teacher at the Short Line School, and Grievant Frye requested placement as a fifth grade teacher at New Martinsville School. (See footnote 1) Grievants' immediate supervisor lacked authority to grant the requested relief at level one. The grievance was denied following an evidentiary hearing at level two, and Grievants elected to waive consideration at level three. Appeal to level four was made on August 30, 2006. Grievants' West Virginia Education Association representative Owens Brown, and WCBE counsel Kimberly S. Croyle, of Bowles, Rice, McDavid, Graff & Love, LLC, agreed to submit the grievance for decisionbased upon the lower-level record. The grievance became mature for decision upon receipt of WCBE's proposed findings of fact and conclusions of law on October 10, 2006. (See footnote 2)

The following facts have been derived from a preponderance of the credible evidence made part of the record at level two.

Findings of Fact

1. During the 2005-2006 school year, Grievant Brown was assigned to teach Kindergarten at the Short Line School ("SLS"). She was the least senior Kindergarten teacher assigned to SLS.

2. WCBE determined that one Kindergarten position would need to be eliminated for the 2006-2007 school year.

3. The least senior teacher at SLS was Tabatha Mason, a half-time Early Start (pre-Kindergarten) teacher of children with special needs.

4. Grievant Brown is certified to teach Pre-Kindergarten and Kindergarten, but is not certified to teach in any special education classification.

5. Jody Price teaches another Early Start class at SLS, and has less seniority than Grievant Brown.

6. Because Grievant Brown is not certified to teach special needs students, she was placed on the transfer list, and reassigned to teach first grade at Paden City Elementary School. Prior to the level two hearing, Grievant Brown bid into a third grade position at SLS. 5. During the 2005-2006 school year, Grievant Frye was assigned to teach fifth grade at the New Martinsville School.

6. WCBE determined that one fifth grade position at New Martinsville School would not be needed for the 2006-2007 school year. As the least senior fifth grade teacher, Grievant Frye was placed on the transfer list.

7. The least senior teacher at New Martinsville School was Emily McGuire who teaches special education. Grievant Frye is not certified to teach special education.

8. Grievant Frye was subsequently reassigned to teach first grade at Jacksonburg School. Prior to the level two hearing, Grievant Frye bid into a third grade position at NMS. This action satisfied Grievant Frye's request for relief in this matter.

Discussion

Initially, it is noted that Grievant Frye has been placed into the position she was seeking, and there no longer exists a case in controversy. As such, her grievance is now moot. "Moot questions or abstract propositions, the decisions of which would avail nothing in the determination of controverted rights of persons or property, are not properly cognizable [issues]." *Bragg v. Dep't of Health & Human Res*., Docket No. 03-HHR-348 (May 28, 2004).

Grievant Brown argues that she was entitled to bump into the early-start position held by Jody Price. WCBE asserts that the classroom teacher with the least seniority was Tabitha Mason, who held a half-time, early-start assignment for students with special needs, an assignment for which Grievant Brown was not certified.

Because the grievance does not involve a disciplinary matter, Grievant Brown has the burden of proving her claim by a preponderance of the evidence. Procedural Rules ofthe W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2004); *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. *W. Va. Code* § 18A-4-7a(q), provides: Reductions in classroom teaching positions in elementary schools shall be processed as follows:

(1) When the total number of classroom teaching positions in an elementary school needs to be reduced, the reduction shall be made on the basis of seniority with the least senior classroom teacher being recommended for transfer; and

(2) When a specified grade level needs to be reduced and the least senior employee in the school is not in that grade level, the least senior classroom teacher in the grade level that needs to be reduced shall be reassigned to the position made vacant by the transfer of the least senior classroom teacher in the school without that position being posted: Provided, That the employee is certified and/or licensed and agrees to the reassignment.

Grievant does not challenge the fact that Tabitha Mason is the least senior teacher at SLS. Neither does she claim to hold certification required to teach any type of special education. Grievant's claim that she is entitled to the position held by Jody Price, is not supported by the cited statutory language. Even if the position held by Ms. Mason was not to be considered due to the fact that special certification was required, Grievant did not assert that Ms. Price would have been the least senior classroom teacher at SLS. Grievant offers no authority, and the undersigned is aware of none, to support her claim that she would be entitled to a position held by any teacher at SLS with less seniority, in the certification of her choice.

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

Conclusions of Law

1. Because the grievance does not involve a disciplinary matter, Grievant Brown has the burden of proving her claim by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2004); *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. "Moot questions or abstract propositions, the decisions of which would avail nothing in the determination of controverted rights of persons or property, are not properly cognizable [issues]." *Bragg v. Dep't of Health & Human Res*., Docket No. 03-HHR-348 (May 28, 2004).

3. When there is no case in controversy, the Grievance Board will not issue advisory opinions. *Gibb v. W. Va. Div. of Corrections*, Docket No. 98-CORR- 152 (Sept. 30, 1998); *Miraglia v. Ohio County Bd. of Educ*., Docket No. 92-35-270 (Feb.19, 1992).

3. Because Grievant Frye has received the relief she requested, her grievance is now moot.

4. When the total number of classroom teaching positions in an elementary school needs to be reduced, the teacher with the least seniority must be placed on transfer. *W. Va. Code* § 18A-4-7a(q); *Bibey/Fitzwater v. Wetzel County Bd. of Educ.*, Docket No. 04- 01-212 (Aug. 13, 2004); *Cline v. Mingo County Bd. of Educ*., Docket No. 95- 29-240 (Sept. 29, 1995). 5. Grievant failed to prove that she was entitled to bump Ms. Price as the least senior classroom teacher at SLS.

Accordingly, the grievance is **DENIED.**

Any party may appeal this decision to the Circuit Court of Kanawha County or the Circuit Court of Wetzel 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: OCTOBER 23, 2006

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SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

Grievant Frye amended her requested relief at level two to an assignment as a third grade teacher at New Martinsville

School.

Footnote: 2

Grievant did not submit proposals at level four.