DAWN WEST,

Grievant,

v. **DOCKET NO. 96-52-172**

WETZEL COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

On November 8, 1995, Dawn West (Grievant) submitted this grievance under W. Va. Code §§ 18-29-1, et seq., complaining that Respondent Wetzel County Board of Education (WCBE) had committed "discrimination in the hiring process." She further described the matters she was grieving as follows:

> I was coerced into bidding on all vacancies in the county, even though there was never any official dismissal from my position of five years at Short Line. I bid on all vacancies that I was certified in. I know that three of those positions were filled by less senior applicants. I had intentions of returning to my job at Short Line, however, I find out that I was hired as the Title I Teacher at Paden City Elementary, a position which I didn't even bid on. I think I should be given my position back and would like to know why less senior people were hired over me in all positions applied for.

The grievance was waived to Level II on November 16, 1995, as Grievant's immediate supervisor was without authority to resolve the matter. Thereafter, a Level II hearing was conducted on January 30, 1996. The Superintendent's designee, Edward Glover, issued a written decision denying the grievance at Level II on March 15, 1996. Grievant thenappealed to Level III where WCBE waived consideration of the grievance as authorized by W. Va. Code § 18-29-4(c).

On May 8, 1996, Grievant appealed to Level IV where a telephonic pre-hearing conference was conducted by Administrative Law Judge Nedra Koval on May 24, 1996. On June 17, 1996, Judge Koval wrote to the parties, noting that, in accordance with understandings reached at the pre-hearing conference, "Respondent has filed the level two transcript and exhibits; Mr. Blalock [WCBE's counsel] has filed a motion with respect to the timeliness issue; and Mr. Brown [Grievant's representative] has

responded to Mr. Blalock's submission." (See footnote 1) Subsequently, the parties agreed to submission of this grievance for decision on the record developed at Level II, and agreed upon a briefing schedule. Grievant's brief was received on August 28, 1996, and Respondent's reply brief on September 5, 1996. On September 16, 1996, for administrative reasons, this matter was reassigned to the undersigned for decision on the record.

DISCUSSION

WCBE contends that this grievance was not initiated within the following time limits set forth in W. Va. Code § 18-29-4(a)(1):

> Before a grievance is filed and within fifteen days following the occurrence of the event upon which the grievance is based, or within fifteen days of the date on which the event became known to the grievant or within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance, the grievant or the designated representative shall schedule a conference with the immediate supervisor to discuss the nature of the grievance and the action, redress or other remedy sought.

A timeliness defense is an affirmative defense which the moving party must establish bya preponderance of the evidence. Lowry v. W. Va. Dept. of Educ., Docket No. 96-DOE- 130 (Dec. 26, 1996); Hale v. Mingo County Bd. of Educ., Docket No. 95-29-315 (Jan. 25, 1996). As required by W. Va. Code § 18-29-3(a), Respondent asserted that this grievance was untimely at the Level II hearing. HT at 7-8. (See footnote 2) See generally Payne v. Mason County Bd. of Educ., Docket No. 96-26-047 (Nov. 27, 1996); Trickett v. Preston County Bd. of Educ., Docket No. 95-39-413 (May 8, 1996).

In order to determine if this grievance was timely filed, it is necessary to review the events which led to this grievance in some detail. Several pertinent facts are stated in an earlier decision by this Grievance Board involving the same parties, West v. Wetzel County Board of Education, Docket No. 95-52-411 (May 17, 1996) (West I). However, the facts in that matter will be restated herein only as necessary to adjudicate the issues raised in this grievance.

For five years prior to August 1, 1995, Grievant was employed by WCBE as a classroom teacher at Short Line Elementary School (Short Line), teaching children with Learning Disabilities (LD). West I at I; HT at 54. Based upon a series of events more fully described in West I, Dr. Martha Dean, WCBE's Superintendent of Schools, sent Grievant a certified letter, dated August 1, 1995, stating, in pertinent part, as follows:

> We met in my office on Tuesday morning, August 1, 1995. The purpose of the meeting was to discuss the status of your continued employment with the Wetzel

> County Board of Education.
>
> I informed you that there were two (2) conditions to your continued employment:
>
> 1) That you seek, by applying for vacancies, a position in a school within the county other than Short Line School; and
>
> 2) That you undergo a psychological evaluation, at the Board's expense, in order to obtain a "fitness to work" statement prior to reentering the classroom.

G Ex 1; West I at 6.

