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ELSA OLSEN

v.

DOCKET NO. 14-87-288-2

HAMPSHIRE COUNTY BOARD OF EDUCATION

DECISION

Grievant, Elsa Olsen, is employed as a half-time learning disabilities teacher and half-time screener-evaluator by the Hampshire County Board of Education. On September 21, 1987 Ms. Olsen filed a level one grievance in which she alleged violations of W.Va. Code, 18A-4-8b, W.Va. State Board of Education Policies 5300 and 5310 and the Hampshire County Board of Education policy regarding the evaluation of personnel. The grievance was denied at levels one and two and was appealed to level four on November 12, 1987. After several continuances an evidentiary hearing was held on March 23, 1988. The grievant appeared in person and by representative; the board of education chose not to appear but requested that its position as set forth in the level two record be considered.

The grievant argues that three school psychologist positions were created and filled without having been posted thereby denying her an opportunity to apply for the positions and that the psychologists have been assigned to evaluate special education teachers, a duty for which they are neither qualified nor certified. The violations of State Board of Education Policies 5300 and 5310 are alleged because her evaluations were exemplary. She demands that the positions be posted, that she be employed for one of the positions, be granted backpay and that the evaluation of special education teachers be assigned to the appropriate employees.

The record indicates that as part of an administrative reorganization Mr. Gerald Mathias, Director of Special Education, was also to be given the duties of Director of Curriculum for the 1987-88 school term. As a result of his increased responsibilities Mr. Mathias assigned the psychologists additional duties including the evaluation of special education teachers. The scope of the psychologists' evaluation is to be limited to the review of procedural safeguards mandated by both state and federal governments and whether the teacher is following through with

each student's Individual Educational Profile. Any discrepancies or deficiencies are to be reported to the principal for correction. (T. Level II p.6) The job description for psychologist was amended to include the new duties and the position is now titled "School Psychologist/Coordinator of Special Education Services".

The grievant's testimony at levels two and four was that when Mr. Mathias was given the additional duties as Director of Curriculum as well as Special Education that she had requested to be his assistant. She was disappointed when she learned that the county planned to hire a third psychologist and divide some of Mr. Mathias' duties among them. She suggested that such a plan was not the best idea and that she could take the job on a half-time basis which would not require the hiring of additional personnel. When the third psychologist was hired she questioned the legality of an individual who was not certified in learning disabilities observing her and having input into her evaluation. (T. Level II pp. 29-31) The grievant admits that she is not qualified to perform the duties of a school psychologist but that she could perform the administrative duties assigned to the position.

While the grievant obviously disagrees with the results of the administrative reorganization she cannot force the creation of a position simply because she is qualified and wants to be promoted. The development of administrative positions is within the discretion of the board. As the grievant readily admits that she is not qualified for the position of Psychologist/Special Education Coordinator, she could not have been awarded the position if she had applied making it unnecessary to address the issue of whether the positions should have been posted. The alleged violations of State Board Policies 5300 and 5310 were not pursued and while the grievant apparently intended that her evaluations be considered in support of her qualifications for promotion, it is again irrelevant as she was not qualified for the positions as established.

At the level four hearing the grievant raised an issue that another position, the "Coordinator of Special Education", had been posted since the filing of the present grievance. The grievant claims that she was the most qualified of the two applicants but that she had been advised that she had no chance of receiving the position due to her pending grievance. As the issue is substantially different from the pending matter

and had not been addressed at a lower level, it is hereby remanded to level two for consideration.

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

Findings of Fact

1. Grievant is employed as a half-time learning disabilities teacher and a half-time screener-evaluator by the Hampshire County Board of Education.

2. Prior to the 1987-88 school term an administrative reorganization was implemented which required the Director of Special Education to additionally assume the duties of the Director of Curriculum.

3. The grievant indicated her interest in becoming the assistant to the Director of Curriculum and Special Education.

4. Mr. Mathias assigned some of his previous duties as director of special education to the school psychologists who as a result of an amended job description are now "School Psychologists/Coordinators of Special Education Services".

5. As part of their expanded duties the psychologists/coordinators will engage in observing and, to a limited extent, evaluating special education teachers.

6. The grievant is not qualified to hold the position of psychologist/coordinator.

7. The grievant has offered no authority in support of her allegation that the psychologists/coordinators should not observe and evaluate special education teachers.

Conclusions of Law

1. The grievant has established that she was not qualified to hold the position of a psychologist/coordinator and has failed to show that the board acted improperly in establishing the positions.

2. It is incumbent upon a grievant to prove the allegations of the grievance by a preponderance of the evidence. McDaniel v. Berkeley County Board of Education, Docket No. 39-87-203-2; McLaughlin v. West Virginia University, Docket No. BOR1-87-208-2.

Accordingly, the grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Hampshire 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 19, 1988

Sue Keller

SUE KELLER
HEARING EXAMINER