DORIS ROWE, .

Grievant, .

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v. . Docket Number: 94-20-605

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KANAWHA COUNTY BOARD OF EDUCATION, .

Respondent. .

D E C I S I O N

Doris Rowe (hereinafter Grievant) filed this grievance on April 28, 1994, against her employer, the Kanawha County Board of Education (hereinafter Board), pursuant to the provisions of West Virginia Code §§18-29-1, et seq. This claim was denied at the lower two levels of the grievance procedure and appeal was made to level four by form dated October 3, 1994. The statement of grievance relied upon at level four is as follows: "Transferred from a position that I had held for two years to accommodate a less seniored - less qualified employee who was hired under a federal grant to assist me and the other special educator due to a 'heavy caseload'." Grievant seeks reassignment to her previous position. The parties agreed that this Decision could be based upon theevidence presented at the level two hearing and the statements and arguments presented to the Board at Grievant's transfer hearing held on April 15, 1994. The case became mature for decision on March 3, 1995, after receipt of the record.

The following findings of fact have been properly deduced from the evidentiary record developed in the case.

Findings of Fact

1. Grievant is a professional educator certified in the following areas: elementary education 1-6, middle education 1-4 and special learning disabilities 1-12.

2. For the 1992-1993 and 1993-1994 school years, Grievant was assigned to Ruffner Elementary School to teach students with learning disabilities in a self-contained classroom setting. She also functioned as a case manager providing instruction to regular students, gifted students and those with behavior disorders.

3. Grievant was one of the three teachers who taught within that school's special education program.

4. A case manager is an in-house title given to a teacher who not only teaches students within his/her area of expertise but who is also responsible for educational programming for those children. Case managers often teach other children out of their area of expertise if the teaching techniques or substance of the material is appropriate for them.

5. In the Spring of 1994, the Board anticipated that Grievant would not have any students with learning disabilities ina self-contained setting to teach for the 1994-1995 school year. Therefore, Grievant was placed on transfer for that upcoming year.

6. The Board considers that Grievant's certification directly relates only to the teaching of learning disabled students within a self-contained setting.

7. Since the beginning of the 1994-1995 school year, Grievant has been assigned to Chamberlain Elementary School where she is currently teaching multi-categorized students as a support teacher.

Discussion

Grievant contends that her transfer was both inconsistent with the Board's applicable policy on transfers and the result of an arbitrary and capricious exercise of authority. She claims that she should not have been transferred because of her seniority. She also averred that she was transferred to a different school where now she performs similar duties to those she had performed; therefore, the Board's justification for her transfer is not valid.

The Board asserts that it properly decided to transfer Grievant based upon the anticipated need

for her services at Ruffner Elementary and that it did not have a choice but to transfer her according to the applicable State Board of Education's regulations. The Board's Director of its Office of Exceptional Students testified that the State Board of Education only recognizes Grievant as a teacher of students with learning disabilities based on her current certification; therefore, because there were no such students going to be assigned to her at Ruffnerfor the 1994-1995 school year, it had no choice but to transfer her. This witness stated that this rationale holds true even though Grievant may act as a case manager in teaching other students along with those directly assigned to her.

W. Va. Code §18A-2-7 states, in pertinent part,

> The superintendent, subject only to the approval of the board, shall have the authority to assign, transfer, promote, demote or suspend school personnel and to recommend their dismissal pursuant to provisions of this chapter.

County boards of education have substantial discretion to make assignments and transfers in accordance with this statutory provision, so long as they do not abuse their substantial discretion and takes such action in good faith after having considered the best interests of the schools. A teacher does not have a vested right to be assigned to a particular school in a county. State ex rel. Hawkins v. Tyler County Bd. of Ed., 275 S.E.2d 908, 911-912 (W. Va. 1981). Further, a board of education is bound to follow the administrative procedures and remedies it properly establishes to conduct its affairs. Powell v. Brown, 238 S.E.2d 220 (W. Va. 1977).