Grievant testified that Dr. Dean informed her that she would not be returning to teach at Short Line Elementary School. HT at 12-13. It is not clear exactly when that conversation took place, but Grievant stated that she applied for a Third Grade teaching vacancy at Paden City Elementary School (PCES) in June or July of 1995, because she had been told that she would not be returning to Short Line. HT at 15.

Grievant was subsequently suspended for 30 days, effective August 24, 1995, on charges of insubordination. West I at 7. As determined in West I:

> On August 23, 1995, one day before the 1995-96 school year was to begin, Grievant informed Dr. Dean that she would fully comply with the directives . . . .

West I, Finding of Fact No. 4, at 16. After serving the 30-day suspension at the beginning of the 1995-96 school year, Grievant was instructed to report to work at PCES as a Title I Developmental Reading Teacher. HT at 9-11, 14. Grievant reported to work at PCES on October 5, 1995. HT at 11. Grievant stated that she made no formal application for the PCES position, and believes that she was not properly certified to fill the position. HT at 11, 14. However, Grievant acknowledged that she voluntarily interviewed for the position she was awarded at PCES, although she had not filled out a bid sheet in advance of being offered an interview. HT at 40-41. Further, PCES Principal Margaret

Sine explained to her at the time of her interview that she did not require an additional certification, as anyteacher with an elementary certificate is certified to teach Developmental Reading. HT at 79.

Grievant complained that the PCES Third Grade teaching position for which she applied was awarded to a less senior applicant, Terri Locke. HT at 15-16. However, Grievant acknowledged that, prior to initiating this grievance, she did not inquire as to why Ms. Locke was selected, because she only applied for the position to comply with Ms. Dean's instructions, and she was expecting to return to her old position at Short Line. HT at 17. Grievant similarly applied for a Sixth Grade teaching position at Short Line which was awarded to a less senior employee, Alice Rae Burgess. HT at 35.

Grievant also applied for the position she had previously held at Short Line, but that position was awarded to a less senior employee, Kim Kehrer. HT at 19-20, 58. Grievant acknowledged that the position was posted as requiring certification in Learning Disabled (LD), Mentally Impaired (MI) and Behavior Disordered (BD), and she is only certified in LD. (See footnote 3) HT at 20, 37. However, she alleged that the successful applicant did not have all three certifications either. HT at 20.

Jane Beckett, Principal at Short Line, testified that she served on a committee which considered Grievant and Ms. Kehrer for the LD/BD/MI position at Short Line. HT at 58. Ms. Beckett explained that the committee employed a grid or matrix to evaluate the seven factors to be applied in assessing qualifications under W. Va. Code § 18A-4-7a. The committee determined that neither Grievant nor Ms. Kehrer had the appropriate certification and/or licensure, so neither applicant received a point in that category. HT at60, A Ex 1. Both applicants had relevant specialized training, so each received a point in that category. Grievant was determined to have a higher degree level in the specialized area and greater seniority, and was awarded points in those two categories. A Ex 1. Ms. Kehrer had greater total teaching experience and more teaching experience in the relevant field, and was awarded points in those categories. In the area of past performance on evaluations, Ms. Kehrer received a point while Grievant did not. HT at 61, A Ex 1. Thus, Ms. Kehrer received points in four criteria and Grievant in three. See A Ex 1. Giving each criterion equal weight, the committee recommended Ms. Kehrer for the position.

Ms. Beckett acknowledged that Grievant had teaching experience in the certification areas included in the position. HT at 66. However, the committee weighed the amount of the applicants' experience, determining that Grievant did not get credit for "the existence of teaching experience in the required certification area" under § 18A-4-7a. HT at 65-66.

Grievant also applied for a First Grade teaching position at Short Line. HT at 22-23. Grievant alleged that the position was awarded to Colleen Adkins, who had previously been employed by WCBE as a substitute teacher. HT at 23-24. Ms. Beckett similarly testified that a committee on which she participated had reviewed 12 applications for the First Grade position, recommending Ms. Adkins on the basis of her 10 years' total teaching experience, all of which was in the subject area. HT at 62. Grievant had less total experience (6 years) and no experience in the subject area. See A Ex 2. Ms. Adkins was given credit for satisfactory evaluations based upon evaluations she had received in another school system. HT at 71.

