THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

BARBARA YEAGER,
Grievant,

v. **Docket No. 2011-1881-CONS**

WETZEL COUNTY BOARD OF EDUCATION,
Respondent.

DECISION

Grievant Barbara Yeager filed this grievance against her employer, the Wetzel County Board of Education ("Board" or "Respondent"), on June 9, 2011. This grievance was originally designated as Docket No. 2011-1778-WetED.[1] Pursuant to W. VA. CODE §6C-2-3(e)(1), by Order dated July 28, 2011, Superintendent J. Diane Watt consolidated this grievance with the grievance of another Board employee, Ms. Julie McCartney. The Grievance Board assigned the above-captioned consolidated docket number to the two grievances.[2] Ms. McCartney's grievance was subsequently dismissed on February 13, 2012.[3]

During the 2010-2011 school year, Grievant was employed by Respondent as a teacher's aide in the Early Start Program at Long Drain Elementary School ("Long Drain"). She received a letter on or about June 3, 2011, which notified her of her

[1] See Level One Joint Exhibit No. 1.
[2] See Order of Consolidation, incorporated with Level One Joint Exhibit No. 1.
[3] See Dismissal Order, incorporated with Level One Joint Exhibit No. 1.

pending transfer from Long Drain to Short Line Elementary School ("Short Line") for the school year 2011-2012.[4] The statement of grievance alleges that Grievant was "[i]llegally transferred [from Long Drain to Short Line] according to W. VA. CODE § 18A-2-7." The relief that Grievant seeks is "[t]o be reinstated at last position held at Long Drain School."[5]

A Level One hearing was held on August 26, 2011, and the designee issued a decision denying the grievance on September 26, 2011. At that hearing, Grievant was represented by Mr. Owens L. Brown, West Virginia Education Association. Respondent was represented by Richard S. Boothby, Esq., Bowles, Rice, Graff and Love, LLP. Grievant appealed to Level Two mediation and a mediation session was held on February 7, 2012. Grievant appealed to Level Three on February 24, 2012. The parties agreed to submit the matter based upon the record and proposed findings of fact and conclusions of law. Respondent's Proposed Level Three Decision was received on June 21, 2012. This matter became mature for decision when Grievant's proposed Findings of Fact and Conclusions of Law were received on June 25, 2012.

---

[4] See Respondent's Level One Exhibit No. 2.

[5] Grievant made two assertions in her Findings of Fact and Conclusions of Law which were not raised in her grievance. Therefore, these assertions have not been addressed by the undersigned. Grievant asserted that she had more seniority than four other teacher's aides who were employed at Long Drain, but she provided only vague testimony regarding how long she thought the aides had been employed there and speculated about their ages. Grievant also asserted that the position into which she was moved at Short Line should have been posted, and that failure to do so was a violation of W. VA. CODE § 18A-4-8b(g).

Synopsis

Grievant was a "Supervisory Teacher Aide for Early Start" at Long Drain for the 2010-2011 school year, providing personal care for special needs students. She was transferred from Long Drain to Short Line for the 2011-2012 school year and was notified of that transfer on or about June 3, 2011. Grievant alleges that Respondent violated the notice of transfer requirements of W. VA. CODE § 18A-2-7 in transferring her as it did. Grievant was able to demonstrate that she was entitled to - and did not receive - timely notice of transfer under said statute and was not afforded the rights thereunder. The grievance is granted.

The following facts are found to be proven by a preponderance of the evidence based upon an examination of the entire record developed in this matter.

Findings of Fact

1. Grievant applied for, and was hired to fill, a position at Long Drain pursuant to a posting ("the posting") dated May 4, 2010. The posting read, in pertinent part, as follows: "POSITION/TITLE: Supervisory Teacher Aide - Early Start" at "SCHOOL/DEPARTMENT: Countywide [Based at Long Drain School]." [6]

2. Grievant worked in the preschool classes in that capacity for the Respondent during the 2010-2011 school year at Long Drain, providing personal care for the special needs students.

3. There was no evidence that Grievant was assigned to work with any particular special needs student or students at Long Drain.

