NANCY ALEXANDER,

Grievant,

v. **Docket No. 01-20-377**

KANAWHA COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Grievant Nancy C. Alexander, most recently the assistant principal of Riverside High School, filed her grievance on April 13, 2001 stating, “My Seniority was improperly calculated. I was denied seniority for time I performed administrative work with administrative certificate. My transfer is a result of improper seniority calculation.” As relief Grievant requests that she be “granted the administrative experience for time [she] performed administrative work with administrative certificate.” (See footnote 1)

At Level I, Grievant's immediate supervisor denied the grievance because he had no authority to grant the relief requested. The matter proceeded to a Level II hearing on May 15, 2001 before Grievance Evaluator Lisa West. Grievant was represented by WVEA Representative Perry Bryant, and Respondent was represented by James W. Withrow, Esq., General Counsel. The Level II Decision denied the grievance based on its merits andfor untimeliness. Grievant then appealed directly to Level IV, requesting that the matter be considered based on the record developed at the lower levels. Respondent submitted its fact/law brief on July 23, 2001 and Grievant submitted her fact/law brief on August 14, 2001, whereupon the matter became mature for a decision.

The issues raised at Level IV are whether consideration of the merits is precluded by an untimely filing and if not, whether Grievant is entitled to administrative seniority for the time she was classified as a Lead Teacher Facilitator (LTF) after she received her administrative certificate. Since the merits of the case need not be considered if the grievance was untimely, that issue will be considered first. Based on a preponderance of the evidence contained in the record, the following findings of fact are appropriate:

TIMELINESS - FINDINGS OF FACT

1. Respondent did not raise the issue of timeliness at Level I.

2. Respondent did not assert the issue of timeliness at or before the Level II hearing.

3. Respondent first argued the issue of timeliness in its Level II brief, eight days after the Level II hearing was concluded.

TIMELINESS - DISCUSSION

Although this is a non-disciplinary grievance in which Grievant bears the burden of proof, Respondent carries the burden of proof on the affirmative defense of timeliness. Respondent argues in its fact/law brief that Grievant knew or should have known that she was not accumulating administrative seniority for her LTF position as long ago as the 1995-1996 school year. Testimony adduced by Respondent on cross-examination at theLevel II hearing may support this argument. That evidence suggested that Grievant knew as early as 1996 that she was not receiving administrative seniority although she considered her work to be administrative. However, she did not have an administrative certificate at that time and is not asking for administrative seniority for that period. Because a grievance must be filed within fifteen days of the occurrence of the event on which a grievance is based, Respondent contends that the instant grievance was filed several years too late.

Respondent is likewise late in making that assertion. A claim that a grievance is untimely must be raised at or before the level two hearing, and is barred if it is not raised until after the hearing is concluded. W.Va. Code § 18-29-3(a). While Respondent did ask a few questions that were relevant to Grievant's timeliness, it offered no argument to relate the testimony to. Further, the testimony that was given relates to a time period three years prior to the time for which relief is requested, and in the interim she received an administrative certificate. Respondent made no assertion that the testimony supported a finding that the grievance was untimely until it filed its Level II proposed findings of fact and conclusions of law eight days after the hearing. In fact, Respondent offered no opening statement, no closing, nor argument on any issue at the Level II hearing. Grievant was unable to respond to Respondent's assertion until she filed her Level IV brief, at which time she argued that the defense must be asserted at or before Level II.

Under its procedural rules and prior cases, this Grievance Board has long held that a party asserting that a grievance was not timely filed must prove this affirmative defense by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. and StateEmployees

Grievance Bd., 156 W.Va. C.S.R. 1 § 4.21; Heckler v. Randolph County Bd. of Educ., Docket No. 97-42-140 (Feb. 26, 1998). This affirmative defense explicitly requires two things: 1) an assertion of the defense; and 2) proof of the issue. Less well established is whether the defense is raised merely by the presentation of evidence that proves the defense, or whether it must be positively and expressly pled by the party asserting the defense. The statutory requirement is plain: "Any assertion by the employer that the filing of the grievance at level one was untimely must be asserted by the employer on behalf of the employer at or before the level two hearing." W. Va. Code § 18-29-3(a). This requirement unambiguously requires an assertion, a positive identification of the untimeliness as an issue, before the end of the Level II hearing. Respondent made no such assertion.

