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

GASTON CAPERTON
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JANET I. PRATT

v.

Docket No. 17-88-176

HARRISON COUNTY BOARD OF EDUCATION

DECISION

Grievant Janet I. Pratt, at relevant times, was employed by Respondent Harrison County Board of Education as a classroom teacher.¹ She grieves what she perceives to be her blocked access to a kindergarten position filled by a person not specifically certified by the West Virginia Department of Education, as she is, to provide instruction to children on that level. After denial at Level II² and

¹ In her letter of December 14, 1988, Ms. Pratt related she "was placed in a temporary position. . . which I am forced to leave in January, 1989." Her current status is unknown to this Grievance Board, but in the absence of evidence to the contrary, it will be presumed she is still employed by Respondent in a professional teaching capacity.

² Grievant filed her claim directly at Level II "since her immediate supervisor had no authority to adjust it." Letter from Grievant's representative, November 15, 1988. While W.Va. Code §§18-29-1 et seq. allows for a grievance to be filed at the lowest level where relief is available, it also requires written waiver of the preceding levels. The record does not reflect that such was obtained in this case.

waiver at Level III, her complaint was submitted for decision on the record below at Level IV on September 14, 1988. Proposed findings of fact and conclusions of law were submitted on or before the stated deadline of February 10, 1988, and the matter is mature for disposition.³

At the time of the Level II hearing in July 1988, Grievant had some eight-and-one-half years' seniority with Respondent, and certifications in elementary education, grades 1-6, with specialization in early childhood, N-K. T. 6. In December 1987, she applied and was selected for an early childhood position at Hartman Elementary School commencing January 1988; however, based on conversation with Myra Townsend, then Respondent's Director of Personnel, Grievant agreed to wait until school year 1988-89 to assume the job. During Summer 1988, Grievant was advised that the position at Hartman had been eliminated and that she accordingly was being placed on the administrative transfer list and encouraged to apply for other jobs within her certification.⁴ She did apply for a number of positions and was still unassigned at the Level II hearing.⁵ Her

³ Decision in this case has been delayed due to change in both parties' representatives since the grievance was filed.

⁴ Grievant does not allege any procedural impropriety whatsoever in her placement on administrative transfer; hence, none will be considered.

⁵ See n. 1, supra.

grievance, based on the fact that one Janet Lee Sprout, who is without kindergarten endorsement on her professional certificate, holds the kindergarten teaching post at Lost Creek Elementary School, T. 16,⁶ is stated as follows:

I hold a temporary assignment, though fully certified for a kindergarten position held by a teacher who is not certified in kindergarten. This violates. . . [W.Va. Code] §§18-5-18 and 18A-3-1. The relief I seek is for the kindergarten position held by a person not certified in kindergarten to be vacated and posted.

In Chapman v. Harrison Co. Bd. of Educ., Docket No. 18-87-210-2 (Mar. 1, 1989), this Grievance Board granted the following relief:

Respondent is ordered to vacate and post the position of kindergarten teacher, Lost Creek Elementary School, and to evaluate applicants therefor in accordance with W.Va. Code §§18A-5-18, 18A-3-1 and 18A-4-8b(a).

The remainder of this Decision will be presented as formal findings of fact and conclusions of law.

⁶ For the history of Ms. Sprout's assignment to this job, see Chapman v. Harrison Co. Bd. of Educ., Docket No. 18-87-210-2 (Mar. 1, 1989).

It is interesting to note that Respondent "wanted to be sure. . . [it had] people [teaching kindergarten]. . . who were certified," T. 23, and therefore, effective school year 1988-89, kindergarten became a separate program from grade one and above under Respondent's official policy. T. 26.

FINDINGS OF FACT

1. Grievant Janet Pratt is employed by Respondent Harrison County Board of Education as a classroom teacher, with responsibility not in the area of early childhood.

2. Grievant is certified to teach elementary education, grades 1-6, with specialization in early childhood, grades N-K.

3. Janet Lee Sprout, kindergarten teacher at Lost Creek Elementary School, is certified to teach elementary education, grades 1-6. Ms. Sprout does not have specific kindergarten endorsement on her certificate.

4. The only relief Grievant seeks is the removal of Ms. Sprout from her position and its posting as vacant.

5. By Decision of March 1, 1989, this Grievance Board has ordered Respondent to post the Lost Creek Elementary School kindergarten teacher's position as vacant. Chapman.

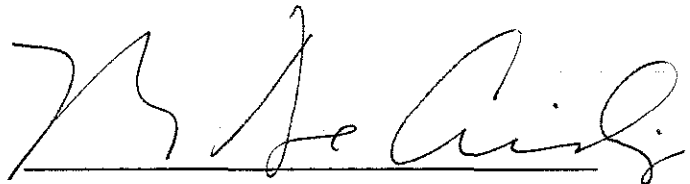
CONCLUSIONS OF LAW

1. When a grievant's requested relief has already, in effect, been granted in toto, his/her claim is mooted and must be denied. See Payne et al. v. Fayette Co. Bd. of Educ., Docket No. 10-87-319-4 (Mar. 23, 1988).

2. The Decision in Chapman operates as an effective granting of the relief requested in the instant grievance.

Accordingly, this grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Harrison County and such appeal must be filed within thirty (30) days of receipt of this decision. See 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.



**M. DREW CRISLIP
HEARING EXAMINER**

Dated:

March 1, 1989