

**THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD**

**GWEN WAGNER,
Grievant,**

v.

Docket No. 2017-0809-RaIED

**RALEIGH COUNTY BOARD OF EDUCATION,
Respondent.**

DECISION

Grievant, Gwen Wagner, was employed by Respondent, Raleigh County Board of Education, as an aide at the time this grievance was filed on August 26, 2016. Grievant filed a complaint over her non-selection for a vacancy in the position of aide/early childhood classroom assistant teacher (ECCAT) at Crescent Elementary School. Her Statement of Grievance reads as follows:

My classification is Moderate Aide. I applied for the ECAT position at Crescent Elementary however the position was given to a person with less seniority. I have completed all requirements for the ECAT certification set forth by the State Department of Education. Grievant asserts that this situation constitutes seniority violation of W. Va. Code 18A-4-8b and 18A-4-8g.

The Grievant seeks the following relief:

Grievant seeks the right to be awarded the ECAT position at Crescent Elementary. Also make it retroactive to the date of filling the position with compensation for all lost wages and benefits, pecuniary and nonpecuniary, the maximum extent permitted by law. Grievant also seeks interest on all monetary sums.

After the October 5, 2016, Level One evidentiary hearing, the Superintendent's designee issued a decision denying the grievance. A Level Two mediation session was

conducted on January 23, 2017. Grievant perfected her appeal to Level Three on January 31, 2017. A Level Three hearing was scheduled for April 4, 2017, but on that date the parties agreed to submit the matter on the lower level record supplemented by stipulations and proposals. This matter was reassigned to the undersigned on July 11, 2017, for administrative reasons. Grievant appeared by her counsel, John Everett Roush, West Virginia School Service Personnel Association. Respondent appeared by its counsel, Howard E. Seufer, Jr., Bowles Rice LLP. This matter became mature for consideration on May 2, 2017.

Synopsis

Grievant was employed by Respondent as an Aide when she filed this grievance. She bid on a posted Aide/Early Childhood Classroom Assistant Teacher position, which required Early Childhood Classroom Assistant Teacher certification. Although Grievant was the most senior applicant in the Aide classification, this Board has ruled that for seniority purposes, the aide class titles are not in the same classification category as the ECCAT class titles. The record did not establish that Grievant had more seniority in the ECCAT category than the successful applicant. In addition, the successful applicant held an ECCAT job at the time Respondent appointed her to the position. Grievant did not demonstrate she was entitled to placement in the posted position.

The following Findings of Fact are based upon the record and stipulations.

Findings of Fact

1. Grievant was employed as a Moderate Aide III at Fairdale Elementary School at the time this grievance was filed.

2. Respondent posted a vacancy notice for the position of Kindergarten aide/ECCAT at Crescent Elementary School on July 26, 2016.

3. Among the applicants for the job were aide/ECCAT Connie Workman, aide/ECCAT Constance Austin and Grievant, who was then an aide.

4. At the time of application, Constance Austin was working for Respondent as a regular aide/ECCAT. Constance Austin's seniority date as a regular aide was January 23, 2013.

5. Although Grievant had once held an aide/ECCAT job and was still licensed as an ECCAT, Grievant, when she applied for the posted aide/ECCAT vacancy, was working for the Respondent as an aide, but not as an ECCAT. Grievant's seniority date as a regular aide was February 3, 2011.

6. Initially it appeared that Connie Workman would receive the appointment, since she was the most senior regular employee then holding the aide/ECCAT multiclassification who applied. However, before Respondent acted to fill the vacancy, Connie Workman withdrew her application.

7. On August 23, 2016, aide/ECCAT Constance Austin was appointed by Respondent to fill the vacant aide/ECCAT position at Crescent Elementary. Constance Austin was the second most senior aide then holding the aide/ECCAT multiclassification who had applied.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Board 156 C.S.R. 1 § 3 (2008); *Holly v. Logan County*

Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); *Hanshaw v. McDowell County Bd. of Educ.*, Docket No. 33-88-130 (Aug. 19, 1988). "A preponderance of the evidence is evidence of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." *Petry v. Kanawha County Bd. of Educ.*, Docket No. 96-20-380 (Mar. 18, 1997). In other words, "[t]he preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." *Leichliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