---

[6] See Respondent's Level One Exhibit No. 2 - Wetzel County, Notice of Vacancy, dated May 4, 2010.

4. The reduction in force and transfer process relative to Grievant's position began in December of 2010. It was then that Ms. Deanna Myers, the Director of Curriculum and Instruction for the Respondent for pre- K through 6th grade and Title I, and then Board Superintendent William Jones ("Board Superintendent") began to discuss the Grievant's position. They believed that Grievant would still be needed as a preschool aide at Long Drain for the 2011-2012 school year. As a result, they did not recommend that Grievant should be placed on the transfer list during the Spring 2011 personnel season.

5. Ms. Myers explained that the pre-school registration process began in January of 2011, and that enrollment continued into the fall. Ms. Myers indicated that, because preschool enrollment is ongoing throughout the fall with no deadline, it can be difficult to predict the final population of the preschool class(es).

6. Grievant did not receive notice of transfer to Short Line by the February 1, 2011, deadline prescribed by W. VA. CODE § 18A-2-7. Instead, on or about June 3, 2011, Grievant received a letter from the Board Superintendent explaining that, due to a drop in the preschool student population at Long Drain for the school year 2011-2012, the Respondent might need to exercise its right to move Grievant from Long Drain to Short Line, "so as to accommodate student needs." The letter further stated that, "[a] 'Countywide' aide means that you can be moved to other aide job assignments in the county so as to accommodate student needs and be assigned duties at a different school if needed."

7. Ms. Julie McCartney had also applied for and accepted a teaching position at Long Drain pursuant to the May 4, 2010 posting. The posting to which she responded contained the following language: "POSITION/TITLE: Early Start Teacher/ Preschool Special Needs Teacher - "SCHOOL/DEPARTMENT: Countywide [Based at Long Drain School]" [7] Ms. McCartney was also notified by letter dated June 3, 2011, from the Board Superintendent, of her transfer from Long Drain to another location for the school year 2011-2012.

8. The term or designation of "itinerant" was not used in the posting of either Grievant's position or Ms. McCartney's position.

9. The preschool population of students at Long Drain typically averaged approximately 19, which allowed for only one preschool class at that elementary school.[8] There was a rather dramatic rise in the preschool enrollment at Long Drain from the 2009-2010 school year to the 2010-2011 school year. The population increased from approximately 19 students to 35 students. This increase, in turn, required two preschool classes. The preschool population at Long Drain then dropped from 35 students to 20 students for the 2011-2012 school year and only one preschool class was then needed. Due to the drop at Long Drain and increased preschool enrollment at Short Line for 2011-2012, Respondent transferred Grievant to work at Short Line in its preschool program.

---

[7] See Respondent's Level One Exhibit No. 1 - Wetzel County, Notice of Vacancy, dated May 4, 2010.

[8] See Level One Hearing Transcript, dated August 26, 2011 at p. 15.

10. After Grievant was placed on transfer, she bid upon and was awarded a different special education aide position at Short Line.[9]

Discussion

Grievant has the burden of proving her grievance by a preponderance of the evidence. *Howell v. W. Va. Dep't of Health & Human Res.,* Docket No. 89-DHS-72 (Nov. 29, 1990.) *See also 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); "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." *Leichliter v. Health and Human Res.,* Docket No 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, a party has not met its burden of proof. *Id.* A preponderance "is generally recognized as evidence of greater weight, or which is more convincing than the evidence which is offered in opposition to it." *Petry v. Kanawha County Bd. Of Educ.*, Docket No. 96-20-380 (Mar. 18, 1997).

Respondent was permitted to transfer the grievant as dictated by provisions of W. VA. CODE § 18A-2-7, which allows the superintendent, subject to the approval of the board, to transfer school personnel.[10] " '[The] provision [at W. VA. CODE § 18A-2-7]

---

[9] Grievant suffered no loss of pay or benefits as a result of the matters of which she complained and, therefore, she did not seek damages for back pay.