The following points of law support the conclusion that the timeliness defense was untimely raised, and that this grievance may be considered on its merits.

TIMELINESS - CONCLUSIONS OF LAW

1. A party asserting that a grievance was not timely filed must prove this affirmative defense by a preponderance of the evidence. Procedural Rules of the W.Va. Educ. and State Employees Grievance Bd., 156 W.Va. C.S.R. 1 § 4.21; Heckler v. Randolph County Bd. of Educ., Docket No. 97-42-140 (Feb. 26, 1998); Norton v. Bd. of Directors/W. Va. Northern Community College, Docket No. 96-BOD-369 (Dec. 9, 1996); Hale and Brown v. Mingo County Bd. of Educ., Docket No. 95-29-315 (Jan. 25, 1996); McVay v. Wood County Bd. of Educ., Docket No. 95-54-041 (May 18, 1995). Thisaffirmative defense explicitly requires two things: 1) an assertion of the defense; and 2) proof of the issue.

2. Merely asking questions which are probative of issues relevant to an affirmative defense is not an assertion of that defense. An affirmative defense is one that must be expressly pled by the party asserting it. An assertion requires some positive identification or articulation of a particular argument and a relation of that argument to the evidence that supports it. Respondent failed at or before the Level II hearing to articulate its timeliness defense or to relate the evidence it adduced to a defense, hence it did not assert the timeliness defense.

3. Any assertion by the employer that the grievance was untimely must be made by the employer on behalf of the employer at or before the Level II hearing. W. Va. Code § 18-29-3(a). The record fails to contain any evidence that Respondent asserted a timeliness defense at or before the Level II hearing and use of such defense is precluded by statute. 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).

4. Because Respondent failed to timely assert its timeliness defense, this grievance may be considered on its merits regardless of whether it was filed within the time required.

Having disposed of the timeliness issue, it is now incumbent upon the undersigned to consider the primary issue raised by Grievant: whether she is entitled to administrative seniority for the period she spent working as a LTF after she acquired her administrativecertificate. Careful consideration of the entirety of the previously developed record supports the following findings of relevant facts:

SENIORITY - FINDINGS OF FACT

1. On or about July 7, 1995 Respondent posted three newly-created professional job openings for the 1995-96 school year. These positions were described in the posting as follows:

> **ADMINISTRATION AND INSTRUCTION -** Lead Teacher Facilitator for Alternative Evening Program - (THREE POSITIONS) **(Required - Valid WV teaching certificate with Endorsements in at least two major subjects or Special Education areas)**
>
> Preferred: Experience with at-risk students; Self directed work habits; Excellent classroom management skills; Good organizational Skills; Experience with computer based instruction; and ability to motivate and develop rapport with students and families. These positions will be 200 day positions working during evening hours. Salary will be in accordance with the established Kanawha County pay schedule. **JOB DESCRIPTIONS FOR THESE POSITIONS ARE AVAILABLE IN THE PERSONNEL OFFICE.**

[Resp. Exh. No. 4 - Emphasis in original]

2. One of these openings was for Dupont Academy, which was later renamed Riverside Academy, an alternative evening school for 50 to 90 students located at Dupont (Riverside) High School. (See footnote 2)

3. On September 5, 1995 Grievant was hired by Respondent as LTF of Riverside Academy under the supervision of Linda K. Winter, Kanawha County Schools Director of Student Affairs, Alternative Programs and Drug Education. Ms. Winter washeadquartered at the Board's central office, and only rarely made an appearance at the Academy.

4. The LTF job description requires a valid West Virginia Teaching Certificate, and lists as the job goal, “The teacher, within the area of his/her professional expertise, will instruct students in ways that are consistent with the program(s) of studies adopted by the Kanawha County Board of Education.” [Resp. Ex. No. 1] In contrast, the job descriptions for both Principal and Vice Principal

require both a teaching certificate and an administrative certificate, and list as their job goals, “To serve in a twofold capacity as instructional leader of the school and to serve as a manager of facilities and administrative operations; in accordance with West Virginia School Law § 18A-2-9 to serve as the delegated administrator responsible for the planning and management, operation, and evaluation of the programs and services within the school.” [Resp. Exh. Nos. 2, 3]

5. While the Principal and Vice Principal job descriptions list as their first performance responsibility the development of an instructional program that provides for various student levels and interests, the LTF's first performance responsibility is to implement the program of study.

