SHIRLEY MILLER

v. Docket No. 94-26-1106

MASON COUNTY BOARD OF EDUCATION

D E C I S I O N

On or about September 8, 1994, Grievant, professionally employed by Respondent Mason County Board of Education (MCBE), filed the following grievance:

In the Fall of 1993, I voluntarily transferred to the Second Chance High School in the position of lead teacher. This school year my assignment was substan tially altered even though I never agreed to a reas signment. I am asking that I be reinstated into the original position for which I accepted the informal process: Voluntary transfer.

MCBE denied wrongdoing and maintained that the adjustment of Grievant's teaching schedule for the 1994-95 school year did not amount to a transfer as contemplated by W.Va. Code 18A-2-7. After her case was denied at the lower grievance levels, Grievant appealed to level four. Thereafter, the parties requested a decision based on the record below. The case became mature for decision upon the completion of the parties' respon sive briefing on March 14, 1995.

Based on all matters of record, the following findings of fact are properly made.1

Findings of Fact

1. Grievant is certified as a teacher in secondary business education and business math, T2.9, and also holds the all-encompassing administrative certificate (K-12 principal, superintendent, general instruction supervisor, vocational

administrator). G Ex 1.

2. In September 1987, MCBE posted a job for a 200-day "Tutorial Therapist" at MCBE's Vocational Center (MCVC). The job description identifies the students to be served as "adoles cent youth experiencing underachievement syndrome." Among other things, the incumbent was required to assess abilities, to plan and deliver remediation, to raise academic achievement and to help students reach the goal of high school graduation. R Ex 1.

3. Grievant, listed on an October 1987 personnel action form as a teacher at "PPHS," was the successful applicant for the tutorial therapist post at MCVC, and was transferred to that job, effective November 5, 1987. R Ex 3.

4. Beginning by at least Spring 1993 (1992-93 school year), Grievant actively sought to further develop, expand and house a drop out prevention - reentry program (Program) for

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1The record consists of a copy of the transcript and exhibits of the October 19, 1994 level two hearing (T2._), and also a copy of the transcript/exhibits of the November 28, 1994 level three hearing (T3._). Adverse decisions were rendered on those levels on October 26 and November 29, 1994, respectively.

at-risk students in a larger site than the then-present location at the MCVC. G Ex 2-4.

5. In April 1993, Grievant was reassigned to MCVC as a 200-day teacher for the 1993-94 school as denoted on MCBE's "Status Form." R Ex 4.

6. In July 1993, Grievant prepared a draft proposal for an expanded and relocated Program which she titled, "Mason County Second Chance High School." G Ex 5. Grievant concen

trated her relocation efforts on a facility within the campus of Lakin State Hospital, a site which MCBE ultimately leased from the State prior to the beginning of the 1993-94 school year.

7. According to Grievant, prior to the move to Lakin, MCBE Superintendent Michael Whalen asked her to "oversee" operations at Lakin, and they discussed what her "title" at the facility should be. She said she acknowledged she could not become a principal due to overstaffing, but suggested she could be designated the "lead teacher." She said she ultimately agreed to move from the vocational school to the new site on a voluntary basis, and to "administer" the Program and "maintain" the Lakin facility, all without modification of her teacher classification or additional compensation. T2.21-22.

8. The physical layout of the Program's new site includes two classrooms interconnected with a computer room as well as a smaller office, a reception/supply area and a staff/locker room. In addition, next to the classrooms are the rest rooms and a storage/custodian/maintenance area. Across the hall are several rooms for MCBE's adult basic education program (ABE), staffed by another teacher, Tom McNeely, and an area reserved (by the State) for vocational rehabilitation. There is a gymnasium at one end of the complex. G Ex 6.

9. At the onset of the 1993-94 school year, the Program's staff included Grievant and one other teacher, Walter Raynes. There was no principal, secretary, receptionist or cook assigned to the Lakin facility.

10. In September 1993, Richard Haycraft became MCBE's Director of Secondary Education and overall supervisor of the Program's operations. T.68.

