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

v.

Docket No. 89-50-046

WAYNE COUNTY BOARD OF EDUCATION

DECISION

Grievant Deana Prince is a teacher employed by Respondent Wayne County Board of Education. On or before December 20, 1988, she submitted the following statement of grievance at Level I:

A special education position was for bid Dec. 5-Dec. 9, 1988. The position was in Behavior Disorders [BD] ...[7]-12 or K-12. I currently work at Tolsia High School as a teacher for the Educable Mentally Impaired [EMI]. I do not have a certificate for EMI or BD. My undergraduate certification is in Social Studies 7-12. Since September 1985 I have been teaching various types of special education at Crum High School in Wayne County.

I have been working on a Master's in Behavior Disorders. When Crum & Fort Gay Schools were consolidated, I was notified I had received the job, "as per your bid" at Tolsia, the combined

high school, in BD-LD [Learning Disabilities] that I had bid on. When we actually moved into Tolsia my principal assigned me to teach EMI. This meant a change in my graduate education. The person in charge of certification in my county informed me I had to take classes in EMI instead of BD so I could get a permit & keep my job.

Then I bid on the BD job. I was informed no one certified had applied and no one had been hired. If no one certifies [sic] applies, it is customary Board policy to place the most qualified or senior person in the position & put them on permit. In this case, this was not done. They will allow me to teach EMI at Tolsia on permit but they will not allow me to teach BD at C-K [Ceredo-Kenova High School] on permit - Behavior Disorders, in the field of graduate study, in which I have 18 hours and lack only the student teaching to become certified. I have previously taught in a Behavior Disorder residential school. I have BD students in my room at Crum H.S. Since Jan. 25, 1989, I have had a B.D. student in my room at Tolsia.

By way of relief, Grievant seeks placement in the BD position at Ceredo-Kenova High School. Her claim was denied at Levels I and II¹, waived at Level III, and filed at Level IV on February 15, 1989, where hearing was conducted March 8, 1989. With the presentation of proposed findings of fact and conclusions of law by March 24, 1989, this case is mature for disposition.²

¹ The Level II hearing transcript is a part of the record herein.

² At the conclusion of the Level IV hearing, March 24 was announced as the date of closure of the record, and the parties agreed that any information they chose to present would be delivered to the Grievance Board on or before that date. Respondent's version as to fact and law was received March 24; Grievant has apparently chosen to waive post-hearing submission.

Grievant's recitation of her employment history and other background information, supra, was not challenged by Respondent; in fact, there is virtually no contention as to the pertinent facts in this case, and they will accordingly be presented infra as formal findings of fact, followed by conclusions of law thereon.

FINDINGS OF FACT

1. Grievant was the most senior applicant for the position of Behavior Disorders teacher, Ceredo-Kenova High School.

2. None of the applicants were qualified, in that none held certification or permit in BD.³

3. In the recent past, one of the BD students at C-K ran through a plate-glass window; another overpowered the instructor and vanished for several hours; and that same teacher had his nose broken twice on the job, all indicative of Respondent's Special Education Coordinator's characterization of the post as "the toughest teaching assignment in Wayne County."

³ A certificate indicates the completion of a certain level of formal training in a given field; a permit generally indicates the ongoing pursuit of training, perhaps toward certification, in the field in which its holder is then working.

4. For reasons including those recounted in Finding #3 and the fact that autistic students in the class were thought, by professionals consulted, to be negatively affected by frequent change, Respondent decided not to fill the position with a regular teacher not then fully certified or permitted in BD, but instead to place a substitute in the post until such time as a fully certified or permitted regular teacher could be employed. The substitute in question is not qualified to teach BD on a permanent basis but does meet all requirements of the West Virginia Department of Education (DOE) for this temporary assignment.