Grievant was informed that she was not selected for the PCES Third Grade andShort Line Sixth Grade positions shortly after August 25, 1995. HT at 35-36. By letter dated June 14, 1996, Grievant's representative clarified Grievant's position on these nonselections, noting that Grievant was only grieving her nonselection to the LD/BD/MI and First Grade teaching positions at Short Line. The other incidents of nonselection were presented simply to establish a pattern of discriminatory conduct by WCBE. Grievant was mailed notice that she was not selected for the LD/BD/MI position at Short Line on October 16, 1995, and a similar notice of nonselection regarding the First Grade position at Short Line was mailed to Grievant on October 25, 1995. HT at 88-89. There was no evidence as to when Grievant received these letters. HT at 96.

According to Grievant's testimony, she signed her grievance on November 7, 1995, and gave it to another WCBE employee, "Esther," who date-stamped the form as received by WCBE. HT at 30-31. The date stamp on the form indicates that the grievance was received on November 8, 1995. See G Ex 1.

As of October 5, 1995, Grievant was aware that she was no longer assigned to Short Line. Assuming that Grievant's mandatory transfer from Short Line was not included in the grievance which was addressed by this Grievance Board's decision in West I, under W. Va. Code § 18-29-4(a)(1), Grievant had 15 days to file a grievance over this reassignment to another teaching position at PCES. W. Va. Code § 18-29-2(b) defines "days" as days of the employee's employment term exclusive of Saturday, Sunday, official holidays or school closings. Administrative notice is taken that October 9, 1995, was a state holiday. There is no evidence in the record of any other holidays or school closings during the 15 days following October 5, 1995. Accordingly, Grievant had until October 27, 1995, to file a grievance regarding her transfer to PCES. Because this grievance was notinitiated

at Level I until November 8, 1995, that portion of this grievance is not timely and may not be considered. (See footnote 4) See Edwards v. Clay County Bd. of Educ., Docket No. 96-08-064 (July 9, 1996); Adkins v. W. Va. Dept. of Educ., Docket No. 95-DOE-507 (Apr. 26, 1996).

In his brief, Grievant's representative argues that Grievant is teaching in a position for which she does not hold the requisite certification, and is therefore entitled to some relief on that basis. This situation could arguably be treated as a continuing violation, thereby meeting the W. Va. Code § 18-29-4(a)(1) time limit for filing a Level I grievance. See Blankenship v. Summers County Bd. of Educ., Docket Nos. 92-45-133/134/135 (Nov. 30, 1992); Allman v. Harrison County Bd. of Educ., Docket No. 89-17-215 (June 29, 1990). However, it is apparent that the instant grievance was previously focused on Grievant's alleged "illegal transfer" out of Short Line, and WCBE's asserted failure to hire Grievant for any subsequent teaching vacancy at Short Line. (See Grievant's statement of grievance, supra.) In these circumstances, the undersigned finds that the specific issue of whether Grievant is properly credentialed to hold her current teaching position at PCES involves a separate matter which has not been properly elevated through the grievance procedure to Level IV. See W. Va. Code § 18-29-3(j); W. Va. Dept. of Health & Human Resources v. Hess, 189 W. Va. 357, 432 S.E.2d 27 (1993); Crawford v. Mercer County Bd. of Educ., Docket No. 94-27-958 (Apr. 13, 1995); Anderson v. Wyoming County Bd. of Educ., Docket No. 93-55-183 (Sept. 30, 1993). The record indicates Grievant was notified of her nonselection to the LD/BD/MI position by a letter mailed on October 16, 1995. However, there is no evidence as to when Grievant actually received this notice. Grievant was not mailed notice informing her of her nonselection to the Short Line First Grade position until October 25, 1996. Accordingly, WCBE has not met its burden of demonstrating that the portion of the grievance which complains that Grievant was better qualified for either of those two positions was not timely filed under W. Va. Code § 18-29-4(a)(1). See Ooten v. Mingo County Bd. of Educ., Docket No. 96-29-122 (July 31, 1996); Hale, supra.

The merits of WCBE's decisions not to select Grievant for the two classroom teaching positions at Short Line will now be considered. Hiring decisions relating to classroom teachers in West Virginia are governed by the provisions of W. Va. Code § 18A- 4-7a (1993). The portion of that statute pertinent to this grievance provides:

> If one or more permanently employed instructional personnel apply for a classroom teaching position and meet the standards set forth in the job posting, the county board of education shall make decisions affecting the filling of such positions on the basis of the following criteria: Appropriate certification and/or licensure; total amount of

> teaching experience; the existence of teaching experience in the required certification area; degree level in the required certification area; specialized training directly related to the performance of the job as stated in the job description; receiving an overall rating of satisfactory in evaluations over the past two years; and seniority. Consideration shall be given to each criterion with each criterion being given equal weight. (Emphasis added.)

