

ELLEN KISER, .

.

Grievant, .

.

v. . Docket No. 95-20-541

.

KANAWHA COUNTY BOARD OF EDUCATION, .

.

Respondent. .

DECISION

This is a grievance by Ellen Kiser (Grievant), a professional employee of the Kanawha County Board of Education (KCBE), contend ing that she was transferred in violation of W. Va. Code § 18A-4- 7a. This grievance was initiated on September 13, 1995. After her grievance was denied at Level I, Grievant appealed to Level II where a hearing was conducted on November 7, 1995. The grievance was denied at Level II by Hilary Cowan, the Superintendent's designee, on November 29, 1995. Grievant waived Level III in accordance with W. Va. Code § 18-29-4(c), and appealed to Level IV on December 7, 1995. After a hearing was set at Level IV, the parties elected to supplement the record with a joint stipulation of fact and submit this matter for decision on the Level II record and that stipulation. This matter became mature for decision on April 2, 1996, upon receipt of written submissions from both parties.

The pertinent facts in this matter are essentially undisputed. Accordingly, the following Findings of Fact are appropriately derived from the testimony and evidence admitted at the Level II hearing and the stipulated documents with which the parties supplemented the record.

FINDINGS OF FACT

1. Grievant has been employed by the Kanawha County Board of Education (KCBE) as a classroom teacher since 1972. Tr at 7.

2. Grievant has been assigned to KCBE's Weimer Elementary School (WES) since 1974 as a

Title I/Chapter I [\(See footnote 1\)](#) reading teacher. Tr at 7-8.

3. A letter from KCBE Superintendent Jorea Marple dated July 28, 1994, states that Grievant would be employed for the 1994-95 school year as a "Teacher, Elementary Reading" at WES. KCS Ex 3 at L II.

4. During the 1993-94 and 1994-95 school years Grievant taught Language Arts for one-half day and Reading Recovery© for one-half day. Tr at 11-12.

5. Language Arts involves teaching reading, writing, spelling and English. Reading Recovery© involves an intensive remedial reading program with one-to-one student-teacher activities. Tr at 8-12.

6. Teachers employed to teach Reading Recovery© must complete a specialized training program over and above what is required to obtain Elementary Education Certification and Reading Certification or Reading Authorization. Tr at 9-11. See stipulated document No. 2.

7. KCBE posts currently vacant positions which involve duties similar to those Grievant performed from 1993 to 1995 as a .5 Reading Recovery© teacher, e.g., "Title I Basic Skills/Reading Emphasis (Reading Recovery)." See stipulated document No. 1 at 1.

8. Grievant was not competitively selected to perform the duties of the position described in Finding of Fact Number 4 as there was no posting of a .5 Reading Recovery© position at WES. Tr at 20, 22.

9. During the latter part of the 1994-95 school year, a majority of the staff at WES voted to eliminate the Reading Recovery© Program. See KCS Ex 2. (Grievant did not participate in this decision as she was off work due to illness at that time.)

10. WES Principal John Handley approved the WES faculty recommendation to eliminate the Reading Recovery© program in August, 1995, and assigned Grievant to teach Chapter I Reading instead of Reading Recovery© during the 1995-96 school year. Tr at 39-40.

11. Grievant was not notified of a proposed transfer prior to the first Monday in April, 1995.

DISCUSSION

In order to prevail on claims of this nature, Grievant must prove the allegations in her case by a preponderance of the evidence. Stout v. Harrison County Bd. of Educ., Docket No. 93-17-081 (Apr. 12, 1994); Randolph v. Harrison County Bd. of Educ., Docket No. 17-88-001-2 (June 30, 1988).

W. Va. Code § 18A-2-7, relied upon by Grievant, provides:

The superintendent, subject only to approval of the board, shall have authority to assign, transfer, promote, demote or suspend school personnel and to recommend their dismissal pursuant to provisions of this chapter. However, an employee shall be notified in writing by the superintendent on or before the first Monday in April if he is being considered for transfer or to be transferred,

This Grievance Board has previously recognized that "[a] transfer may consist of the reassignment of an employee to a different position, a different location or significantly different duties and responsibilities." Matthews v. Preston County Bd. of Educ., Docket No. 39-88-239 (July 27, 1989). However, "[a] teaching schedule adjustment, not including the assignment of duties and responsibilities outside of a teacher's presently- utilized area of certification, discipline, department or grade level, is not a transfer requiring application of W. Va. Code § 18A-2-7." Kidd v. Fayette County Bd. of Educ., Docket No. 89-10- 452 (Dec. 14, 1989). See Carr v. Mercer County Bd. of Educ., Docket No. 94-27-074 (Dec. 30, 1994); Dotson v. Greenbrier County Bd. of Educ., Docket No. 13-87-321-4 (Mar. 7, 1988).

