

**BILLY J. ROSE,**

**Grievant,**

**v.                 Docket No. 95-04-521**

**BRAXTON COUNTY BOARD OF EDUCATION,**

**Respondent.**

## **DECISION**

Grievant, Billy J. Rose, is a substitute bus operator for the Braxton County Board of Education ("BCBOE"). He alleges BCBOE violated W. Va. Code §§18A-4-8b, 18A-4-8e, and 18A-4-8g when he did not receive a temporary Custodian position. This grievance was denied at Levels I and II, and waived by BCBOE at Level III. Following appeal to Level IV, a hearing was held on February 7, 1996. BCBOE did not appear at this hearing, but as no continuance was granted, the undersigned conducted a hearing at that time. Because some factual issues remained, the undersigned asked the parties to prepare some stipulations. After much delay and written communication between the parties and the undersigned, a second hearing was scheduled. The parties then jointly requested that the case be submitted with several stipulations. This case became mature for decision on August 20, 1996, the deadline for the parties' submission of findings of fact and conclusions of law. Although the record is somewhat confusing, the following findings can be appropriately made from the record.

### **Findings of Fact**

1. Grievant is employed as a substitute bus operator with the seniority date of May 17, 1995.
2. On September 6, 1995, BCBOE posted two Custodian III positions. The position at Braxton County Middle School ("BMS") was a permanent one. [\(See footnote 1\)](#) The position at Flatwoods Elementary ("FE") was a temporary one. The posting referred the applicant to the job description for the qualifications. This posting also required the applicant to hold the classification title in the category of employment.
3. The job description states, "[a]ll new applicants must demonstrate competence in the performance of job related skills on a skills test."

4. Grievant applied for both positions. [\(See footnote 2\)](#)
5. Grievant did not know he was required to take a competency test to qualify for the position until he had his grievance conference to question why he did not receive the FE position.
6. The successful applicant, Steve Jenkins, is less senior than Grievant, by one day, with the seniority date of May 18, 1995. Mr. Jenkins applied for the position in question, and then requested the competency exam. He passed this test prior to his approval by BCBOE to fill the position.
7. Grievant did not take the exam and was not considered by BCBOE to be qualified for the position.

### Issues

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Grievant argues BCBOE had a duty to tell him about the required competency testing, and once he had applied, to call him and set up this testing. BCBOE argues W. Va. Code § 18A-4-8e does not impose such a duty on it. BCBOE also argues that it followed its prior practice of only scheduling an applicant for testing after the applicant called requesting the competency exam.

### Discussion

\_\_\_\_\_ W. Va. Code §18A-4-8e states:

Competency tests shall be administered to applicants in a uniform manner under uniform testing conditions. County boards of education shall be responsible for scheduling competency tests and shall not utilize a competency test other than the test authorized by this section.

No other guidance is provided to county boards about the scheduling of these exams, other than directing a county board to excuse an applicant from work, if the scheduled test conflicts with his work schedule. Although the process could be handled in another way, BCBOE's past practice of requiring an applicant to request the testing, and then scheduling it at a convenient time cannot be said to be wrong. As for Grievant not knowing that a competency exam was required, the posting for the position directed him to the job description for the qualifications. The job description clearly stated "new applicants must demonstrate competence in the performance of job related skills on a skills test." This data appeared at the bottom of the first page of the job description and was connected to the knowledge, skills and abilities required for the position.

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

## Conclusions of Law

1. In a non-disciplinary grievance, the grievant has the burden of proving his case by a preponderance of the evidence. Napier v. Logan County Bd. of Educ., Docket No. 94-23-541 (Apr. 25, 1995).

2. Grievant was not qualified for the position at issue because he had not passed the competency exam.

3. Absent some directive in W. Va. Code §18A-4-8e, a county board of education is not required to call applicants for a position and notify them they must take a competency exam to be qualified for a position, where notice that a competency exam was required to qualify for the position and this notice was clearly given in the job description referred to in the posting. This posting directed an applicant to read the job description for the required qualifications.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Braxton 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 30, 1996**

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[Footnote: 1](#)

Grievant does not contest the filling of the BMS position as that successful applicant has more seniority than he.

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[Footnote: 2](#)

At Level I this grievance was denied because Grievant did not use the "proper language" in applying for the FE position, and thus, was not considered for it. At Level II, the Hearing Examiner indicated the application, while confusing, was valid for both positions. Grievant's application simply states, "I am interested in the Custodian III jobs posted. I would rather

have the Braxten (sic) County Middle School." Absent BCBOE requiring a specific form for applications, this note is sufficient to apply for both positions. Apparently, because of the confusion caused by Grievant's wording of this application, he was not considered for the FE position. As will be addressed in this Decision, this fact does not effect the eventual outcome of this grievance.