As nonselection to teaching vacancies does not involve a disciplinary matter, Grievant has the burden of proving each allegation in her claim by a preponderance of the evidence. Educ. & State Employees Grievance Bd. Procedural Rule 4.19, 156 C.S.R. 1 (1996); Williams v. Lincoln County Bd. of Educ., Docket No. 93-22-386 (Mar. 7, 1994); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). Because at least one currently employed teacher (Grievant) applied for each position at issue, WCBE looked to the second set of criteria in W. Va. Code § 18A-4-7a, quoted above, in choosing the best-qualified applicant. See Ellis v. Mingo County Bd. of Educ., Docket No. 96-29-164 (June 28, 1996). WCBE's witnesses testified as to how they applied each criterion and arrived at the conclusion that another applicant was better qualified for the position than Grievant, giving equal weight to each criterion.

In regard to the LD/MI/BD teaching position at Short Line, WCBE's witness indicated that the committee assessing the qualifications of Grievant and the successful applicant determined that, although Grievant had "teaching experience in the required certification area," Ms. Kehrer should receive credit for that criterion and Grievant should not receive credit, because Ms. Kehrer had greater teaching experience in the area than Grievant. HT at 65-67. This Grievance Board has previously determined that this approach constitutes "an erroneous application of the clear language of the statute." Beckley v. Lincoln County Bd. of Educ., Docket No. 95-22-107 (Feb. 29, 1996). See Richmond v. Raleigh County Bd. of Educ., Docket No. 92-41-363 (May 27, 1993). The statute does "not refer to the amount of teaching experience an applicant has in his/her area of certification because the word 'existence' is not a quantitative word." Richmond, supra. Thus, in this criterion, Grievant and the successful applicant should have been rated equally. See Beckley, supra; Richmond, supra.

With regard to the other statutory criteria, Grievant attempted to shift her burden of proof to WCBE, arguing that the employer is obligated to prove Grievant did not receive satisfactory performance evaluations for the past two years, as indicated by the decision of the interview committee to award the successful applicants credit in this category of thequalifications matrices. See

A Exs 1 & 2. However, there is no presumption that an employee's performance evaluations are satisfactory, and Grievant must demonstrate by a preponderance of the evidence that her past performance evaluations were satisfactory. Grievant neither presented her most recent evaluations as evidence nor testified that her last two evaluations were satisfactory. Indeed, Grievant only testified that she had more seniority than either of the two successful applicants for the positions she is contesting, and WCBE's witnesses indicated that Grievant was given credit for her seniority as required by § 18A-4-7a. In these circumstances, WCBE is not obligated to establish that the successful candidates were better qualified than Grievant. See Fisher-Collinsworth v. Wayne County Bd. of Educ., Docket No. 95-50-457 (Mar. 15, 1996).

Accordingly, Grievant failed to demonstrate that WCBE erred in determining that the successful applicant for the First Grade teaching position at Short Line was the better qualified candidate under the second set of criteria in W. Va. Code § 18A-4-7a. (See footnote 5) See Fisher-Collinsworth, supra. However, Grievant did establish that WCBE erred in determining that the successful applicant for the LD/MI/BD teaching position was better qualified under the second set of criteria in § 18A-4-7a. Had WCBE applied the statutory criteria correctly, Grievant and Ms. Kehrer would have tied.

This Grievance Board has determined that "A county board has broad discretion to develop a method for breaking ties between or among applicants. A board is not prohibited from using one of the criteria or other aspect of the candidate's credentials tobreak a tie between or among the candidates." Monk v. Mercer County Bd. of Educ., Docket No. 95-27-245 (Sept. 28, 1995). See generally, Pockl v. Ohio County Bd. of Educ., 185 W. Va. 256, 406 S.E.2d 687 (1991). Consistent with these determinations, this grievance is granted, in part. This grievance will be remanded to WCBE to reassess the relative credentials of Grievant and Ms. Kehrer for the LD/MI/BD teaching position at Short Line. (See footnote 6) If Grievant is aggrieved by the outcome of that reassessment, she may file an appropriate grievance at Level I of the grievance procedure in accordance with the time limits set forth in W. Va. Code § 18-29-4(a).