[10] W. VA. CODE §18A-2-7. Assignment, transfer, promotion, demotion, suspension and recommendation of dismissal of school personnel by superintendent; preliminary notice of transfer; hearing on the transfer; proof required. (a) The superintendent, subject only to approval of the board, may assign, transfer,

vests great discretion in the county superintendent and the county board of education to transfer and assign teachers to designated schools and this Court will not interfere with the exercise of that discretion where such action is taken in good faith for the benefit of the school system and is not arbitrary. *Bates v. Board of Education of Mineral County,* 133 W.Va. 225, 55 S.E.2d 777 (1949); *Weaver v. Board of Education of Calhoun County,* 128 W.Va. 42, 35 S.E.2d 679 (1945).

"However, an employee shall be notified in writing by the superintendent on or before February 1 if he or she is being considered for transfer or to be transferred. Only those employees whose consideration for transfer or intended transfer is based upon

---

promote, demote or suspend school personnel and recommend their dismissal pursuant to provisions of this chapter. However, an employee shall be notified in writing by the superintendent on or before February 1 if he or she is being considered for transfer or to be transferred. Only those employees whose consideration for transfer or intended transfer is based upon known or expected circumstances which will require the transfer of employees shall be considered for transfer or intended for transfer and the notification shall be limited to only those employees. Any teacher or employee who desires to protest the proposed transfer may request in writing a statement of the reasons for the proposed transfer. The statement of reasons shall be delivered to the teacher or employee within ten days of the receipt of the request. Within ten days of the receipt of the statement of the reasons, the teacher or employee may make written demand upon the superintendent for a hearing on the proposed transfer before the county board of education. The hearing on the proposed transfer shall be held on or before March 15. At the hearing, the reasons for the proposed transfer must be shown.

(b) The superintendent at a meeting of the board on or before March 15 shall furnish in writing to the board a list of teachers and other employees to be considered for transfer and subsequent assignment for the next ensuing school year. An employee who was not provided notice and opportunity for a hearing pursuant to subsection (a) of this section may not be included on the list. All other teachers and employees not so listed shall be considered as reassigned to the positions or jobs held at the time of this meeting. The list of those recommended for transfer shall be included in the minute record of the meeting and all those so listed shall be notified in writing, which notice shall be delivered in writing, by certified mail, return receipt requested, to the persons' last known addresses within ten days following the board meeting, of their having been so recommended for transfer and subsequent assignment and the reasons therefor.

known or expected circumstances which will require the transfer of employees shall be considered for transfer or intended for transfer and the notification shall be limited to only those employees." W. VA. CODE § 18A-2-7. "The discretion with respect to transfer, however, is clearly not without limitation.' " *State ex rel. the Board of Educ. of the County of Kanawha v. The Honorable Patrick Casey, as Judge of the Circuit Court of Kanawha County, W. Va., and David P. Gillespie,* 176 W.Va. 733, 440 (Apr. 4, 1986). The discretion of county boards of education must be tempered in a manner that is reasonably exercised, in the best interest of the schools and in a manner which is not arbitrary and capricious. *Syl. Pt. 3, Dillon v. Bd. of Educ.,* 177 W. Va. 145, 351 S.E.2d 58 (1986).

Grievant asserts that she should have been notified on or before Feb 1, 2010, that she would be transferred from Long Drain to another school for the 2011-2012 school year, pursuant to W. VA. CODE § 18A-2-7. This notice would have explained Grievant's various rights, including the right to a hearing and the right to a statement of reasons for transfer. Due to lack of notice, Grievant could not avail herself of those rights. Moreover, Grievant did not have the opportunity to bid on positions that became available before June 3, 2011, which was the date upon which she finally received notice of her transfer.

Significantly, Respondent concedes that Grievant was not extended the procedural rights that should have been afforded to her under W. VA. CODE § 18A-2-7(a) with respect to timely notification of transfer. However, it is Respondent's contention that Grievant was an itinerant service person; that it is "abundantly clear" that

the Board's use of the term "countywide" was intended to mean - and did mean - itinerant. Respondent maintains that because Grievant was clearly an itinerant employee, Grievant could be transferred without the benefit of the notice required under W. VA. CODE § 18A-2-7. However, Respondent did not point to any authority or precedent to show that "countywide" has been construed to mean itinerant and/or that it has been understood as such by job applicants.

