

**JENNIFER KESSLER,**

**Grievant,**

**v. Docket No. 96-51-060**

**WEBSTER COUNTY BOARD OF EDUCATION,**

**Respondent.**

### **DECISION**

Grievant, Jennifer Kessler, is currently employed by the Webster County Board of Education ("WCBOE") as a paraprofessional in a service personnel classification. She grieves her nonselection for an elementary teaching position, stating that WCBOE hired a noncertified teacher for the position instead of her. Grievant requests employment into the position, backpay, and all appropriate benefits. This grievance was waived at Level I due to lack of authority to resolve the issue. At Level II the hearing examiner ruled the successful applicant was not qualified for the position, and recommended WCBOE reconsider its prior decision. He granted no further relief as he saw "no compelling legal right on the part of the grievant to receive such." This grievance was waived at Level III. A Level IV hearing was scheduled, but the parties decided to submit the case on the record developed below, with the additional submission and stipulation of the successful candidate's professional teaching certification issued on December 11, 1995. ([See footnote 1](#))

The record below, while sparse, is sufficient for the following Findings of Fact.

#### **Findings of Fact**

1. On November 28, 1995, WCBOE posted a job vacancy for a fourth grade teacher at Glade Elementary. The position was for the rest of the school year, and required a valid West Virginia teaching certificate. The deadline for application was December 4, 1995.

2. The successful applicant, Linda Cline, was formally employed by WCBOE as an elementary teacher. She had been RIF'd some time previously and placed on the Preferred Recall List. She allowed her license to lapse during a portion of this time.

3. Grievant is certified as a multi-subject, K-8, teacher and is currently employed as a paraprofessional, which is a service personnel position. As a paraprofessional, Grievant assists one special education student on a daily basis with his educational needs. Grievant had no teaching experience.

4. Superintendent Ron Williams reviewed the list of applicants for the position, and narrowed the list to two applicants, Grievant and Ms. Cline. He knew Grievant was currently certified, and that the successful applicant had completed the course work for the renewal of her license. 5. At the board meeting on December 12, 1995, he recommended Grievant for the position because he did not believe Ms. Cline was currently certified. WCBOE rejected Superintendent Williams recommendation, and Mr. Williams then recommended Ms. Cline. WCBOE accepted this second recommendation, and Ms. Cline was hired for the position on that date.

6. At the time Ms. Cline was considered for the teaching position, she had completed the necessary course work for recertification, but had not yet received her new certificate from the West Virginia Department of Education ("WVDOE").

7. Ms. Cline possesses a valid teaching certificate issued by WVDOE with the effective date of December 11, 1995, and was certified to teach at the time of her hiring, and at the time she assumed her teaching duties.

### Discussion

The Level II Hearing Examiner based his partial relief on the belief that Ms. Cline was not properly certified at the time of her hiring. Given the subsequent submission and stipulation by the parties at Level IV, that Ms. Cline was certified to teach as of December 11, 1995, the day before her hiring, that ruling is in error. "W. Va. § 18-5-4 (1993) specifically contemplates that boards of education may make selection decisions based upon the best information as to the certification an individual will hold at the time that person enters into their assigned teaching duties. In particular, that statute authorizes school boards to `employ such qualified teachers, or those who will qualify by the time of entering upon their duties, necessary to fill existing or anticipated vacancies for the current or next ensuing school year.'" Grossl v. Mingo Bd. of Educ., Docket No. 93-29-496 (July 21, 1994)(citing W. Va. Code §18-5-4 (1993))(emphasis in Grossl). Additionally, W. Va. Code §18A-3-2 permits school boards to employ teachers, in good faith, who are expected to receive their certification, but have not

yet done so. Shrewbridge v. Mercer County Bd. of Educ., Docket No. 94-27-094 (Sept. 29, 1994).

Here, WCBOE knew Ms. Cline had completed the necessary course work to renew her certification. "The effective date of the license or endorsement for an individual who applies within three months following completion of an approved program shall be the program completion date." W. Va. Dept. of Educ. Policy 5202, § 5- f-1a.1. Further, WCBOE knew Ms. Cline had previously taught within its system and had been placed on the Preferred Recall List. Clearly, WCBOE hired Ms. Cline with the good faith belief that she would be certified by the time she entered into her assigned teaching duties, and she was. Thus, Grievant's contention that WCBOE hired "a noncertified teacher" is in error.

The above-discussion will be supplemented by the following Conclusions of Law.

#### Conclusions of Law

1. A county board of education may employ, in good faith, a teacher who it expects will be certified by the time she assumes her assigned duties. W. Va. Code §§18-5-4 & 18A-3-2; Grossl v. Mingo County Bd. of Educ., Docket No. 93-29-496 (July 21, 1994).

2. "The effective date of the license or endorsement for an individual who applies within three months following completion of an approved program shall be the program completion date." W. Va. Dept. of Educ. Policy 5202, §5-f-1a.1.

3. WCBOE violated no Code Sections when it selected Ms. Cline For the teaching position at Glade Elementary.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Webster 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: August 28, 1996**

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[Footnote: 1](#)

*This grievance was administratively assigned to the undersigned in June 1996.*