LANA SPURLOCK,

Grievant,

v. **Docket No. 97-22-019**

LINCOLN COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Lana Spurlock (Grievant), an employee of Respondent Lincoln County Board of Education (LCBE), initiated a grievance pursuant to W. Va. Code §§ 18-29-1, et seq., on April 5, 1996, alleging that LCBE violated W. Va. Code §§ 18A-2-2 and 18A-4-19 when it reduced her employment term from 240 days to 226 days for the 1996-97 school year. Her grievance was waived to Level II where a hearing was conducted on August 19, 1996. Dr. Donna Martin, the Superintendent's designee, issued a decision on November 16, 1996, granting the grievance, but indicating that the relief requested had to be awarded at Level III. On December 2, 1996, LCBE met and granted the grievance. Thereafter, without notice to Grievant, at a subsequent meeting conducted on December 16, 1996, LCBE purported to rescind its previous action granting the grievance, thereby reinstating its prior decision to reduce Grievant's term of employment to 226 days. Upon learning of LCBE'saction, Grievant submitted this appeal to Level IV on January 13, 1997. (See footnote 1) A Level IV hearing was conducted in this Grievance Board's office in Charleston, West Virginia, on February 6, 1997. At that time, the parties made oral arguments regarding the legal issue of whether LCBE's decision on the grievance was final. The parties waived submission of written arguments, and this matter became mature for decision at that time.

The pertinent facts in this matter are not in dispute. Accordingly, the following Findings of Fact have been developed from the entire record. (See footnote 2)

FINDINGS OF FACT

1. Grievant is employed by the Lincoln County Board of Education (LCBE) as a professional employee, and is assigned to teach in LCBE's adult basic education program. During the 1995-96 school year, Grievant held a 240-day employment term.

2. Prior to April 1, 1996, LCBE took action to reduce Grievant's term of employment for the 1996-97 school year to 226 days.

3. Grievant timely grieved this action and, following a Level II hearing, on November 16, 1996, the Superintendent's designee, Dr. Donna Martin, recommended that the grievance be granted.

4. On December 2, 1996, LCBE voted to grant the grievance, reinstating Grievant's employment term for the 1996-97 school year to 240 days, pending federal funding.

5. Federal funds are available to pay Grievant's salary for the 240-day term of employment for the 1996-97 school year.

6. LCBE's Superintendent did not exercise his right under W. Va. Code § 18-29- 3(t) to appeal LCBE's Level III decision to Level IV of the grievance procedure within five working days.

7. On December 16, 1996, LCBE rescinded its action of December 2, 1996, granting Grievant's grievance.

8. Grievant received no advance notice of LCBE's action to rescind its decision to grant her grievance, thereby reducing her contract term to 226 days.

9. LCBE's decision to rescind its previous action resulted from concerns over the morale of other employees whose employment terms for the 1996-97 school year had been reduced for financial reasons.

DISCUSSION

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving each element of her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.19 (1996); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code § 18-29-6.

The grievance procedure for education employees is intended to "provide a simple, expeditious and fair process for resolving problems at the lowest possible administrative level." W. Va. Code § 18-29-1. See Adams v. Cabell County Bd. of Educ., Docket No. 94-06-520 (May 15, 1995).

Accordingly, this Grievance Board has recognized the principle that "finality is desirable in the law," and applied it to grievance procedures. See Epling v. Boone County Bd. of Educ., Docket No. 89-03-562 (Feb. 28, 1990). See generally Liller v. Human Rights Comm'n, 180 W. Va. 433, 376 S.E.2d 639 (1988). Consistent with this principle, this Grievance Board has refused to allow grievants to employ the grievance procedure to attack the outcome of another employee's grievance. See Webster v. Wayne County Bd. of Educ., Docket No. 96-50- 119 (Nov. 27, 1996); Dalton v. Mercer County Bd. of Educ., Docket No. 96-27-044 (July 29, 1996); Toney v. Lincoln County Bd. of Educ., Docket No. 95-22-118 (June 30, 1995); Gillman v. Logan County Bd. of Educ., Docket No. 91-23-196 (Nov. 7, 1991); Kennedy v. Univ. of W. Va. Bd. of Trustees, Docket No. 90-BOT-302 (Dec. 27, 1990). Likewise, this Grievance Board has applied the doctrine of res judicata to preclude grievants from relitigating issues which were resolved in prior grievance decisions. See Meeks v. Kanawha County Bd. of Educ., Docket No. 96-20-095 (Feb. 28, 1997); Woodall v. W. Va. Dept. of Transp., Docket No. 93-DOH-393 (Feb. 2, 1994). See also Wolfe v. Forbes, 159 W. Va. 34, 217 S.E.2d 899 (1975); Ramsey v. W. Va. Dept. of Health and Human Resources, Docket No. 90-H-478 (July 31, 1991).

In this matter, Grievant seeks a determination from this Grievance Board that LCBE had no authority to reverse its decision granting her grievance. The record is clear that LCBE's decision on December 2, 1996, was made in the context of its role as a grievance evaluator under W. Va. Code §§ 18-29-1, et seq. See Epling, supra. Accordingly, the undersigned administrative law judge finds that LCBE's action on December 2, 1996, constitutes a final adjudication of this grievance in favor of Grievant under W. Va. Code §§ 18-29-1, et seq, which was not timely appealed by the Superintendent. Therefore, the merits of this grievance are res judicata, and there is nothing further for this Grievance Board to decide at Level IV.

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

CONCLUSIONS OF LAW

1. In a nondisciplinary grievance, the grievant has the burden of proving each element of her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.19 (1996); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130

(Aug. 19, 1988). See W. Va. Code § 18-29-6.

2. "School personnel laws and regulations are to be construed strictly in favor of the employee." Syl. Pt. 1, Morgan v. Pizzino, 163 W. Va. 454, 256 S.E.2d 592 (1979).

3. Once LCBE took action in its capacity as the grievance evaluator at Level III of the grievance procedure for education employees, and granted Grievant's grievance on its merits, in the absence of a timely appeal by either party, as of December 16, 1996, LCBE had no authority to rescind its previous decision granting the grievance. See W. Va. Code §§ 18-29-1, 18-29-3(t); and, 18-29-4; Epling v. Boone County Bd. of Educ., Docket No. 89-03-562 (Feb. 28, 1990).

Accordingly, this Grievance is **GRANTED**. Respondent Lincoln County Board of Education is hereby **ORDERED** to reinstate Grievant's term of employment at 240 days for the 1996-97 school year, and to award Grievant all pay and benefits she should receive, including, but not limited to, back pay with interest, sick leave, and holiday pay, as a result of holding such extended term of employment.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Lincoln 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: May 29, 1997

Footnote: 1

Although it could be argued that LCBE's action on December 16, 1996, was an independent act separate and apart from the original grievance, thus requiring Grievant to initiate a new grievance at Level I, Respondent did not raise this issue at Level IV, and it is deemed to have been waived.

Footnote: 2As the parties agreed that the facts of Grievant's original complaint are not directly in issue, the undersigned was not provided a transcript of the Level II hearing in this matter.