The term "countywide," which was in the job posting for the positions held by Grievant and Ms. McCartney, was interpreted differently by each of the three individuals who testified at the Level One Hearing. It was Grievant's understanding that the use of the term "countywide" in job postings indicated that the position could be at any school in the county. However, because the subject posting described the position as "countywide" and added, "[b]ased at Long Drain," Grievant believed that the physical location of the job would be at Long Drain.[11]

Ms. McCartney, like Grievant, had been hired for a "countywide" position, which was not designated or referred to as itinerant. Ms. McCartney believed that "countywide" simply referred to the fact that she was a countywide employee. It was neither explained nor apparent to Ms. McCartney when she applied for the teaching position at Long Drain that she could be transferred without the notice afforded by W. VA. CODE § 18A-2-7.[12] The Respondent had informed neither Ms. McCartney nor Grievant of the meaning or intent of the terms "itinerant" or "countywide" before they accepted the posted positions. "Countywide," as used in this posting, was certainly

[11] See Level One Grievance Hearing Transcript, dated August 26, 2011, at p. 32.
[12] Id. - at pp. 19-20.

subject to an interpretation other than that urged by Respondent. However, both Grievant and Ms. McCartney understood that one employed in an "itinerant" teaching status could be moved from one school to another.

Conversely, the meaning of "itinerant" in job postings has been clearly established. When special education aide positions are specifically posted as "itinerant," employees may be required to transfer from one school to another, as the plain meaning of the word suggests.[13] As this Grievance Board stated in *Davisson v. Lewis County Bd. of Educ.,* Docket No. 02-21-209 (Nov. 13, 2002), "[A] board of education . . . **has the discretion to designate a . . . position as itinerant when it is posted**; employees who bid upon and are awarded such positions may, accordingly, be moved to accommodate the students' needs." (Emphasis added). *Also see Vance v. Jefferson County Bd. of Educ.*, Docket No. 02-19-030R (Nov. 20, 2002); *Bailey v. Raleigh County Bd. of Educ.,* Docket No. 97-41-45 (Apr. 20, 1998); *Bennett v. Randolph County Bd. of Educ.,* Docket No. 05-42-396 (Apr. 12, 2006). "Special education aides are in a unique setting . . . Grievant . . . is not really assigned to a location, but to a particular child who happens to attend a particular school." *Conrad v. Nicholas County Bd. of Educ.,* Docket No. 97-34-388 (Jan. 12, 1998); C.A. # 98-AA-16; Affirmed; Dec. 22, 1998, Berger, J. The Grievance Board in *Conrad* specifically approved designating special education aides as itinerant to allow their movement from school to school with students.

[13] "itinerant – travelling from place to place; especially: covering a circuit." *Merriam-Webster.com*. Merriam-Webster, 2012. Web. 11 August 2012.

"Itinerant" is uniformly used in job postings to indicate that employees in these positions can be involuntarily transferred. For example, in *Bailey*, supra., the posting included the following statement: "These positions are **'Itinerant'** with the homeschool for 1997-98 listed." (Emphasis in original.) Interestingly, in some instances, respondents not only used the term itinerant in their postings, but also seemed concerned to explain what that designation would entail in terms of potential job location and transfer. The school board in *Vance*, *supra.*, advertised an itinerant position, prudently detailing these matters. The posting stated, "Special Education/ Transportation/General/Classroom Aides-ITINERANT." (Emphasis in original.) The attached job description provided further clarity by noting that "changes in job assignment/job site and responsibilities can occur throughout the year. Initial site located at Charles Town Middle/Jr. High School." Also, Respondent in another grievance posted a vacancy for an "Itinerant Special Education Classroom Aide/Bus Aide/Autism Mentor, with the primary location being Marlinton Elementary School." *Sanders v. Pocahontas County Bd. of Educ.,* Docket No. 06-38-430 (May 10, 2007). *Also see Bennett*, *supra.* and *Sisler v. Pocahontas County Bd. of Educ.,* Docket No. 2008-1284-PocEd (January 16, 2009).

