SHIRLEY RAMEY,

Grievant,

v. DOCKET NO. 94-02-002

LINCOLN COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

The facts in this case are not in dispute and are summarized in the following narrative. Shirley "Geneva" Ramey (Grievant) has been employed as a bus operator for the Lincoln County Board of Education (Board) for nineteen years. Grievant entered into a supplemental contract of employment with the Board for the 1992-1993 school year to transport a special education student to and from Harts High School. Grievant received $6.00 per day for this supplemental contract. The contract specifies that the period of assignment "shall be 1992/93 school year or as long as required by IEP." Grievant fulfilled the supplemental contract for the 1992-93 school year. It apparently was the understanding of both Grievant and the Board that the assignment would continue for the 1993-94 school year.

Sometime in September 1993, soon after the beginning of the 1993-94 school year, Grievant was informed that the supplementalbus run was canceled because the student's health had deteriorated and he was being transported to and from school via private vehicle. A physician's order sent to the school, dated November 2, 1993, confirmed that the student could no longer be transported to school by bus.

Grievant filed this grievance on October 4, 1993, alleging that her extracurricular special education bus run had been eliminated in violation of W. Va. Code §§ 18A-2-8 (See footnote 1) , 18A-2-6, 18A-4-8a and 18A-4-16. Grievant seeks reinstatement of and compensation for the extracurricular bus run. This grievance proceeded through the first three levels of the grievance procedure and both parties agreed to submit the matter on the record for decision at Level IV. The

Board relies on the record below, and the Grievant filed fact/law proposals on February 1, 1994, at which time this case became mature for decision.

Discussion

Grievant alleges the Board violated W. Va. Code § 18A-4-8a, which provides, in pertinent part:

> No service employee shall have his or her daily work schedule changed during the school year without such employee's written consent, ...

and W. Va. Code § 18A-2-6, which provides that:

> The continuing contract of any such employee shall remain in full force and effect except as modified by mutual consent of the school board and the employee, unless and until terminated with written notice, stating cause or causes, to the employee, by a majority vote of the full membership of the board before the first day of April of the then current year, . . .

This Grievance Board has held that both of the above statutory provisions apply to extracurricular contracts issued pursuant to

W. Va. Code § 18A-4-16. (See footnote 2) Smith v. Bd. of Educ., 341 S.E.2d 685 (W.Va. 1985); Garvin v. Webster County Bd. of Educ., Docket No. 92-51-407 (Jan. 7, 1993); Black v. Cabell County Bd. of Educ., Docket No. 92-06-114 (June 22, 1992).

In Smith, the Court "likened the extracurricular assignment to regular employment and held that a county board of education, if it intended to alter an extracurricular assignment, had to abide by the same procedural strictures applicable to regular contracts. . . ." Lambert v. Logan County Bd. of Educ., Docket No. 91-23-199 (June 24, 1991).

The Smith Court held that an extracurricular contract, even if its term was for one year only, could not be allowed to expire without notice to the affected employee. Unlike Smith, however, this is not a case where the Board undertook to review the contract at the end of the school year and determined it wanted to replace the bus operator with another operator, thus terminating her contract. Grievant's supplemental contract of employment with the Board, signed by all the appropriate parties, clearly states thatthe assignment "shall be 1992/93 school year or as long as required by IEP" (emphasis

added). The special education student's IEP (Individual Education Plan) no longer required that he be transported to school via school bus. Thus, the supplemental contract was no longer required.

There is nothing in the record to indicate that the Board's action would have been taken absent the intervening emergency medical condition of the special education student. This is not a case where the extracurricular bus run was wrongly awarded to another bus operator out of rotation or with less seniority. Cf. Connor v. Barbour County Bd. of Educ., Docket No. 01-86-197-2 (Jan. 26, 1987). There simply is no student to pick up anymore.

Grievant's contract was not canceled; it was merely enforced. The contract, by its own terms, would terminate if a certain condition subsequent occurred. That condition occurred, and the contract provided that the assignment was completed. General principles of contract law are not in conflict with the applicable statutes. When the subject matter of a contract entered into pursuant to W. Va. Code § 18A-4-16, or any other contract provided for by statute, ceases to exist and that cessation is expresslyprovided for in the terms of the contract, then the contract comes to an end by its own terms and is not subject to the procedural requirements of Code §§ 18A-2-6 and 18A-4-8a.

To grant Grievant's request to reinstate the bus run for a non-existent student would be an absurd result. Additionally, to order the Board to compensate Grievant for a year-long extracurricular assignment that does not exist would provide Grievant an unmerited windfall not contemplated by the parties.

The following conclusions of law are derived from the record.

Conclusions of Law

1. Grievant's supplemental contract of employment expired under its own terms, as contemplated by the parties, when the special education student could no longer be transported to school by school bus.

Accordingly, this grievance is DENIED.

Any party may appeal this decision to the Kanawha County Circuit Court or the Lincoln County Circuit Court, and such appeal must be filed within thirty (30) days of receipt of this decision. W.Va. Code §29-6A-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so

that the record can be prepared and transmitted to the appropriate court.

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MARY JO ALLEN

Administrative Law Judge

Date: June 3, 1994

Footnote: 1 *W. Va. Code § 18A-2-8, which deals with the suspension and dismissal of school personnel, is inapplicable to this grievance. Grievant has been neither suspended nor dismissed from her position as bus operator; therefore, that claim is denied.*

Footnote: 2 *Grievant also alleges a violation of W. Va. Code § 18A-4-16, which governs extracurricular assignments. That section provides that (1) extracurricular assignments shall be made only by mutual agreement of the employee and the superintendent, or designated representative; (2) the employee and superintendent shall mutually agree upon the number of hours of the assignment; (3) the terms and conditions of the assignment shall be in writing; and (4) the employee's regular contract of employment shall not be conditioned upon the employee's acceptance or continuation of an extracurricular assignment.*

Grievant and the Board agreed upon the extracurricular assignment, the terms of which were in writing. No evidence was presented that Grievant's regular contract of employment wasconditioned upon her acceptance or continuation of the extracurricular assignment. There is no evidence that the Board violated this Code section; therefore, that claim is also denied.