KIM BELLADONNA,

Grievant,

v.

DOCKET NO. 97-23-321

LOGAN COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Kim Belladonna, complains that "I was transferred from Holden Grade School while a teacher with less time but a BD certification was allowed to stay. There were no BD students at the school as of the May 1st transfer deadline." The grievance was denied at level one, and a level two hearing was held on June 13, 1997. Superintendent Ray Woolsey denied the grievance by decision dated June 23, 1997, and Grievant appealed to level four on July 11, 1997. The case was submitted on the record developed at the lower levels, and became mature on August 15, 1997, the deadline for submission of proposed findings of fact and conclusions of law. (See footnote 1)

SUMMARY OF EVIDENCE

The Grievant testified in her own behalf, and presented the testimony of Brenda Skibo. No exhibits were offered into evidence.

FINDINGS OF FACT

I find, by a preponderance of the evidence, the following facts. 1. Grievant is employed by the Logan County Board of Education ("Board") as a professional certified to teach special education students classified as MI (mentally impaired) and LD (learning disorders). Grievant was not certified

to teach BD (behavioral disorders) students prior to the end of the 1996-97 school year.

2. Grievant was employed during the 1996-97 school year as an LD/MI teacher at Holden Elementary School.

3. Lesa Osenton was also employed during the 1996-97 school year at Holden Elementary, and was certified to teach LD, MI, and BD students.

4. At the end of the 1996-97 school year, it was necessary for the Board to eliminate one special education position at Holden Elementary. The Board determined it was in the best interests of the school to keep Ms. Osenton, who was certified in LD, MI, and BD, and transfer Grievant who was only certified in LD and MI. The reason given to Grievant for her transfer was that she did not have BD certification.

5. At the time of Grievant's transfer, there were no BD students at Holden Elementary.

DISCUSSION

Grievant alleges the Board violated the transfer provisions of W. Va. Code § 18A-4- 7a when it transferred her from Holden Elementary instead of Ms. Osenton, who has less seniority. Grievant's reliance on Code § 18A-4-7a is somewhat misplaced. That Section addresses the procedure to be followed when a county board is required to reduce the number of professional personnel, specifically with regard to the personnel subject to release. Grievant was not reduced in force, she was transferred.

Transfers are governed by W. Va. Code § 18A-2-7, which states, in pertinent part:

> 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. . .

A board of education has substantial discretion in matters relating to the assignment and transfer of school personnel. The power to transfer teachers must be exercised in a reasonable manner and in the best interests of the school and must not be exercised arbitrarily and capriciously. Dillon v. Wyoming County Bd. of Educ., 351 S.E.2d 58 (W. Va. 1986); State ex. rel. Hawkins v. Tyler County Bd. of Educ., 275 S.E.2d 908 (1980).

Grievant has not alleged any procedural flaws in her transfer. Rather, she alleges a less senior teacher should not have been retained at Holden, and the reason given for her transfer did not exist,

i.e., there were no BD students at Holden Elementary at the time of her transfer, and thus no reason to require that an LD, MI, and BD certified teacher remain at Holden.

The Board argues it was in the best interests of the school when faced with having to eliminate one special education position, to have the teacher certified in all three specialties remain in the event there was a BD student enrolled at Holden. The Board spoke of other schools where it was forced to hire a BD certified teacher to teach just one student because the other special education teacher at the school did not possess that certification. This is clearly not an effective or efficient use of the limited funds available to the Board. The Board wanted to avoid a similar situation when it determined it needed to eliminate one special education position at Holden Elementary. This cannot be found to be an arbitrary or capricious reason for its decision to transfer Grievant and retain Ms. Osenton. Further, seniority is not determinative in the decision to transfer professionalpersonnel, only in the decision to reduce personnel. See Blankenship v. Logan County Bd. of Educ., Docket No. 97-23-039 (July 14, 1997).

CONCLUSIONS OF LAW

1. In a non-disciplinary grievance, the burden of proof lies with the grievant to prove her case by a preponderance of the evidence. Gwilliam v. Preston County Bd. of Educ., Docket No. 95-39-255 (Dec. 22, 1995).

2. County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel. Nevertheless, this discretion must be exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious. Dillon v. Wyoming County Bd. of Educ., 351 S.E.2d 58 (W. Va. 1986); State ex. rel. Hawkins v. Tyler County Bd. of Educ., 275 S.E.2d 908 (1980).

3. Teachers have no vested right to be assigned to any particular school in the county. State ex rel. Hawkins v. Tyler County Bd. of Educ., 375 S.E.2d 911 (W. Va. 1981).

4. The board did not abuse its discretion by choosing to transfer the LD/MI teacher at Holden Elementary while retaining the LD/MI/BD teacher, which will allow Holden Elementary to service any special education needs which may arise, and is thus in the best interests of the school.

5. Grievant failed to prove by a preponderance of the evidence any violation of W. Va. Code §§ 18A-4-7a or 18A-2-7.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Logan 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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MARY JO SWARTZ

Administrative Law Judge

Dated: October 16, 1997

Footnote: 1

The level two transcript was received by this Board on October 6, 1997.