6. The remaining performance responsibilities of a principal are:

1 . Encourages the use of multiple procedures for the evaluation of student achievement.

2 . Implements a procedure for instructional placement of new enrollees.

3 . Provides instructional material and equipment.

4 . Supervises the implementation of the Programs of Study.

5 . Attends to the professional care and use of student records.

6 . Coordinates the curriculum with feeder schools.

7 . Works with staff in developing the instructional program.

8 . Designs and implements an effective scheduling program. 9 . Provides for the inclusion of special curricular programs.

10 .

Establishes and implements a school improvement process.

11 .

Informs the community of existing instructional programs and activities.

12 .

Works with faculty to plan and implement staff development programs.

13 .

Evaluates instructional programs periodically and utilizes results in planning.

14 .

Assesses the effectiveness of school policies and procedures.

15 .

Conducts a continuous review of enrichment and extracurricular programs.

16 .

Implements a system to monitor student progress.

17 .

Upgrades professional skills annually.

7. The LTF's remaining performance responsibilities are:

18 .

Establishes a climate conducive to learning.

19 .

Utilizes effective teaching techniques.

20 .

Monitors and evaluates student progress toward learning outcomes.

21 .

Promotes and maintains positive pupil-parent-teacher relationships.

22 .

Maintains professional relationships and work habits.

23 .

Maintains and upgrades his/her professional skills.

24 .

Accepts additional responsibilities as assigned by the principal/immediate supervisor.

25 .

The following teacher responsibilities set forth in W.Va. State Board Policy 5310:

25.1 .
implementing a program of study,

25.2 .
fostering a classroom climate conducive to learning,

25.3 .
utilizing instructional management systems models which increase student learning,

25.4 .
monitoring student progress towards mastery of instructional objectives and goals,

25.5 .
communicating within the educational community, and

25.6 .
meeting professional responsibilities.

8. The LTF Job Description lists no administrative operations and facilities management responsibilities.

9. Grievant was hired for the 1995-96 school year and paid under a Teacher's Contract of Employment to perform the duties of the LTF. This contract requires a professional teacher's certificate. For a brief period of time, Grievant taught Social Studies at the Academy in addition to her non-classroom duties as LTF. 10. Thomas Bradley testified that Grievant “hired” him in October of 1996 as a contract teacher to replace Grievant in the Social Studies classroom. At the time he was working as a substitute teacher, and Grievant called him and told him there was a position, he went to

the school that evening and was interviewed by Grievant, and she “hired [him] on the spot.” He began working the next day. He believes he signed a supplemental service agreement that evening and later on went through the process of making an application and being recommended to the Board by the superintendent. He was originally assigned by Grievant to replace her as Social Studies teacher “and then she took over purely administrative duties after that.” [Lvl II Tr., p. 10]

11. Mr. Bradley also works as a long-term substitute at Riverside High School where Grievant is now a Vice Principal. His working relationship with Grievant at the Academy was the same as his working relationship with her at Riverside High School is now.

12. Witness Carol Thom is the Principal of Stonewall Jackson Middle School. She was Vice Principal of Dupont High School at the time when Grievant was LTF of the Academy there. She observed Grievant scheduling classes, evaluating teachers, deciding whom to hire and recommending teachers for the Academy, managing the facilities, obtaining resources for teachers to use, and counseling students. She worked with Grievant in transitioning students between the Academy and the regular school. She observed Grievant handling discipline in the same way her vice principals do at her school now. 13. Witness John Stricker is the counselor at Riverside High School during the day and works at the Academy at night. He observed Grievant acting as the administrator of the Academy and doing everything an administrator would do. He observed Grievant doing the scheduling, raising money for the students and organizing awards functions and picnics for them, handling the discipline, developing school-wide policies, selecting staff for hiring, and observing and informally (See footnote 3) evaluating teachers.

14. Witness Michael Wilkinson is currently the LTF at Riverside Academy (See footnote 4) . He was a teacher at the Academy under Grievant's leadership for five years. He described her as the administrator of the night school, who scheduled students and classes, developed policies, suspended students and recommended students for expulsion, evaluated teachers, and made appointments to personnel. He stated that at least in the 1999/2000 school year, she did formal teacher evaluations along with Ed Durham, who evaluated teachers at all the academies.

