DEBORAH CLINE,

Grievant,

v. **Docket No. 95-29-240**

MINGO COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Grievant, Deborah Cline, states in her grievance:
I am a Chapter One teacher at Gilbert Grade School and was recently put on transfer for the 1995-96 school year. This is a violation of W V Code 18A-4-7a. I ask to remain in my Chapter One position at Gilbert Grade.

This grievance was waived at Levels I and III and denied at Level II. Grievant appealed to Level IV, and the parties agreed to submit the case on the record. The grievance became mature for decision on August 1, 1995, the deadline for the submission of proposed findings of fact and conclusions of law.

The record in this case is very limited. Apparently, in Spring 1995, the Mingo County Board of Education ("MCBOE") notified Grievant she was being placed on the transfer list for the 1995-96 school year because of a reduction in staff at her school. Grievant, a certified elementary education teacher, was employed at Gilbert Grade School ("GGS") as a Chapter One, remedial math teacher. This position requires no special certification and anycertified elementary education teacher is qualified to hold the position.

Again, apparently, the Grievant asked for and received a transfer hearing. Thereafter her transfer was approved by MCBOE. Feeling she had been improperly removed from her position, Grievant filed this grievance specifically relying on the following paragraph in W. Va. Code §18A-4-7a.

When the total number of classroom teaching positions in an elementary school needs to be reduced, such reduction shall be made on the basis of seniority with the least senior teacher being

recommended for transfer; Provided, That a specified grade level needs to be reduced and the least senior employee in the school is not in that grade level, the least senior classroom teacher in the grade level that needs to be reduced shall be reassigned to the position made vacant by the transfer of the least senior teacher in the school without that position being posted. . .

It is unclear from the record whether the "total number of classroom teaching positions" needed to be reduced or a "specified grade level" needed to be decreased. Grievant testified she was being transferred because "another teacher in the building with more seniority than [she] wanted [her] position." Trans. Level II at 3. This individual was later identified as a sixth grade teacher. Id. Further complicating matters is the lack of clarity concerning Grievant's seniority. Grievant never stated she had more seniority than any other classroom teacher at GGS. Grievant did testify there were teachers more senior than she at GGS, that she did not know how many or who, and all three sixth grade teachers had more seniority. It is assumed Grievant is the leastsenior teacher at GGS, as she would have informed the lower level Grievance Evaluator if this were not true.

The Level II Decision states "[t]he Grievant's seniority date is August 25, 1986, Certification Elementary Education 1-6. The record indicates two other elementary employees, "A" and "B", are certified and licensed, and have seniority over the Grievant for this position." "A" and "B" have the same seniority date. A random drawing was held with "A" selected as being the most senior.

If the "total number of classroom positions" needed to be reduced, then Grievant must be transferred because she has failed to prove she is not the least senior teacher at GGS. If a "specified grade level," here the sixth, needed to be reduced, Grievant would still lose because the least senior sixth grade teacher would be reassigned "to the position made vacant by the transfer of the least senior teacher in the school. . . ." W. Va. Code §18A-4-7a.

Grievant's argument that Lloyd, et al. v. Kanawha County Bd. of Educ., Docket No. 91-20-327 (Oct. 29, 1991), should apply is without merit. In the Lloyd case the grievants filed a civil suit against the Kanawha County Board of Education ("KCBOE") challenging one of KCBOE's administrative regulations. The Kanawha County Circuit Court ruled W. Va. Code §18A-4-7a was ambiguous and should be interpreted to apply to only "grade level" teachers, and "special program" teachers (See footnote 1) were not covered by this statute. TheCircuit Court also ruled KCBOE's regulation, which dealt with the RIF and transfer of "special program" teachers was "fair" and "sensible." This regulation treated "special program" teachers as one collective group for the purposes of a RIF, thus

"special program" teachers could not displace "grade level" teachers. Of course the Circuit Court's rulings in Lloyd were given effect in the Lloyd grievance. That ruling is not binding on the parties in this grievance. MCBOE has no regulation similar to Kanawha County's for dealing with "special program" teachers.

The above discussion will be supplemented by the following findings of fact and conclusions of law.

Findings of Fact

1. Grievant was employed as a Chapter One teacher at GGS.
2. MCBOE reduced the teaching staff at GGS.
3. Grievant was the least senior teacher at GGS.

Conclusions of Law

1. Grievant has the burden of proving her case by a preponderance of the evidence. Sanders v. Brooke County Bd. of Educ., Docket No. 93-05-173 (Aug. 27, 1993).
2. Grievant failed to demonstrate she was not the least senior teacher at GGS.
3. Grievant failed to demonstrate MCBOE violated W. Va. Code §18A-4-7a.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Mingo 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: September 29, 1995

Footnote: 1Apparently, "special program" teachers are ones who do not teach a specific grade level.