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**WEST VIRGINIA EDUCATION AND  
STATE EMPLOYEES GRIEVANCE BOARD**

**GASTON CAPERTON**  
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**ELSA OLSEN**

**v.**

**DOCKET NO. 89-14-81**

**HAMPSHIRE COUNTY BOARD OF EDUCATION**

**DECISION**

Grievant, Elsa Olsen, is employed by the Hampshire County Board of Education (Board) and presently holds the position of learning disabilities teacher/key screener, evaluator. Ms. Olsen filed a level four grievance appeal on March 3, 1989 as a result of her failure to receive the position of Coordinator of Special Education. This issue had first been raised by Ms. Olsen at an earlier grievance hearing at which time the hearing examiner ruled that it was a separate issue<sup>1</sup> which had not been considered by the superintendent or the Board and remanded it for evaluation

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<sup>1</sup>The Board raises the issue of timeliness as a level one grievance was not filed until May 4, 1989 even though the grievant's attempt to consolidate this issue with other grievance was denied on March 23, 1989. As the record indicates the grievant was advised that she had not received the position by letter dated December 16, 1987 a grievance should have been filed within fifteen days of her receipt of this notification rather than attempting to amend another grievance at a hearing held three months later. However, the Board did not appear at that hearing to defend its position and the issue of timeliness must be considered waived at that point. The remand was not formally ruled upon until May 19, the grievance must be considered timely from that date.

at the lower levels. No action was taken at levels two or three and the level four appeal was subsequently filed.<sup>2</sup>

The record reflects that the position of "Coordinator of Special Education Programs" was posted November 3, 1987. Qualifications for the position were a special education teaching certificate, experience working with exceptional children, a Masters degree and administrative training and experience. Five applications were received in response to the posting but only two were considered, the grievant and Ms. Paula Daskal, the successful applicant.

The grievant argues that she has more seniority, more educational credits and better qualifications than the successful applicant and has been denied the position in violation of W.Va. Code §§18A-4-8b and 18-29-3(r)<sup>3</sup> as well as State Board of Education Policies 5300 and 5310. She requests that she be instated to the position of Coordinator

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<sup>2</sup>The Board states that no action was taken at level two as it contends that the level four hearing examiner does not have the authority to remand. This authority may be derived from W.Va. Code §18-29-6(b) which authorizes hearing examiners to exercise such powers as will provide for the effective resolution of grievances not inconsistent with any rules or regulations of the board or other provision of the article.

<sup>3</sup>Although not entirely clear, this violation appears to refer to the grievant's claim that Mr. Gerald Mathias, her immediate supervisor, stated that she would not receive the position because of a previous grievance she had filed. Mr. Mathias denies that he made such a statement. Due to the outcome of this decision this matter requires no further consideration.

and be awarded backpay from the date the position was filled.

The grievant states her credentials as possessing a Bachelor of Science degree in Early Childhood Education, a Masters degree in Elementary Education plus 120 hours towards a Doctorate in Education majoring in administration with a minor in special education/learning disabilities. In addition to her present position which she has held since 1981, she has been employed as a Developmental Assessment Specialist for the Division of Maternal and Child Health (one year), an At-Home Handicapped teacher for Child Development Services of RESA VIII (three years), a Preschool Trainable Mentally Retarded teacher (one year), Educational Director of the Southern Maryland Tri-County Community Action (one year) and teacher at Tri-County (one year). She has also taught extension graduate classes.

Superintendent Grey Cassell represented the Board at the level four hearing at which time he did not produce information requested by the grievant regarding Ms. Daskal.<sup>4</sup> He did explain that his decision had been based upon her administrative experience, her interview responses and her greater seniority. Documentation submitted with the Board's proposed findings of fact and conclusions of law establishes

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<sup>4</sup>Grievant's representative did not pursue this information through a Motion to Produce or other means nor did he call Ms. Daskal as a witness to independently prove her qualifications.

that Ms. Daskal has been employed by the Board since 1973, first as Administrative Director and pre-school teacher at the Special Services Center (with combined administrative and teaching duties) until 1978 when she assumed the position of Coordinator of Special Vocational Needs which she held until 1988. Ms. Daskal is certified to teach in the area of mental retardation, has earned a Masters degree plus thirty hours of graduate credit including hours in the area of administration.<sup>5</sup>

This Board has held in numerous decisions that, with the exception of disciplinary matters, it is incumbent upon the grievant to prove all of the allegations constituting the grievance by a preponderance of the evidence. Higgins v. Randolph County Board of Education, Docket No. 42-88-209 (April 28, 1989); Wheeler v. Randolph County Board of Education, Docket No. 42-88-253 (April 28, 1989); Romeo v. Harrison County Board of Education, Docket No. 17-88-013 (April 30, 1988). In the present matter the grievant has shown her own qualifications but she has failed to establish that they made her more qualified than the successful applicant.

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<sup>5</sup> Although this information was provided after the hearing the attached cover letter indicates that a copy was provided to the grievant's representative who has filed no objections. In any event little weight was given to the information as the grievant failed to show that she was more qualified.

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. The grievant is employed by the Hampshire County board of Education as a learning disabilities teacher/key screener, evaluator.

2. On November 3, 1987 the Board posted the position vacancy for Coordinator of Special Education Programs. Five applications were received; however, only the grievant and Ms. Paula Daskal were considered for the position.

3. The grievant's education and experience qualify her for the position as defined by the job description.

#### Conclusions of Law

1. It is incumbent upon a grievant to prove all the allegations constituting the grievance by a preponderance of the evidence. Butler v. McDowell County Board of Education, Docket No. 33-88-208 (March 31, 1989); Lucas v. Mercer County Board of Education, Docket No. 27-88-180 (Dec. 15, 1988).

2. The grievant has failed to prove that she was the most qualified applicant for the position of Coordinator of Special Education or that the Board's decision was in any other way flawed.

Accordingly, this grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Hampshire County or to the Circuit Court of Kanawha 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 Hearing Examiners is a party to such appeal, and should not be so named. Please advise this office of any intent to appeal so that the record can be prepared and transmitted to the appropriate Court.

DATED:

May 31, 1989

Sue Keller

SUE KELLER

SENIOR HEARING EXAMINER