Consistent with the foregoing discussion, the following findings of fact and conclusions of law are appropriate in this matter:

FINDINGS OF FACT

1. For five years prior to August 1, 1995, Grievant was employed by the Wetzel County Board of Education (WCBE) as a classroom teacher at Short Line Elementary School (Short Line), teaching

children with Learning Disabilities (LD). West I at I; HT at 54.

2. Grievant is certified by the West Virginia Department of Education to teach Elementary (multi-subjects) grades 1-6, Language Arts grades 5-8, and LD grades K-12. HT at 9. 3. On August 1, 1995, WCBE Superintendent Dr. Martha Dean sent Grievant a certified letter which, among other matters, instructed her to apply for vacancies at county schools other than Short Line, as a condition of her continued employment by WCBE. G Ex 1; West I at 6.

4. On August 23, 1995, Grievant informed Dr. Dean that she would comply with this directive. West I, Finding of Fact No. 4, at 16.

5. In June or July of 1995, Grievant applied for a Third Grade teaching position at Paden City Elementary School (PCES).

6. When Grievant appeared to interview for the PCES Third Grade vacancy, PCES Principal Margaret Sine asked Grievant if she wanted to interview for a vacant Title I Developmental Reading position at PCES. HT at 39-40. Grievant told Principal Sine she was not qualified for the position, because she did not have certification in Developmental Reading, but Principal Sine explained that her Elementary certification qualified her for the position. HT at 39-40.

7. Grievant was selected for the Developmental Reading position at PCES, and WCBE Assistant Superintendent Butch Barcus called Grievant on October 3, 1995, instructing her to report to PCES on October 5, 1995. HT at 94.

8. Grievant reported to work in her new position at PCES on October 5, 1995. HT at 11.

9. On September 25, 1995, Grievant applied for a vacant position at Short Line teaching children who are Mentally Impaired (MI), LD, and Behavior Disordered (BD). See G Ex 9. This was essentially the same position Grievant held prior to transferring to PCES, except that certification in MI and BD was added to the position. HT at 20, 64-65. 10. A committee which interviewed Grievant and the successful applicant, Kim Kehrer, determined, based on the applicants' responses to interview questions, that neither applicant had the appropriate certification, both applicants had relevant specialized training, Grievant had a higher degree level in the specialized area and greater seniority, Ms. Kehrer had greater total teaching experience and greater teaching experience in the relevant field, and Ms. Kehrer had satisfactory evaluations while Grievant did not. HT at 60-61. See A Ex 1.

11. Based upon a determination that Ms. Kehrer had received points in 4 criteria and Grievant had received points in 3 criteria, WCBE awarded the LD/MI/BD position at Short Line to Ms. Kehrer.

12. On October 16, 1995, WCBE Assistant Superintendent Barcus mailed written notification to Grievant that she was not selected for the position described in Finding of Fact No. 9. HT at 88-89; A Ex 5.

13. On September 25, 1995, Grievant applied for a First Grade teaching position at Short Line. See G Ex 11.

14. A committee interviewed Grievant and 12 other applicants. The committee recommended, and WCBE hired, Colleen Adkins, then employed by WCBE as a substitute teacher, for the position. HT at 23-24, 62.

15. The committee determined that while both Grievant and Ms. Adkins had appropriate certifications and relevant degrees, and Grievant had greater seniority, Grievant did not have teaching experience in the subject area, did not have satisfactory evaluations, and had less total teaching experience than Ms. Adkins. HT at 62, 69-71; A Ex 2. 16. On October 25, 1995, WCBE Assistant Superintendent Barcus mailed written notification to Grievant that she was not selected for the position described in Finding of Fact No. 13. HT at 89-90; A Ex 6.

17. It is not known when Grievant received the notification letters described in Findings of Fact Nos. 12 and 16.

18. Grievant filed this grievance at Level I on November 8, 1995. HT at 30-31. See G Ex 1.

CONCLUSIONS OF LAW

1. In a grievance which is not disciplinary in nature, the grievant has the burden of proving the allegations in her complaint by a preponderance of the evidence. W. Va. Educ. & State Employees Grievance Bd. Procedural Rule 4.19, 156 C.S.R. 1 (1996); Williams v. Lincoln County Bd. of Educ., Docket No. 93-22-386 (Mar. 7, 1994); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988).

2. A timeliness defense is an affirmative defense which the moving party must establish by a preponderance of the evidence. Lowry v. W. Va. Dept. of Educ., Docket No. 96-DOE-130 (Dec. 26, 1996); Ooten v. Mingo County Bd. of Educ., Docket No. 96-29-122 (July 31, 1996); Hale v. Mingo County Bd. of Educ., Docket No. 95-29-315 (Jan. 25, 1996).