15. Of the 49 administrative operations and facilities management responsibilities listed on the Principal's Job Description [Resp. Exh. No. 2], testimony and documentary evidence show that after Grievant ceased her classroom teaching duties, she regularly performed at least the following:

26 .

Develops and implements a school philosophy.

27 .

Interprets and implements board policy.

28 .

Prepares and implements short- and long-range plans.

29 .

Provides efficient organization for daily school operations. 30 .
Works with staff, students, and parents to design and maintain an effective discipline policy.

31 .

Administers effective attendance procedures.

32 .

Organizes and supervises the management of extracurricular activities.

33 .

Replies to inquiries from the community courteously and promptly.

34 .

Communicates information, policies and procedures to staff members.

35 .

Communicates information, policies and procedures to students.

36 .

Provides parents with regular student progress reports.

37 .

Maintains communications with the various support divisions within the school system.

38 .

Assures the confidentiality of privileged information.

39 .

Determines staff assignments.

40 .

Maintains schedules for auxiliary personnel.

41 .

Cooperates with the Personnel Division in selecting staff members.

42 .

Recommends school personnel for employment.

43 .

Encourages efficient and economic use of school plant facilities.

44 .

Follows proper procedures in expenditure of general fund.

45 .

Keeps accurate financial records and reports.

46 .

Follows the established evaluation procedure for evaluating all school staff.

47 .

Reflects ability to work with people.

48 .

Involves the staff in the decision-making process.

49 .

Creates an atmosphere conducive to good staff morale.

50 .

Shows the capacity to motivate other people.

51 .

Demonstrates the ability to solve problems.

52 .

Provides instructional leadership and support within the school building, including coordination of the delivery of learning outcomes.

53 .

Performs other duties as may be assigned.

16. Grievant's supervisor stated in her August 1997 to June 1998 written evaluation of Grievant, “Nancy assists classroom teachers in developing appropriate instruction.” She further stated, “Nancy's job responsibilities include supervising other staff in these [instructional management system] areas.” “She has many times assisted the Director of Alternative programs in administrative tasks.” [Gr. Exh. No. 3]

17. Grievant's August 1997 to January 1998 evaluation states in part, “Nancy supervises staff in the delivery of the Program of Studies.” “Ms. Alexander serves as theInstructional Leader for the entire Dupont Academy.” “Data Keeping is a large task which Ms. Alexander does well.” [Gr. Ex. No. 4]

18. Grievant's supervisor's remarks on her August 1996 to June 1997 teacher Evaluation include, “Nancy must also supervise other staff in the delivery of the Programs of Study.” “Nancy serves as a 'case manager' for every student enrolled in the program. She sets high goals for herself, the students, and the staff.” [Gr. ex. No. 5]

19. Remarks on Grievant's August 1995 to June 1996 Teacher Evaluation include, “Nancy has the additional responsibility of seeing that contracted staff also follow the Programs of Study.” “Nancy has the responsibility of providing 'case management' for every student enrolled in the program, ensuring appropriate scheduling and instructional activities.” “Nancy is prompt and completing grades and other student records.” [Gr. Ex. No. 6]

20. On May 7, 1999 Grievant received her provisional Professional Administrative Certificate issued by the West Virginia Department of Education with endorsements for Principal (5-12) and Supervisor of Instructions (K-12).

21. On July 21, 2000 Grievant's title was reclassified to Acting Principal of Riverside Academy with some additional duties that were to be assigned to her. (See footnote 5) Prior to this time there was no principal or other administrative position assigned to the Academy. Shortly thereafter, Grievant applied for and was hired into her current position as ActingAssistant Principal of Riverside High School and became permanent in that position on October 19, 2000. (See footnote 6)

22. The change in Grievant's status was the result of an audit by the Board that concluded that lead teachers were performing administrative functions. Grievant testified that this audit of the alternative education program countywide was performed in May, 1999 and was ongoing when she received her administrative certificate. [Tr. p. 140]

23. Grievant was notified that, at the end of the 2000-2001 school year, she would be transferred from her Acting Assistant Principal position to a Classroom Teacher position, to accommodate a person with more administrative seniority who would be losing a job at another school as a result of overall reductions in administrative positions within the county.

24. The predominate duties performed by Grievant in her work were administrative in nature from the time she was hired as LTF of the Academy until she resigned her position as Principal there to accept her current job as Assistant Principal of Riverside High School.