Grievant cites to the Board's policy titled Transfer of Professional Personnel/K-6 Classroom Teacher, Administrative Regulation 30.00. Under this regulation, the term "realign" is defined as "A change in the number of classroom teachers assigned to teach in particular grade levels so as to adjust to shifting enrollment" Sections 30.04 and 30.05 state as follows:

> Realignment/Reduction -- If a principal determines that it will be necessary to realign the assignments ofclassroom teachers for the next ensuing school year and the total number of classroom teachers assigned to the school is scheduled to be reduced, the least senior classroom teacher assigned to the school (excluding special program teachers, See A30.05) shall be recommended for transfer by the Superintendent. If the least senior classroom teacher is not assigned to a grade level to be reduced, the classroom teachers in the grade level scheduled to be reduced, in order of seniority starting with the most senior classroom teacher, shall be requested to agree to reassignment to the position to be vacated by the least senior classroom teacher. If no agreement is forthcoming, the least senior classroom teacher who withheld agreement shall be recommended for transfer by the Superintendent. If such recommended transfers are approved by the Board, all newly created assignments shall be promptly posted. Note: Half-time (.5) classroom teachers are not subject to

transfer or reassignment unless a half-time (.5) reduction is required.

Program Reduction -- If a determination is made to reduce any special program (e.g. IMC, Physical Education, Head Start, Special Education, or Chapter 1) the professional personnel assigned to such special program shall be recommended for transfer by the Superintendent.

The Board made no response as to whether this regulation was controlling in this case or to whether it had complied with either of these cited sections. Based upon a review of the limited evidence in the record, it is determined that this regulation was not applicable to the transfer at issue.

Grievant did not dispute or present any evidence to refute the Board's justification that it was required to transfer her under the State Board of Education's regulations because it (State Board) would not recognize a need for Grievant to remain at Ruffner if she was not scheduled to teach students covered under her presentcertification. (See footnote 1) Consistent with the exclusion provision in the first sentence of section 30.04, the procedures established for the transfer of teachers within a school based upon a realignment/reduction were not applicable to the scenario at hand because Grievant teaches special education. Further, section 30.05 is also not applicable because the special education program at Ruffner was not eliminated. Therefore, it is concluded that Grievant's transfer was not the type of transfer referred to in the Board's policy cited above which deals with transfers as a result of a need for realignment due to student enrollment.

Given the discussion above, it also determined that Grievant has not established by a preponderance of the evidence that the Board violated Code §18A-2-7 by abusing it discretion in deciding to transfer her from Ruffner Elementary School. The Board's decision seems to have been based upon a good faith, reasonable review of the facts before it, and with a concern for the best interests of its schools. An administrative body's compliance with the law or regulations controlling an action it is attempting to take, is a defense to an allegation that it has abused its discretion. In conclusion, Grievant has presented no evidence to support the argument that she should not have been transfered from Ruffner Elementary to Chamberlain Elementary simply based upon her seniority.

The foregoing discussion of the case is hereby supplemented by the following appropriately made conclusions of law.

Conclusions of Law

1. County boards of education have substantial discretion to make assignments and transfers in accordance with W. Va. Code §18A-2-7, so long as they do not abuse their discretion and take such action in good faith after having considered the best interests of the schools. Further, a teacher does not have a vested right to be assigned to a particular school in a county. State ex rel. Hawkins v. Tyler County Bd. of Ed., 275 S.E.2d 908, 911-912 (W. Va. 1981).

2. In this case, Grievant has the burden to prove her claim by a preponderance of the evidence. W. Va. Code §18-29-6. Grievant has failed to meet her burden in proving that the Board violated Code §18A-2-7 when it transferred her from Ruffner Elementary School to Chamberlain Elementary School at the beginning of the 1994-1995 school year.

Therefore, this grievance is hereby **DENIED**.

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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ALBERT C. DUNN, JR.

Administrative Law Judge

March 15, 1995

Footnote: 1No applicable State Board of Education regulations were included in the record. The Undersigned does not deem it necessary to research the Code of State Regulations for any such applicable regulations given that Grievant has not contested the Board's interpretations.