3. WCBE established by a preponderance of the evidence that Grievant did not grieve her transfer

from Short Line to PCES within the 15-day time limit established by W. Va. Code § 18-29-4(a)(1). See Norton v. Bd. of Directors, Docket No. 96-BOD-369 (Dec. 9, 1996); Ball v. Kanawha County Bd. of Educ., Docket No. 94-20-384 (Mar. 13, 1995).

4. WCBE failed to establish by a preponderance of the evidence that Grievant did not timely file that portion of her grievance relating to nonselection to two teaching positionsat Short Line within the time limits established in W. Va. Code § 18-29-4(a)(1). See Ooten, supra; Hale, supra.

5. With regard to hiring for classroom teaching positions, boards of education must exercise their discretionary authority by considering the seven "qualifying factors" set forth in W. Va. Code § 18A-4-7a. That statute requires that each factor be weighted equally. Sisk v. Mercer County Bd. of Educ., Docket No. 95-27-113 (Sept. 25, 1995).

6. Grievant established by a preponderance of the evidence that WCBE misapplied W. Va. Code § 18A-4-7a in assessing the relative qualifications of Grievant and the successful applicant for an LD/MI/BD teaching position at Short Line in that the criterion in the statute, "existence of teaching experience in the required certification area," does not permit a relative assessment of the amount of the applicants' teaching experience in a particular field. Beckley v. Lincoln County Bd. of Educ., Docket No. 95-22-107 (Feb. 29, 1996); Richmond v. Raleigh County Bd. of Educ., Docket No. 92-41-363 (May 27, 1993).

7. Grievant failed to demonstrate that she was more qualified than the successful applicant for the First Grade teaching position at Short Line under the second set of criteria in W. Va. Code § 18A-4-7a. See Fisher-Collinsworth, Docket No. 95-50-457 (Mar. 15, 1996).

8. "A county board has broad discretion to develop a method for breaking ties between or among applicants. A board is not prohibited from using one of the criteria or other aspect of the candidate's credentials to break a tie between or among the candidates." Monk v. Mercer County Bd. of Educ., Docket No. 95-27-245 (Sept. 28, 1995). See generally, Pockl v. Ohio County Bd. of Educ., 185 W. Va. 256, 406 S.E.2d 687 (1991).

Accordingly, this grievance is **GRANTED**, **IN PART**. This grievance is hereby **REMANDED** to Respondent Wetzel County Board of Education to reassess the relative credentials of Grievant and Ms. Kehrer for the LD/MI/BD teaching position at Short Line Elementary School in compliance with W. Va. Code § 18A-4-7a and the rulings in this decision. All other relief is **DENIED**.

Any party may appeal this decision to the Circuit Court of Wetzel County or 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: February 18, 1997

Footnote: 1

Contrary to the assertions of Grievant's representative in his written submission, the issue of timeliness raised by Respondent was not previously resolved by Judge Koval.

Footnote: 2

The transcript from the Level II hearing in this matter will be cited as "HT at ." Grievant's exhibits will be cited as "G Ex " while WCBE's exhibits will be cited as "A [Administration] Ex ."

Footnote: 3

The position Grievant previously held at Short Line only required certification in LD.

Footnote: 4

Even if this grievance were timely, a preponderance of the evidence indicates that Grievant voluntarily interviewed for the Developmental Reading position at PCES, accepted the position upon being informed of her selection, thereafter claiming that she was "coerced" when she learned that she had not been selected to return to her previous position at Short Line.

Footnote: 5

Although the committee apparently applied the same misinterpretation of § 18A-4-7a in evaluating the candidates' teaching experience for the First Grade position, this error was not harmful as the record indicates Grievant did not have any teaching experience in that certification area.

Footnote: 6

In addition to reassessing the relative qualifications of the applicants for the LD/MI/BD position at issue, WCBE should examine whether the first set of criteria in W. Va. Code § 18A-4-7a should be applied to this selection. It is noted that neither applicant had all of the certifications required in the posting. Thus, although both applicants were "permanently employed instructional personnel," it does not appear that they also "meet the standards set forth in the job posting." As

neither party has argued this issue, it has not been addressed in this decision. See Fisher v. Marion County Bd. of Educ., Docket No. 93-24- 042 (Mar. 11, 1993). See also Suan v. Lewis County Bd. of Educ., Docket No. 91-21-074 (Aug. 28, 1991).