Resolution of grievances alleging an on-site transfer must necessarily depend on the particular facts in each case. See Kidd, supra. However, the focus of the "inquiry is whether Grievant has been assigned significantly different duties or responsibilities outside her presently utilized area of certification, discipline or department." Blackburn v. Mingo County Bd. of Educ., Docket No.95-29-489 (Mar. 27, 1996). Applying these principles to the instant matter, it does not appear that KCBE's action in relieving Grievant of Reading Recovery® duties, and returning her to conventional basic skills reading duties, constitutes a transfer within the meaning of W. Va. Code § 18A-2-7.

The site where Grievant works was not changed by elimination of the Reading Recovery® program. Likewise, Grievant's subject matter assignment remains within the same subject-area certifications under which she was employed during the previous years. Grievant did not obtain the .5 Reading Recovery® assignment in 1993-94 or 1994-95 through a competitive posting. Accordingly, KCBE was not precluded from assigning Grievant to the duties of a Chapter I reading teacher without complying with the transfer procedures in W. Va. Code § 18A-2-7. See Blackburn, supra; Miller v. Mason County Bd. of Educ., Docket No. 94-26-1106 (May 12, 1995); Crawford v. Mercer County Bd. of Educ., Docket No. 94-27-958 (Apr. 13, 1995); Dunleavy v. Kanawha County Bd. of Educ., Docket No. 20- 89-008 (Feb. 23, 1989).

Moreover, there is no showing that KCBE acted arbitrarily or unreasonably when WES Principal

John Headley assigned Grievant to teach Chapter I Reading, ceasing to use her specialized training in Reading Recovery®. See State ex rel. Melchiori v. Bd. of Educ., 188 W. Va. 575, 425 S.E.2d 251 (1992). Such a determination falls within the sound discretion provided the WES Principal under W. Va. Code § 18A-2-9. See Long v. Logan County Bd. of Educ., Docket No.95-23-506 (Apr. 29, 1996); Piccirillo v. Brooke County Bd. of Educ., Docket No. 94-05-626 (Dec. 30, 1994).

In addition to the foregoing discussion, the following Conclusions of Law are appropriate in this matter.

CONCLUSIONS OF LAW

1. Grievant has the burden of proving each element of a grievance of this nature by a preponderance of the evidence. Stout v. Harrison County Bd. of Educ., Docket No. 93-17-081 (Apr. 12, 1994); Randolph v. Harrison County Bd. of Educ., Docket No. 17-88- 001-2 (June 30, 1988).

2. Tenured teachers do not have a vested right to be assigned to a particular school nor to a particular set of duties. Mahon v. Mingo County Bd. of Educ., Docket No. 94-29-305 (Mar. 17, 1995). See State ex rel. Hawkins v. Tyler County Bd. of Educ., 275 S.E.2d 908, 911-12 (W. Va. 1981); Weaver v. Bd. of Educ., 128 W. Va. 42, 35 S.E.2d 679 (1945).

3. 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. Miller v. Mason County Bd. of Educ., Docket No. 94-26-1106 (May 12, 1995).

4. Grievances alleging that a teacher has been "transferred" as a result of a change in duties must be decided on a case-by- case, fact-specific basis, and the inquiry must focus upon whether the grievant has been assigned significantly different duties or responsibilities outside her presently utilized area of certification, discipline or department. Blackburn v. Mingo County Bd. of Educ., Docket No. 95-29-489 (Mar. 27, 1996). See Kidd v. Fayette County Bd. of Educ., Docket No. 89-10-452 (Dec. 14, 1989); Matthews v. Preston County Bd. of Educ., Docket No. 39-88-239 (July 27, 1989).

5. Assigning Grievant, a Chapter I reading teacher, to teach basic skills reading without employing the Reading Recovery® method under which Grievant worked on a half-time basis during the 1993-94 and 1994-95 school years did not constitute a transfer within the meaning of W. Va. Code § 18A-2-7, as Grievant remained at the same work site, the half-time position teaching Reading Recovery®

was not obtained through a competitive posting under W. Va. Code § 18A- 4-7a, and her duties require the same subject-area certifications under which she worked in previous years. See Blackburn, supra; Miller, supra; Kidd, supra.

6. KCBE, through WES Principal John Handley, did not act arbitrarily or capriciously when Grievant was assigned to teach Chapter I Reading during the 1995-96 school year without utilizing her specialized training in Reading Recovery© as applied during the 1993-94 and 1994-95 school years. See State ex rel. Melchiori v. Bd. of Educ., 188 W. Va. 575, 425 S.E.2d 251 (1992).

Accordingly, this grievance is **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.

LEWIS G. BREWER

Administrative Law Judge

Dated: April 30, 1996

[Footnote: 1](#)

These terms apply to a federally-funded program to improve students' basic skills. The terms are often used interchangeably.