Contrary to Grievant's assertions that there is no longer any such thing as ECCAT seniority and that service in ECCAT positions results in the accrual of "aide" seniority, the Grievance Board has expressly held that for seniority purposes, the aide class titles are not in the same classification category as the ECCAT class titles. Accordingly, employees in the aide classification category are not entitled to priority in filling ECCAT positions over employees holding the ECCAT classification title. As the undersigned concluded in both *Mayle v. Barbour County Bd. of Educ.*, Docket No. 2016-0113-BarED (Aug. 26, 2016) and *Paugh v. Barbour County Bd. of Educ.*, Docket No. 2015-1574-BarED (Aug. 26, 2016). The *Mayle* decision was affirmed by the Circuit Court of Kanawha County on January 31, 2017 (Civil Action No. 16-AA-85).

As Respondent has indicated in its proposals, the issue which will decide this case is the school service personnel seniority statute. WEST VIRGINIA CODE § 18A-4-8g(j) provides that "[s]ervice personnel who are employed in a classification category of

employment at the time when a vacancy is posted in the same classification category of employment shall be given first opportunity to fill the vacancy.” Another subsection of the service personnel seniority statute provides that “[a] school service person who holds a multiclassification title accrues seniority in each classification category of employment that the employee holds and is considered an employee of each classification category contained within his or her multiclassification title.” WEST VIRGINIA CODE § 18A-4-8g(l).

Concerning all of the applicants for the posted aide/ECCAT vacancy at Crescent Elementary School, once aide/ECCAT Connie Workman withdrew from consideration, Constance Austin was the most senior remaining aide/ECCAT who applied. The record is undisputed that Grievant was an aide, but not an aide/ECCAT. Therefore, Respondent appointed the most senior Aide/ECCAT, Constance Austin, to fill the vacancy, and it was not an error to bypass Grievant.

In the event an applicant for a multiclassified service vacancy currently holds the very same multiclassification as the posted job, then a county board may prefer that candidate over another who currently holds a job in one, but not all, of the components of the posted multiclassified position. *Donnellan v. Harrison County Bd. of Educ.*, Docket No. 02-17-003 (Sept. 20, 2002); *Edmunds v. Kanawha County Bd. of Educ.*, Docket No. 99-20-023 (Mar. 31, 1999). Based upon that precedent and the above statute, it was appropriate for Respondent to prefer aide/ECCAT Constance Austin over Grievant, an aide, for the position at Crescent Elementary.

In the instant case, both the successful candidate and Grievant were regular aides when they applied for the aide/ECCAT vacancy, and both were qualified to serve as ECCATs. However, the successful applicant held a regular aide/ECCAT job when she

applied, whereas Grievant held a job with a single class title, aide. Although Grievant had more seniority than Constance Austin as an aide, she does not claim more seniority than Constance Austin as an ECCAT. Grievant offered no evidence showing that her prior stint as an ECCAT for the 2014-2015 school year was longer than the time Constance Austin served as an ECCAT when the vacancy at issue was filled.

The following Conclusions of Law support the decision reached.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). See also *Holly v. Logan County Bd. of Educ.*, Docket No. 96-23-174 (Apr. 30, 1997); *Hanshaw v. McDowell County Bd. of Educ.*, Docket No. 33-88-130 (Aug. 19, 1988). "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." *Leichliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

2. In the event an applicant for a multiclassified service vacancy currently holds the very same multiclassification as the posted job, then a county board may prefer that candidate over another who currently holds a job in one, but not all, of the components of the posted multiclassified position. *Donnellan v. Harrison County Bd. of Educ.*, Docket No. 02-17-003 (Sept. 20, 2002); *Edmunds v. Kanawha County Bd. of Educ.*, Docket No. 99-20-023 (Mar. 31, 1999).

3. Grievant failed to establish by a preponderance of the evidence that she possessed more seniority in the aide/ECCAT classification than the successful applicant in this case. In addition, Grievant failed to establish by a preponderance of the evidence that Respondent violated any law, rule, or policy in giving priority to the successful applicant who held an aide/ECCAT job at the time of application for the vacant position.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. See W. VA. CODE § 6C-2-5. Neither the West Virginia Public Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. However, the appealing party is required by W. VA. CODE § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The Civil Action number should be included so that the certified record can be properly filed with the circuit court. See *also* 156 C.S.R. 1 § 6.20 (eff. July 7, 2008).

Date: July 20, 2017

Ronald L. Reece
Administrative Law Judge