

RHONDA McQUAID

v. Docket No. 96-17-293

HARRISON COUNTY BOARD OF EDUCATION

DECISION

Grievant, Rhonda McQuaid, employed by the Harrison County Board of Education (Board) as a teacher assigned to Bridgeport Middle School (BMS), filed five level one grievances in April 1996, in which she alleged:

1. “My position is not being abolished as stated on my transfer letter. An existing teacher at BMS will be taking over my classes.”

2. “Another teacher at BMS is 'bumping' me out of my position. I am not being RIFed and she is not a 200+ day employee.”

3. “By placing me on a transfer list, I was discriminated against because other teachers in my building were elementary certified also and had less seniority than me.”

4. “My position at BMS was originally posted Math 6-8 in 1992. I am specialized in Math, but the teacher replacing me is not.”

5. “I was forced to drop pre-Algebra from my math program because the other 7th grade math teacher at BMS is not specialized and can not teach it. If I were teaching it this year, I would not have been transferred.”

Grievant's immediate supervisor lacked authority to grant the requested relief. The grievances were consolidated for hearing at level two and were denied. The Board waived consideration at level three, and the matter was advanced to level four on July 10, 1996. A hearing was held on November 12, 1996, to supplement the lower-level record. The matter became mature on that date when the parties declined to submit proposed findings and conclusions. The evidence of record supports the following findings of fact.

1. During the 1995-96 school year Grievant was assigned to teach seventh grade mathematics at BMS. Grievant has a specialization in mathematics, grades 4-8, and the

assignment at BMS had been posted as “mathematics specialization preferred.”

2. Grievant is certified in Elementary Education, grades 1-6, and Developmental Reading, grades 7-8. She does not hold Kindergarten certification.

3. In response to declining enrollment and a large budget deficit, the Board reorganized staffing at several schools, including BMS, to be effective the 1996-97 school year.

4. The Board did not implement a reduction in force but achieved the reorganization through the transfer process.

5. Frank Devono, principal at BMS, recommended Grievant and another employee be transferred because they were the least senior teachers at the school who met the transfer criteria established by Superintendent Robert Kittle. [\(See footnote 1\)](#) This criteria included seniority, the availability of an employee for transfer to a kindergarten position, and the maintenance of the overall educational programs at each school and the system as a whole.

6. Lynette Graeber, who previously taught sixth grade English, was subsequently appointed to instruct seventh grade mathematics. Ms. Graeber is certified in Elementary Education, grades 1-6, Early Childhood, Nursery-Kindergarten, Reading Specialist, grades K-12, and Multi-Subjects, K-8. She does not hold a mathematics specialization.

7. BMS has the same number of mathematics teachers, but one less English teacher, in 1996- 97 than the previous year.

8. Holly Williams, the least senior teacher in the BMS English Department, is certified in Elementary Education, grades 1-8, Early Childhood, N-K, Social Studies, grades 1-9, and Reading Specialist, grades K-12.

Grievant argues that because the English Department was downsized, it is appropriate that the least senior member of that department be transferred. Additionally, because she does not have Early Childhood certification, Grievant asserts that she could only successfully bid into such a position if there were no properly certified applicants. Grievant also argues that because she possesses a specialization, she can offer greater “depth and breadth” in the mathematics department, consistent with Superintendent Kittle's criterion that consideration should be given to the maintenance of the overall educational program in each school and the system in its entirety.

The Board asserts that the transfer of Grievant was in compliance with Superintendent

Kittle's "Personnel Actions Position Paper" in that she was one of the two least senior teachers in the school who were eligible to teach Kindergarten. The Board agrees with Grievant that it would be preferable to keep her in a mathematics position and to assign teachers who are specifically certified in Kindergarten education to those positions, but that alternative was not possible with the resources available. The present grievance is virtually identical to that of Allen v. Harrison County Bd. of Educ., Docket No. 96-17-176 (July 31, 1996). [\(See footnote 2\)](#) In that case, Ms. Allen's complaint arose from the same factual basis. The Board had transferred her as part of the staff realignment for the 1996-97 school year necessitated by teacher overages at some schools and the implementation of county-wide, all- day Kindergarten which was to require an additional twenty teachers. Ms. Allen argued that she should be allowed to remain in her position at Gore Middle School because it was not her position which was to be abolished, but rather, it was a health position being eliminated. She was the least senior, full-time teacher at GMS who held elementary certification and was not teaching in a special education program or other specialty course. At level four, the Administrative Law Judge denied the grievance, noting that aside from a procedural requirement set forth in W.Va. Code §18A-2-7, school law does not set forth any particular criteria for the transfer of personnel when a school has a staff overage, and in general teachers have no vested right to be assigned to a particular school. State ex rel. Hawkins v. Tyler County Bd. of Educ., 275 S.E.2d 908, 912 (W.Va. 1980).

As in Allen, a review of the present matter establishes that Grievant failed to prove that the Board violated any statute, regulation, rule, or policy in selecting her for transfer. Neither has she proven her claim of discrimination. The faculty at BMS was reduced by two positions, effective the 1995-96 school term. Kindergarten positions needed to be filled. Because Grievant is certified to teach Elementary Education, grades 1-6, she is permitted by the State Department of Education to teach Kindergarten. Although the teacher who was scheduled to assume Grievant's classes did not have a specialization in mathematics, she is fully certified to teach those classes. Grievant offered no evidence that she would have retained her position if she had continued to teach pre-Algebra. On the contrary, Marcel Malfregeot testified at the level two hearing that he did not believe it would have made a difference. [\(See footnote 3\)](#)

Additionally, Grievant did not prove the claim of discrimination when other teachers, who possessed elementary certification and less seniority, were not transferred. At the level two hearing, Grievant cited two teachers with less seniority who were not transferred; however, Robert Skidmore, Administrative Liaison, testified that those teachers were considered exempt from transfer because they were assigned to the special education and gifted programs, areas which cannot be taught without specific certification which most elementary/middle school teachers lack. Because she was not similarly situated to these teachers, Grievant failed to establish discrimination.

In addition to the foregoing it is appropriate to make the following formal conclusions of law.

Conclusions of Law

1. Because this is a non-disciplinary matter it is incumbent upon Grievant to prove all of the allegations of the grievance by a preponderance of the evidence. Sammons and Varney v. Mingo County Bd. of Educ., Docket No. 96-26-356 (Dec. 30, 1996); Christian v. Mingo County Bd. of Educ., Docket No. 89-29-514 (Jan. 30, 1990).

2. A board of education may transfer and reassign teachers due to a reorganization or because of the need to realign staff for fiscal reasons or program purposes. Allen, supra; see Gongola v. Ohio County Bd. of Educ., Docket No. 95-35-276 (Sept. 29, 1995); Jocum v. Ohio County Bd. of Educ., Docket No. 91-33-396 (Jan. 31, 1992). 3. Grievant has failed to prove that the Harrison County Board of Education violated any statute, rule, regulation or policy when it approved the recommended transfer of Grievant from her 1995-96 assignment at Bridgeport Middle School, effective the 1996-97 school year.

4. Grievant failed to prove the claim of discrimination.

Accordingly, the grievance is DENIED.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Harrison 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.

Date: December 31, 1996 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1 *The record does not reflect Grievant's present assignment.*

Footnote: 2 *This decision was affirmed by Order of the Circuit Court of Harrison County, dated October 16, 1996.*

Footnote: 3 *The record does not reflect Mr. Malfregeot's title but indicates that he may be a central office supervisor.*