11. At some point, Grievant worked with a program funded

by the "JTPA." Generally, a funded JTPA worker is titled as a "coordinator." Although Grievant was never directly named by MCBE as "coordinator" for the Program at Lakin during the 1993-94 school year, a program apparently not funded by the JTPA, she explained that the original coordinator title "evolved" over the years and that she continued to use it because no one ever told her otherwise. T3.22.

12. Of record is an October 1, 1993 memorandum which lists the names of teachers from various schools who have "mutually agreed to act as Teacher-in-Charge." Grievant was named as Teacher-in-Charge (lead teacher) for the "Alternate/Second Chance" school. G Ex 7. Nothing in the record indicates that Grievant had been formally designated lead teacher by any administrator prior to her voluntary transfer to the Lakin site for the 1993-94 school year.

13. According to Mr. Haycraft, the designation of lead teacher empowers that person to act in the stead of the princi pal of a school when the principal is absent or otherwise unable to assume his/her responsibilities. The lead teacher status does not result from a posted, competitively-filled position; rather, MCBE's principals or other administrators designate a lead teacher, who agrees to serve on a year-to-year basis, without any contract or additional compensation. T2.66-67.

14. During 1993-94, the Program encompassed seven instruc tional periods during the workday. According to a report filed by Grievant in April 1994, she was scheduled for math, computers or study hall along with "administration" for five periods and for administration exclusively for two periods. Mr. Raynes was scheduled to teach various classes all seven periods. Beginning the second semester, Drema Greenlee joined the Program on a

half-time basis (three periods), and her assignment resulted directly from Grievant's request for another teacher for the Program. G Ex 8-9.

15. After the move from the Vocational Center, Grievant also assumed all supervisory responsibility for the day-to-day functioning of the Program and Lakin facility, such as develop ing the curriculum, completing necessary reports, managing custodial needs, requisitioning and sometimes even procuring equipment and supplies, filling out teachers' attendance reports and calling out a substitute when necessary (Program teachers and Grievant filled out a form to "evaluate" substitute teach ers), instituting a hot-lunch program in an adjoining building in cooperation with Lakin Hospital, and arranging for some student transportation, among other things. G Ex 10-37. Grievant was not responsible for evaluating her peers at Lakin. T.36.

16. At-risk students generally attend the Program on a part-time (half-day) and transitory basis; however, all students remain enrolled at their home school for such purposes as attendance count, State funding, grading and graduation.2

17. The Program is not required to employ a principal for administrative purposes, or to form a local school improvement council or faculty senate. Moreover, the Program does not support or sponsor student-related endeavors such as bands, athletic teams, or extracurricular clubs.

18. Grievant identified two distinct groups in the at-risk population whose academic needs could not be met in a classroom containing many students: "Willing students" who functioned better in a small, closely-controlled setting and "unwilling students" who posed behavioral problems in the traditional

classroom and disrupted the learning environment for others.

19. During the 1993-94 school year, there was deliberation about whether the Program should also serve students whose presence in the traditional classroom was disruptive. As

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2Grievant testified she dealt with "a fairly fluid population" during the 1993-94 school year. She said while six or so students "carried over" from MCVC to the Lakin site at the beginning of the 1993-94 school year, a total of approximately thirty-four students were eventually served at various times and to varying degrees during the year. T3.49-50.

reflected in a January 13, 1994 memorandum to Mr. Haycraft and Mr. Whalen, Grievant did not agree that the Program at Lakin should or could accommodate that type of "problem" student. G Ex 32.3

20. In April 1994, Grievant was reassigned to Lakin ("Sec Chance") as a 200-day teacher for the 1994-95 school as denoted on MCBE's "Status Form." R Ex 5.

21. During at least the 1993-94 and 1994-95 school years, Grievant held two separate supplemental/extracurricular con tracts, as a homebound instructor and academic coach, both approved by MCBE.