SENIORITY - DISCUSSION

A classroom teacher's predominate educational responsibilities are outlined in the W.Va. Code's definition: “The professional educator who spends the majority of her time in direct instructional or counseling relationship with pupils.” In contrast, a Principal or Assistant Principal, whose job requires an administrative certificate, “has the responsibilityfor the general supervision, management and control of a school or schools and of all school activities involving pupils, teachers and other school personnel, within the guidelines established by the board.” W.Va. Code § 18A-1-1(c).

The LTF position was newly created for the development of the Academy programs, and Grievant and two others (who worked at other academies) were the first to be assigned that job. The responsibilities listed in the LTF job description, consequently, do not closely align with the actual duties of the person holding that job. It is clear that the board's original intent was for the LTF to primarily have normal classroom teaching duties with some additional overall organizational duties. In practice, the organizational duties took over. For Grievant, the evidence shows that the administrative responsibilities inherent in the LTF job displaced the classroom teaching duties entirely. The work she

actually performed only barely matches the classroom teaching duties that are the predominate duties listed in the LTF job description, but they closely match the vast majority of the instructional and administrative responsibilities listed in the job description for Principal. Those that do not closely align may for the most part be attributed to differences in a conventional school and the "alternative" Academy. For the time period for which Grievant requests relief, she performed no classroom teaching duties.

An overwhelming preponderance of the evidence confirms Grievant's contention that she was the *de facto* Principal of the Academy. Every witness testified that Grievant "was responsible for the planning, management, operation and evaluation of the total educational program of the Academy." Her supervisor described her as the "[i]nstructional Leader for the entire Dupont Academy." Respondent reclassified Grievant to ActingPrincipal of the Academy without significantly changing her responsibilities. Although her LTF title was not administrative in nature, she was the administrator of the school.

It is apparent from the statutes that professional seniority accrual is based on the performance of duties, not on the job title of the employee. Consequently, if a job entitles a professional educator to any seniority at all, the entitlement begins when the educator starts working in that job. A professional employee of a county board of education in a nonteaching area of professional employment accrues seniority on the basis of the length of time the employee has been employed by the county board in that area. W.Va. Code §18A-4-7a. The Board is not required by law to attach any particular titles to its professional positions but when the duties of such positions coincide with those of positions recognized and defined by statute it must adhere to any certification-related requirements imposed by the statute. Here, the Board attached the LTF title to a professional position that coincides with a position that the statutes recognize as requiring an administrative certificate, that of Principal. An employee holding a position which is in essence a Principal post must hold a valid administrative certificate. *See*, Robinette v. Logan County Bd. of Educ., Docket No. 91-23-039 (May 30, 1991); Talbert v. Mingo County Bd. of Educ., Docket No. 93-23-166 (Jan. 20, 1994). The Grievance Board has held that a grievant who was in essence serving as Assistant Principal, and possessed a valid administrative certificate during that time, should be credited with administrative seniority for those years in accordance with W.Va. Code §18A-4-7a. *See,* Talbert, *supra*.

Application of these prior holdings to the above facts leads to the conclusion that Grievant would

be entitled to administrative seniority from the time she began working inthe administrative job only if the LTF position were in essence the same as a job that requires an administrative certificate, such as principal or vice principal. According to the job description and her contracts of employment, it did not. However, the job descriptions that most closely match her actual predominate responsibilities, those of Principal and Vice Principal, do require an administrative certificate.

Sufficient evidence has established that Respondent should have considered Grievant's position as administrative in nature and should have required an administrative certificate therefor. The duty requirements of this position only tangentially meet the definition of classroom teacher but predominately match the work one would expect of a Principal or Assistant Principal. The job responsibilities described in the LTF job description do not match the actual work performed by Grievant, hence are not an accurate measure what she was assigned to do. Because Grievant was working in a position that was called Lead Teacher Facilitator but was in essence Principal, she must be credited with administrative seniority for the time she so worked with a valid administrative certificate.

Accordingly, the undersigned finds the following conclusions of law to be appropriate:

SENIORITY - CONCLUSIONS OF LAW

1. This is a non-disciplinary grievance in which the Grievant bears the burden of proof. Her allegations must be proven by a preponderance of the evidence. See, W. Va. Code § 18-29-6; 56 W.Va. C.S.R. 1 § 4.21. "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested factis more likely true than not." Leichliter v. W. Va. Dep't. of Health and Human Resources, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the party bearing the burden has not met its burden. Id. Although Respondent had improperly designated Grievant's LTF position as a classroom teacher position, a preponderance of the evidence supports her argument that the job was more like a principal or assistant principal and hence was administrative in nature.