5. Grievant is a highly-motivated and skilled professional with experience in working with a variety of types of Special Education students, including ones classed as BD, both within and without the Wayne County Schools. However, Grievant has never been certified or permitted in BD. She applied for an EMI/LD/BD permit in September 1986, but was granted only an EMI/LD permit by DOE,⁴ apparently because she was not then teaching and/or scheduled to teach BD classes. She did not contest or complain of the exclusion of BD from her permit in any way until the instant matter arose.⁵

⁴ Permits are issued by DOE pursuant to requests from county boards of education.

⁵ In fact, there is some question whether Grievant was
(Footnote Continued)

6. Grievant's experience working with BD students in her capacity as a teacher in Respondent's employ has been limited to having one or a few BD pupil(s) in classes primarily composed of other Special Education students. Beyond this, in 1983 she served as a camp counselor for autistic children and for several months in 1985 as a teacher at a residential school in Ohio for BD and other exceptional-need students.

7. Grievant, who is only six college semester hours away from full BD certification, was selected in May 1987 for a BD/LD job at Tolsia High School. At the time, she was actively pursuing the completion of her BD program. Upon Tolsia's opening some months later, and not before, her new principal advised her that she would be teaching EMI and not BD/LD. To keep her job at Tolsia, she was forced to change her college program to provide for renewal of her EMI permit, although EMI is not her teaching preference within Special Education.

8. Due to Grievant's misunderstanding of state regulations, her Special Education permit had expired prior to 1987-88. However, she continued to teach Special Education during this period, on an "Option-2" substitute permit.

(Footnote Continued)

cognizant of this exclusion prior to Level II hearing herein. See Lev. II, T. 36. However, it is unrefuted that DOE sent Grievant a November 28, 1986 letter with that information, Exhibit I (Level II), and that the ultimate responsibility for ensuring appropriate certification or permitting lies with the teacher. See Lev. II, T. 34.

9. Grievant currently teaches EMI at Tolsia High School under an EMI/LD permit.

10. Respondent's Superintendent of Schools, Michael Ferguson, would have undoubtedly recommended Grievant's hiring for the C-K job had she been in possession of a BD permit when it was posted in December 1988.

11. Grievant contends that Respondent, consistent with what she characterizes its "policy," should have "placed her" on BD permit and into the C-K position since no applicant was certified or permitted in BD and she was "the most qualified or senior person."⁶ Other special education teachers in the county have been placed on permit after their assignment to an area they had not previously been qualified to work in.

CONCLUSIONS OF LAW

1. County boards of education in West Virginia have substantial discretion in matters relating to the hiring of school personnel, but such discretion must be reasonably exercised in the best interest of the schools and not in an arbitrary and capricious manner. Dillon v. Bd. of Educ. of the Co. of Wyoming, 351 S.E.2d 58 (W.Va. 1986); Shaver v.

⁶ The undersigned would question the validity of any policy granting such preference to a teacher based solely on seniority. See Dillon v. Bd. of Educ. of Wyoming Co., 351 S.E.2d 58 (W.Va. 1986).

Jackson Co. Bd. of Educ., Docket No. 18-88-107 (Nov. 7, 1988).

2. Decisions on filling professional personnel vacancies must be based, in the first instance, on qualifications. Dillon.

3. A teacher employed by a county board of education must have valid certificate or permit in her/his field. W.Va. Code §§18A-3-1, 18A-3-2. Such certificate/permit is an aspect of qualifications. See State ex rel. Oser v. Haskins, 374 S.E.2d 184 (W.Va. 1988).

4. Particularly due to the special needs of the C-K students, Respondent has exercised its discretion reasonably in choosing not to place a person not previously certified or permitted in BD on BD permit, see n. 4, for purposes of staffing the position. This is true regardless of its approach to filling other individual Special Education vacancies.

Accordingly, this grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Wayne 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.

A handwritten signature in dark ink, appearing to read "M. Drew Crislip", is written over a horizontal line.

M. DREW CRISLIP
HEARING EXAMINER

Dated: April 7, 1989