BARBARA J. FLOREN,

Grievant,

v. Docket No. 93-20-327

KANAWHA COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Ms. Barbara Floren, Grievant, filed this grievance on July 23, 1993. She grieves the fact she was told in the spring of 1992 she could not transfer into a vice-principal position after she lost her principal position due to school consolidation and a subsequent reduction-in-force. Since filing this action she has been awarded a principal's position so her present request for relief from this Board is for back pay and the year of administrative seniority she would have received if she had been placed in a vice-principal's position in the 1992/1993 school year.

The Respondent argues this grievance is untimely as it was not filed pursuant to the requirements of W. Va. Code §18-29-4(a)(1). That Code Section states, in pertinent part, that the grievance process should be initiated by the grievant "within fifteen days following the occurrence of the event upon which the grievance isbased, or within fifteen days of the date on which the event became known to the grievant . . . ."

The Grievant counters this "Motion to Dismiss" by arguing she was unaware, until recently, that other similarly situated principals had pursued their claims and won. She points specifically to Pack v. Bd. of Educ. of Kanawha County, Civil Action No. 93-MISC-237 (May 17, 1993) and Robinson v. Hancock County Bd. of Educ., Docket No. 92-15-296 (Nov. 13, 1992) in which the Circuit Court and Grievance Board ruled respectively that vice-principal positions were lateral to principal positions. Thus, if a RIF'd principal had more seniority than a vice-principal the principal could "bump" the vice-principal.

The Respondent cited Spahr v. Preston County Bd. of Educ., 391 S.E.2d 739 (W. Va. 1990) to rebut Grievant's argument. Spahr discussed the discovery rule found in W. Va. Code §18-29-4(a)(1)

and held "the time in which to invoke the grievance procedure does not begin to run until the grievant knows of the facts giving rise to the grievance." Id. at Syl. Pt. 1.

In this case the Grievant was aware of the facts giving rise to the grievance in the spring of 1992, but did not file this grievance until July, 1993. The discovery rule exception of W. Va. Code §18-29-4(a)(1) is not applicable because the Grievant possessed the necessary facts to pursue her claims, but did not do so. Chambers-Cooper v. Roane County Bd. of Educ., Docket No. 90-44-385 (Jan. 15, 1991). Thus, this grievance is untimely.

Further, Grievant's argument that she just found out other individuals had won similar grievances does not alter the fact her grievance was untimely filed. "[T]he date a grievant finds out an event or continuing practice was illegal is not the date for determining whether a grievance is timely filed. Instead, if he knows of the event or practice, he must file within fifteen days of the event or an occurrence of the practice." Harris and Tackett v. Lincoln County Bd. of Educ., Docket No. 89-22-49 (Mar. 23, 1989).

Additionally, during the Level IV hearing the Grievant testified she had filed a timely grievance on this same issue shortly after she received notification that she would not be retained as a principal. This grievance was denied at Level II. At that time the Grievant stated she "accepted the word of the Kanawha County Schools as being the Gospel as that was the way it was."

W. Va. Code §18-29-4(c) states "[w]ithin five days of receiving the decision of the chief administrator, the grievant may appeal the decision . . . ." This the Grievant did not do. Therefore she abandoned her claim and cannot bring it again.

Findings of Fact

1. The Grievant knew of the facts giving rise to her grievance in the Spring of 1992 and filed a claim at that time.

2. The Grievant accepted the decision of the Level II tribunal in a prior grievance filed on this same issue.

Conclusions of Law

1. The time in which to invoke the grievance procedure begins to run when the grievant knows of the facts giving rise to the grievance. Spahr, supra.

2. When a prior grievance has been abandoned by the failure of the grievant to proceed to the next level it cannot be refiled at a later date.

Accordingly this Grievance is **DENIED** on the grounds of abandonment and untimeliness.

Any party may appeal this decision 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 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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JANIS I. REYNOLDS

Administrative Law Judge

Dated: May 31, 1994