W. VA. CODE § 18A-4-8(r), which became effective on July 1, 2010, enforces Grievance Board precedent on the allowable discretion to transfer itinerant positions in providing, as follows, "[i]tinerant status means a service person who does not have a fixed work site and may be involuntarily reassigned to another work site. A service person is considered to hold itinerant status if he or she has bid upon a position

posted as itinerant or has agreed to accept this status." When a job is specifically designated as "itinerant" in a posting, successful applicants now have statutory notice that they need not be afforded the notice and rights prescribed by W. VA. CODE § 18A-2-7.

In *Hauger v. Preston County Board of Education*, Docket No. 00-39-388 (April 5, 2001), a special education aide was transferred during the school year to follow a special needs student to whom she had been assigned. She had not been notified of that transfer during the prior school year and asserted that the transfer violated W. VA. CODE § 18A-2-7. The Administrative Law Judge in *Hauger* referred to the determination in *Conrad, supra.,* that, "aside from transferring the employee to itinerant status, the board 'could not otherwise require the Grievant to move with the child.' " The Grievance Board determined that the involuntary transfer in the middle of the school year clearly constituted a transfer within the meaning of W. Va. Code § 18A-2-7 and that the transfer violated the provisions of that statute as to timely notice, an opportunity for hearing and board action on the transfer. Thus, as Grievant in the instant matter was not designated as an itinerant employee, Respondent violated the notice requirements of W. VA. CODE § 18A-2-7.

In this grievance, Respondent's use of the generic term "countywide" in the posting coupled with the school name Long Drain was subject to Grievant's fair interpretation that the posting referred to an aide position which would be located at Long Drain only. There is a lack of certainty as to where one will work when one

accepts an itinerant position.[14] "However, the individual employee must determine whether or not to accept that possibility before applying for an itinerant position." *Vance v. Jefferson County Bd. of Educ.,* Docket No. 02-19-030, (March 28, 2002).[15] The Respondent's posting lacked the proper clarity to indicate that it intended the position to be itinerant. Therefore, Respondent could not move Grievant to another school without benefit of the transfer procedures dictated at W. VA. CODE §18A-2-7.

Finally, meeting the needs of special education students is the vitally important reason for allowing special education aide employees to be designated as "itinerant" and, as such, subject to transfer without the benefit of W. VA. CODE §18A-2-7. In the instant grievance, there was no need on the part of a particular exceptional student or students that would have required the transfer of Grievant to Short Line. Grievant's continued position at Long Drain did not depend upon a matter as variable as where a special education student would be attending school. Rather, Grievant's transfer was prompted by a decline in the general preschool population.

Each school year, it is incumbent upon superintendents and boards of education to address the issues of whether to keep personnel based upon need, including fluctuating classroom populations. Generally, an action is considered arbitrary and capricious if the agency "entirely ignores important aspects of the problem, explains its

---

[14] Nonetheless, school boards have sought to notify those who hold itinerant positions of a need for their transfer pursuant to W. VA. CODE § 18A-2-7 when their transfer was reasonably foreseeable. See *Conrad*, supra,

[15] *Vance* was subsequently appealed and remanded to the Grievance Board regarding the issue of Grievant's standing to pursue the grievance and, if necessary, to address the statutory issues raised by grievant upon appeal. See *Vance v. Jefferson County Bd. of Educ.,* Docket No. 02-19-030R (Nov. 20, 2002).

decision in a manner contrary to the evidence before it or reaches a decision so implausible that it cannot be ascribed to a different view." *Bedford County Memorial Hosp. v. Health and Human Serv.,* 769 F.2d 1017 (4th Cir. 1985); *Yokum v. W. Va. Schools for the Deaf and Blind,* Docket No. 96-DOE-081 (Oct. 16, 1996). There was a simple decline in the population of the preschool students at Long Drain, which prompted Grievant's late transfer. Boards of education are required in the spring of each year to make decisions regarding personnel assignments based upon the anticipated needs for the forthcoming school year. *Sisler v. Pocahontas County Bd. of Educ.,* Docket No. 2008-1284-PocED (January 16, 2009). *Also see Learmonth v. Fayette County Bd. of Educ.,* Docket No. 03-10-200 (Aug., 20 2003). Respondent did not accurately anticipate whether it needed Grievant to return to Long Drain for the 2011-2012 school year and failed to provide Grievant, who was a non-itinerant employee, with timely notification of transfer. The omission of the Respondent to follow the mandates of W. VA. CODE § 18A-2-7, under these facts, was arbitrary and capricious and an abuse of discretion. Therefore, the grievance must be GRANTED.