22. When the 1994-95 school year began, administrators decided to alter the "focus" of the Program, in part because Ms. Greenlee and Mr. Raynes transferred to other positions, thus limiting subject-matter offerings, and also because of the belief that the Program should include students who disrupted traditional classrooms. T3.70.

23. Grievant's assignment for the 1994-95 school year

included no administrative functions in conjunction with the

3Grievant stated in the memo that the Program "cannot abide" students "who need stricter controls." She suggested that MCBE's "obligation" to those "problem" students could be satisfied, and its "moral dilemma" eased, if the students were provided with homework assignments and "monitoring rather than actual teaching of subject area material" or other "skills training" until such time as the students' attendance and behavior improved to the degree that they could return to a regular vocational program, all requiring only existing personnel at the vocational center and minimal cost, according to Grievant.

operation of the Program; rather, she was scheduled for six periods of tutorial, math, computer or reading classes.

24. Mr. McNeely was also scheduled for six work periods; however, he was designated as lead teacher at the Lakin facility for the 1994-95 school year.

25. Mr. Haycraft testified that Mr. McNeely was named lead teacher at the Lakin facility for the 1994-95 school year essentially because of a belief that a change was in order in terms of focus and management. T3.119. Mr. Haycraft said complaints had been lodged regarding some aspects of Grievant's leadership and management of the Program the prior year. He explained that the Lakin staff complained of overcrowded class rooms while Grievant had no students scheduled and that she was frequently absent on "teaching-type" days. He also said that administrators at home schools reported problems and objected to the "rigors" associated with placement of new students in the

Program. T2.71; T3.120.

26. There was no evidence that any professional certifica tion exists for either Tutorial Therapist or lead teacher.

The Parties' Positions

"The superintendent at a meeting of the board on or before the first Monday in May shall furnish in writing to the board a list of teachers and other employees to be considered for transfer and subsequent assignment for the next ensuing year. All other teachers and employees not so listed shall be consid ered as reassigned to the position or jobs held at the time of the meeting." W.Va. Code 18A-2-7. Essentially, Grievant argues that, absent any formal proceedings to alter her 1993-94 schedule, she should have been given the identical schedule for the 1994-95 school year, including the lead teacher designation. Grievant cites Reed v. Mason County Bd. of Educ., Docket No. 92-26-050 (Mar. 31, 1992), for the proposition that even a partial displacement from a teacher's currently utilized certi fication area and assignment to another area constitutes a transfer pursuant to 18A-2-7. Grievant is requesting the restoration of her 1993-94 schedule and especially the adminis trative duties associated with the lead teacher designation. Grievant essentially likens her status during the 1993-94 school year as no less than that of a "half-time teacher, half-time administrator," i.e., a working principal of a stand-alone school. She notes that her duties as lead teacher at the Lakin facility far exceeded those expected of any other lead teacher in MCBE's schools and were administrative in nature, regardless of the "title" she held.4 For those reasons, Grievant suggests, MCBE was legally obligated to institute formal transfer proceedings before it designated another teacher

to assume the lead teacher administrative duties at Lakin. Finally, Grievant argued, in essence, that because MCBE did not notify her in Spring 1994 of the substantial change in her duties for the coming 1994-95 school year, MCBE could not later relieve her of the lead teacher designation for performance reasons not supported by a formal evaluation.4 T3.139-140. MCBE's position is that Grievant has failed to prove her allegations that an improper transfer or any other illegal action occurred. It reasons that because Grievant volunteered to perform the administrative duties associated with the lead teacher designation and the day-to-day management at the Lakin facility during the 1993-94 school year, a management decision to not ask her to remain lead teacher for the 1994-95 school year did not require prior notification, an opportunity for hearing or a formal evaluation.