2. The seniority of professional educators is determined by statute. Classroom teachers as defined in W.Va. Code § 18A-1-1 shall have their seniority determined on the basis of the length of time the employee has been employed as a regular full-time certified and/or licensed professional educator by the county board of education and shall be granted in all areas that the employee is certified and/or licensed. All other professional employees shall gain seniority in their non-teaching

area of professional employment based on the length of time the employee has been employed by the county board of education in that area. W.Va. Code § 18A-4-7a. Grievant is therefore entitled to seniority for the work she performed for the time she was employed in such work by Respondent.

3. A professional educator earns administrative seniority if the duties she performs are those typically assigned to an assistant principal, and if the educator performing those duties possesses an administrative certificate. See, Talbert v. Mingo County Bd. of Educ., Docket No. 93-23-166 (Jan. 20, 1994); Ward/Cantees v. Mingo County Bd. of Educ., Docket No. 94-29-1134 (Apr. 26, 1995); Hunter v. Mingo County Bd. of Educ., Docket No. 94-29-1063 (April 28, 1995). A grievant who was, in essence, serving as Principal or Assistant Principal, and possessed a valid administrative certificateduring that time, should be credited with administrative seniority for those years in accordance with W.Va. Code §18A-4-7a. *See,* Talbert, *supra*.

4. "Classroom teacher" means the professional educator who spends the majority of her time in direct instructional or counseling relationship with pupils. "Principal" means the professional educator who as agent of the county board of education has the responsibility for the general supervision, management and control of a school or schools and of all school activities involving pupils, teachers and other school personnel, within the guidelines established by the board. W.Va. Code § 18A-1-1(c). Principals must also hold valid administrative certificates for their assignments. W.Va. Code § 18A-2-9.

5. While a "classroom teacher" is necessarily a "teacher," the reverse is not true. The fact that the Grievant has been classified and treated as a "teacher" does not weigh on behalf of her being specifically classified as "classroom teachers." While the Supreme Court used this logic to deny an employee benefits that would normally inure to a classroom teacher, it may also be used to prevent a county board from withholding from an employee the benefits of another classification just because it calls her a "teacher." See, Harmon v. Fayette County Bd. of Educ., 205 W. Va. 125, 516 S.E.2d 748, (1999).

6. Grievant is entitled to be credited with administrative seniority from May 7, 1999.

In accord with the foregoing findings of fact and conclusions of law, the grievance is hereby **GRANTED.** Respondent is directed to recalculate Grievant's administrative Seniority by giving her credit therefor for the period from May 7, 1999 to July 21, 2000. Any party may appeal this Decision to the Circuit Court of Kanawha County. Any 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. However, the appealing party is required by W. Va. Code § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Grievance Board with the civil action number so that the record can be prepared and transmitted to the circuit court.

_____

M. Paul Marteney

Administrative Law Judge

Dated: September 12, 2001

Footnote: 1

In Grievant's proposed findings of fact and conclusions of law, filed on August 14, 2001, her representative additionally requested that Respondent "reevaluate the placement of Ms. Alexander on the transfer list and remove her from the transfer list if the additional seniority granted . . . would have prevented her from being bumped by another administrators [sic]." Because this amendment to the relief sought was added after the hearing, it will not be considered.

Footnote: 2

When Grievant began this position, the alternative evening program was named Dupont Academy and changed its name to Riverside Academy when Dupont High School, at which it was based, became Riverside High School. To avoid confusion, "Academy" is used throughout this Decision to refer to the school.

Footnote: 3 *Teachers who worked on a contract basis were not formally evaluated.*

Footnote: 4 *He is currently working on obtaining an administrative certificate.*

Footnote: 5

Nothing in the evidence enumerates the "additional" duties, but Grievant did testify that she began working through the summer like the principal of any other school does. Respondent's Exhibit No. 11, which implements the reclassification, simply states that "her number of days of employment and salary will be changed." Grievant testified that she did not sign a new contract at that time [Tr. p. 125].

Footnote: 6 *The evidence does not show whether she began accumulating administrative seniority at this time, but it is assumed that she did.*