CONNIE HADDOX,

Grievant,

v. **Docket No. 01-20-022**

KANAWHA COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Connie Haddox, filed this grievance against her employer, the Kanawha County Board of Education ("KBOE"), on or about October 30, 2000. The statement of grievance reads:

> Grievant, a regularly employed aide, applied to fill a position for a Buyer. She was advised she failed the test. The job was reposted and Grievant reapplied. Grievant retook the test, without authorization, but was told that her second test would not count toward qualifying her to fill the position. Grievant contends that Respondent violated West Virginia Code § 18A-4-8e.

As relief Grievant sought "to have her second test considered and if she passed the test, to be placed in the job with back pay, interest, and all benefits retroactive to the date of the filling of the job." (See footnote 1)

The following Findings of Fact are properly made based upon the record developed at Levels II and Level IV.

FINDINGS OF FACT

1. Grievant is employed by KBOE as a Paraprofessional/Aide. During her employment with KBOE, she has also been a Cook.

2. On August 30, 2000, KBOE posted a Buyer position.

3. Grievant applied for the posted position, attended the in-service training, took the competency test for the Buyer position, and failed, as did all other applicants.

4. KBOE posted the position again on October 12, 2000.

5. Grievant applied again for the position. Grievant was told by Karen Williams' secretary, Gloria, that she was not eligible to apply for the position again, and she could not take the competency test. Ms. Williams is KBOE's Coordinator of Human Resources.

6. Grievant took the in-service training for the Buyer position again, appeared at the appointed time to take the Buyer competency test, and was allowed to take it. Grievant failed the competency test again.

DISCUSSION

Grievant bears the burden of proving the elements of her grievance by a preponderance of the evidence. Tibbs v. Mercer County Bd. of Educ., Docket No. 96-27- 074 (Oct. 31, 1996). The issue posed is whether Grievant could take the competency test a second time, and have her application and test score considered, when the same position was posted anew.

W. Va. Code § 18A-4-8e provides for competency testing of school service personnel as follows:

> The state board of education shall develop and cause to be made available competency tests for all of the classification titles defined in section eight [§ 8A-4-8] and listed in section eight-a [§ 18A-4-8a] of this article for service personnel. Each classification title defined and listed shall be considered a separate classification category of employment and shall have a separate competency test, except for those class titles having Romannumeral designations, which shall be considered a single classification of employment and shall have a single competency test. The cafeteria manager class title shall be included in the same classification category as cooks and shall have the same competency test. The executive secretary class title shall be included in the same classification category as secretaries and shall have the same competency test. The classification titles of chief mechanic, mechanic and assistant mechanic shall be included in one classification title and shall have the same competency test.
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> The purpose of these tests shall be to provide county boards of education a uniform means of determining whether school service personnel employees who do not hold a classification title in a particular category of employment can meet the definition of the classification title in another category of employment as defined in section eight of this article. Competency tests shall not be used to evaluate employees who hold the classification title in the category of their employment.
>
> The competency test shall consist of an objective written and/or performance test: Provided, That applicants shall have the opportunity of taking the written test orally if requested. Oral tests shall be recorded mechanically and kept on file. Persons administering the oral test shall not know the applicant personally. The performance test for all classifications and categories other than Bus Operator shall be administered by a vocational school which serves the county board of education. A standard passing score shall be established by the state department of education for each test

and shall be used by county boards of education. The subject matter of each competency test shall be commensurate with the requirements of the definitions of the classification titles as provided in section eight of this article. The subject matter of each competency test shall be designed in such a manner that achieving a passing grade will not require knowledge and skill in excess of the requirements of the definitions of the classification titles. Achieving a passing score shall conclusively demonstrate the qualification of an applicant for a classification title. Once an employee passes the competency test of a classification title, said applicant shall be fully qualified to fill vacancies in that classification category of employment as provided in section eight-b [§ 18A-4-8b] of this article and shall not be required to take the competency test again.

An applicant who fails to achieve a passing score shall be given other opportunities to pass the competency test when making application for another vacancy within the classification category.

Competency tests shall be administered to applicants in a uniform manner under uniform testing conditions. County boards of education shall be responsible for scheduling competency tests and shall not utilize a competency test other than the test authorized by this section.

When scheduling of the competency test conflicts with the work schedule of a school employee who has applied for a vacancy, said employee must be excused from work to take said competency test without loss of pay.

A minimum of one day of appropriate inservice training shall be provided employees to assist them in preparing to take the competency tests.

Competency tests shall be utilized to determine the qualification of new applicants seeking initial employment in a particular classification title as either a regular or substitute employee.

Notwithstanding any provision in this code to the contrary, once an employee holds or has held a classification title in a category of employment, that employee shall be deemed as qualified for said classification title even though that employee no longer holds that classification.

The requirements of this section shall not be construed to alter the definitions of class titles as provided in section eight of this article nor the procedure and requirements of section eight-b of this article.

> The testing procedures of this section shall be implemented effective the first day of July, one thousand nine hundred ninety-one. (Emphasis added.)

Grievant argued the new posting was equivalent to the posting of another job, and this statutory provision requires that she be allowed to take the competency test again. KBOE argued Grievant was not permitted to take the competency test a second time with regard to the same vacancy. This argument was based upon the statutory language highlighted above, which speaks to the employee being allowed to retake the test when applying for **another** vacancy.

While the parties pose an interesting theoretical question, the fact is, Grievant did take the competency test again, her test was graded, and she again failed the test. Grievant testified at the Level II hearing that she did not know whether she had passed the test the second time; however, at the Level IV hearing she stated quite clearly that she had failed the test the second time, but added that was not what this grievance was about. While it is understandable that Grievant believes it is important that this issue be decided, the issue posited is now moot.

The following Conclusions of Law support the Decision reached.

CONCLUSIONS OF LAW

1. The burden of proof is upon Grievant to prove the elements of her grievance by a preponderance of the evidence. Tibbs v. Mercer County Bd. of Educ., Docket No. 96- 27-074 (Oct. 31, 1996).

2. "This Grievance Board does not issue advisory opinions. Dooley v. Dep't of Transp., Docket No. 94-DOH-255 (Nov. 30, 1994); Pascoli & Kriner v. Ohio County Bd. of Educ., Docket No. 91-35-229/239 (Nov. 27, 1991)." Priest v. Kanawha County Bd. of Educ., Docket No. 00-20-144 (Aug. 15, 2000).

Accordingly, this grievance is **DENIED**.

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.

BRENDA L. GOULD

Administrative Law Judge

Dated: July 20, 2001

Footnote: 1

Grievant's supervisor responded at Level I on October 31, 2000, that he was without authority to resolve the grievance. Grievant appealed to Level II, where a hearing was held on December 12, 2000. A Level II decision denying the grievance was issued on January 4, 2001. Grievant waived Level III, appealing to Level IV on January 18, 2001. Grievant was represented by John Everett Roush, Esquire, and Respondent was represented by James W. Withrow, Esquire. This grievance became mature for decision upon receipt of the last of the parties' written arguments on June 25, 2001.