Conclusions of Law

1. Because this is a non-disciplinary grievance, Grievant has the burden of proving her case by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008); *Howell v. W. Va. Dep't of Health & Human Res.,* Docket No. 89-DHS-72 (Nov. 29, 1990); *See also 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).

2. Transfer decisions are based upon the needs of the school, as decided in good faith by the superintendent and the board. *Hawkins v. Tyler County Bd. of Educ.,* 166 W. Va. 363, 275 S.E.2d 592 (1979); *Stewart, et al*., *v. Kanawha County Board of Educ.,* Docket No. 96-20-370 (Jan. 31,1997).

3. W. VA. CODE § 18A-2-7 provides "broad discretion to a superintendent, and gives him the authority to transfer school personnel subject only to the approval of the board." *Post v. Harrison County Board of Educ.*, Docket No. 89-17-355 (Feb. 20, 1990).

4. "It is well established that a board of education has ample discretion in assessing how to best serve the needs of its special needs students." *Sharp v. Jackson County Bd. of Educ.,* Docket No. 07-08-361 (Feb. 26, 2008).

5. A special education aide may be designated as "itinerant" and transferred, based upon the special education student population, without the notification of transfer required under W. VA. CODE § 18A-2-7. A position posted as itinerant may appropriately be moved to accommodate the students' needs. *Vance v. Jefferson County Bd. of Educ.*, Docket No. 02-19-030R (Nov. 20, 2002); *Bailey v. Raleigh County Bd. of Educ.,* Docket No. 97-41-45 (Apr. 20, 1998); *Davisson v. Lewis County Bd. of Educ.,* Docket No. 02-21-209 (Nov. 13, 2002); *Bennett v. Randolph County Bd. of Educ.,* Docket No. 05-42-396 (Apr. 12, 2006).

6. A special education aide who is not designated as "itinerant" cannot be transferred without notification under W. VA. CODE § 18A-2-7. *Hauger v. Preston County Board of Education*, Docket No. 00-39-388 (April 5, 2001). As Grievant in the

instant matter was not designated as an itinerant employee, Respondent violated the notice requirements of W. VA. CODE § 18A-2-7.

7. W. VA. CODE § 18A-4-8(r) specifically allows involuntary transfer of an itinerant employee stating, "[i]tinerant status means a service person who does not have a fixed work site and may be involuntarily reassigned to another work site. A service person is considered to hold itinerant status if he or she has bid upon a position posted as itinerant or has agreed to accept this status."

8. County boards of education have substantial discretion in matters related to hiring, transfer, and promotion of school personnel. However, that discretion of county boards of education must be tempered in a manner that is reasonably exercised, in the best interest of the schools and in a manner which is not arbitrary and capricious. *Syl. Pt. 3, Dillon v. Bd. of Educ.,* 177 W. Va. 145, 351 S.E.2d 58 (1986). The discretion to transfer Grievant was not reasonably exercised under these circumstances.

9. Grievant's position was not designated as itinerant. Grievant was entitled to timely notice of transfer pursuant W. VA. CODE § 18A-2-7 and the right to a hearing and a statement of reasons for transfer. Grievant has shown that Respondent's failure to transfer her pursuant to W. VA. CODE § 18A-2-7 was an abuse of discretion and arbitrary and capricious.

Accordingly, this grievance is **GRANTED.** Respondent is Ordered to immediately reinstate Grievant to the position that she held at Long Drain unless she chooses to remain in the position she subsequently applied for and accepted.

Any party may appeal this decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. See W. VA. CODE § 6C-2-5. Neither the West Virginia Public 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 Civil Action number should be included so that the certified record can be properly filed with the circuit court. *See also*, 156 C.S.R. 1 § 6.20 (eff. July 7, 2008).

DATE: AUGUST 17, 2012

_____
SUSAN L. BASILE
ADMINISTRATIVE LAW JUDGE