MCBE emphasizes that the lead teacher status is not a paid administrative position with an extended work year which has been posted and filled with the most qualified applicant via a binding contract. According to MCBE, because Grievant did not occupy any type of contracted position as lead teacher at the Lakin facility in 1993-94, she could have withdrawn her commit ment to perform administrative duties at Lakin at any time during the 1993-94 school year without recourse on the part of

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4Grievant hinted during the level two hearing, see, T2.78 and T3.123-124, and asserted in her level four fact/law proposals that MCBE could not assign her to teach reading because she is not certified to teach reading. However, this matter was not raised in Grievant's pleadings, not litigated or

argued at the lower grievance levels, and not ruled upon by the grievance evaluators at level two or level three. Therefore, it would be improper for the undersigned to address the issue for the first time at level four. W.Va. Dept. of Health and Human Servs. v. Hess, 432 S.E.2d 27 (W.Va. 1993); accord Crawford v. Mercer County Bd. of Educ., Docket No. 94-27-958 (Apr. 13, 1995).

school administrators. Likewise, it argues, even though MCBE recognizes Grievant's valuable services as a lead teacher for one school year, it has no obligation to retain Grievant as lead teacher in any succeeding year.5

A grievant must prove all the allegations constituting the grievance by a preponderance of the evidence. Rupich v. Ohio County Bd. of Educ., Docket No. 89-35-719 (June 29, 1990); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). Based upon a careful scrutiny of the plead ings, the determinations of material facts as gleaned from the record as a whole and set forth above, a thorough consideration of the parties' arguments, and the proper application of the relevant law, it is determined that Grievant has not met her burden of proof in this case. Accordingly, the following conclusions of law are made.

Conclusions of Law

1. Relocating a teacher from one school to another or substantially altering a teacher's subject matter assignment constitutes a transfer as contemplated by W.Va. Code 18A-2-7. Reed v. Mason County Bd. of Educ., Docket No. 92-26-050 (Mar. 31, 1992); Pansmith v. Taylor County Bd. of Educ., Docket No. 46-86-057 (Aug. 4, 1986). In this case, Grievant's site was not changed and her subject matter assignment was not altered

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5Testimony indicated that MCBE would consider Grievant's services as lead teacher for the 1993-94 school year as administrative experience, but not administrative seniority, for future employment purposes.

because she is still employed by MCBE as a Tutorial Therapist at the same facility as the prior year. See Schafstall v. Brooke County Bd. of Educ., Docket No. 05-86-347-3 (Mar. 30, 1987).

2. Inasmuch as Grievant's employment as a Tutorial Therapist does not require any specific subject-area certifica tion nor encompass any defined subject areas of assignment, changes in her teaching schedule on a year-to-year basis so as to include subject-matter areas necessary to accomplish dropout prevention program goals cannot be construed as a transfer as contemplated by W.Va. Code 18A-2-7. See Crawford v. Mercer County Bd. of Educ., Docket No. 94-27-958 (Apr. 13, 1995); Sanders v. Brooke County Bd. of Educ., Docket No. 93-05-174 (Aug. 27, 1993).

3. Because Grievant is still a Tutorial Therapist as signed to a drop-out prevention Program, any rescheduling that was done within her assigned area to meet the changing focus and needs of the program to which she was assigned was not violative of W.Va. Code 18A-2-7.

4. A teacher's voluntary assumption of some administra tive duties, without posting, application, competitive selec tion, board approval, contract, job description, extended administrative work term or additional compensation does not rise to the level of a professional position protected by school statutes such as W.Va. Code 18A-4-7a.

5. Grievant's willingness to accept year-to-year lead

teacher status and a myriad of administrative duties in conjunc tion with the first year management of a hands-on educational program housed in a facility other than a recognized school building, did not legally obligate MCBE to continue to offer lead teacher status to her in subsequent years.

6. A county board of education has broad discretion in the assignment of its personnel. State ex rel. Hawkins v. Tyler County Bd. of Educ., 275 S.E.2d 908 (W.Va. 1981). Grievant has failed to show an abuse of MCBE's discretion in the matter of her 1994-95 teaching schedule. See Crawford, supra.

Accordingly, this grievance is DENIED in its entirety.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Mason 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 appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate Court.

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NEDRA KOVAL

Administrative Law Judge

Date: May 12, 1995