



*Moore*

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**WANETTA JOHNS**

**v.**

**DOCKET NO. 51-87-279-2**

**WEBSTER COUNTY BOARD OF EDUCATION**

**DECISION**

Grievant, Wanetta Johns, has been employed by the Webster County Board of Education for thirteen years and is presently assigned as an Aide IV at Glade Elementary School. Ms. Johns began grievance proceedings on September 14, 1987 after her assignment was changed within the school. The grievance was denied at levels one, two and three and was appealed to level four on November 5, 1987. An evidentiary hearing was conducted at level four on February 29 and proposed findings of fact and conclusions of law were submitted by March 21.

During the 1986-87 school term the grievant was assigned as a Chapter One reading and math aide in the seventh and eighth grades. By letter of June 3 the grievant applied for

a vacant kindergarten aide position which was posted on June 9, 1987. In August the board created an additional classroom aide position as part of the federal Early Childhood Assistance Program (ECAP) which provides services to children who are educationally between kindergarten and first grade.

The grievant argues that she did not apply for and did not want the position with ECAP and that her transfer to that position was invalid as it was implemented by the principal without following the procedural requirements of W.Va. Code, 18A-2-7. Second, she was improperly denied the regular kindergarten position for which she applied as she had more seniority than the individual awarded the position.

The board argues that the grievant holds the same job classification, works at the same school and during the same hours that she would if placed in the classroom that she requests and that a rescheduling within the same classification is not a transfer as contemplated by W.Va. Code, 18A-2-7. It asserts that the grievant works in a classification generally titled "aide" and that a principal is vested with some flexibility in scheduling which classroom(s) the individual may be assigned.

Further, the board asserts that the grievant never applied for the position which she contends she is entitled neither has she requested the reasons for her non-selection.

Evidence submitted at level four indicates that the grievant was made aware of a future vacancy for the position of kindergarten aide by her principal who accepted her application prior to the position being posted. Although the posting of June 9 was for the position of "aide" at Glade Elementary School and did not state grade level or subject area, it appears that it was for the position sought by the grievant as another aide was reassigned from special education to kindergarten.

While the grievant remains classified as an "aide" the change in assignment from a federally funded reading and math program to a federally funded early childhood program constitutes a transfer subject to the requirements of W.Va. Code, 18A-2-7. This board, the State Superintendent of Schools and the W.Va. Supreme Court of Appeals have all held that building principals do not have the authority to reassign staff members within the building. Therefore, the grievant's transfer to the early child-

hood program was invalid as it was not executed in statutory compliance.

The grievant's intent to apply for the kindergarten position subsequently filled by Ms. Weese is evident by her application of June 3. Decisions regarding the filling of service personnel positions are to be made on the basis of seniority, evaluation of past service and qualifications. Qualifications shall mean the applicant holds a classification title in his category of employment and shall be given first opportunity for promotion and filling of vacancies. The board has made no allegation that the grievant's past evaluations were in any way negative or would deprive her of the opportunity to fill another vacancy. On the contrary, the transfer to the early childhood program indicates that the principal believed that she would function well with that age group. Accordingly, as the grievant has more seniority than Ms. Weese, she is entitled to the regular kindergarten position.

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

### Findings of Fact

1. Grievant has been employed by the Webster County Board of Education as an aide for thirteen years and was assigned to the seventh and eighth grade Chapter One reading and math program in 1986-87.

2. In the spring of 1987 the grievant learned from her principal that there would possibly be a vacancy for a kindergarten aide in 1987-88. The grievant submitted an application for that position on June 3, 1987.

3. A posting dated June 9 included a position listed only as "aide" for Glade Elementary School.

4. After some revisions of the kindergarten program the position of aide was readvertised in July. The grievant did not submit any application after either the June or July postings.

5. In August the board voted to implement a federally funded Early Childhood Education Program which created an additional aide position. This program provides services to students between kindergarten and first grade. The grievant did not apply for this position.

6. Based upon his belief that the grievant's experience in the federal Chapter One program would be beneficial in the new federal program the building principal reassigned her to the early childhood program for 1987-88.

7. An aide with 6-7 years of seniority who was previously assigned to a special education classroom was reassigned to the kindergarten position although she had not applied for a transfer.

#### Conclusions of Law

1. A change of assignment involving a substantial change in duties, responsibilities or subject matter is a transfer and requires compliance with W.Va. Code, 18-2-7. Pansmith et al. v. Taylor County Board of Education, Docket No. 46-86-57 and Burge and Worrell v. Mercer County Board of Education, Docket No. 27-86-113.

2. A principal may make recommendations regarding personnel but it is the superintendent, subject only to approval of the board, who has the authority to assign transfer, promote, demote or suspend school personnel. W.Va. Code, 18A-2-7 and 18A-2-9 and Gallaher v. Taylor County Board of Education, Docket No. 46-87-233-2.

3. The reassignment of the grievant by the building principal was in violation of the transfer procedure as set forth in W.Va. Code, 18A-2-7.

4. Service personnel positions are to be filled on the basis of seniority, qualifications and evaluations of past service. W.Va. Code, 18A-4-8b.

5. The board of education has failed to show any reason for its failure to award the grievant the position for which she applied.

Accordingly, the grievance is **GRANTED** and the Webster County Board of Education is **ORDERED** to instate the grievant in the position of kindergarten aide.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Webster County and such appeal must be filed within thirty (30) days of receipt of this decision. (W. Va. Code, 18-29-7). Please advise this office of your intent to do so in order that the record can be prepared and transmitted to the Court.

DATED

May 26, 1988

Sue Keller

SUE KELLER

HEARING EXAMINER