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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
CASE NO. 19-1028

BOARD OF EDUCATION OF WEBSTER COUNTY,

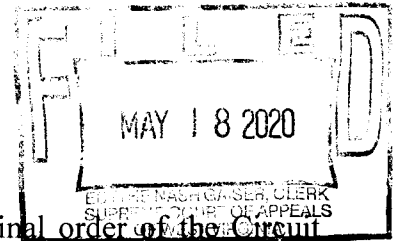
Respondent Below, Petitioner,

v.

DONNIS DAVIS, KAREN HOLCOMB,
AUDREY FLANAGAN, and SAMANTHA
McCOURT,

Petitioners Below, Respondents.

Appeal from a final order of the Circuit
Court of Kanawha County, West Virginia,
Civil Action No. 19-AA-42



PETITIONER'S REPLY BRIEF

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ARGUMENT

West Virginia Code § 18A-4-8g(d) provides that, “[f]or all purposes including the filling of vacancies and reduction in force, seniority shall be accumulated within particular classification categories of employment as those classification categories are referred to in section eight-e of this article [W. Va. Code § 18A-4-8e].” Thus, West Virginia Code § 18A-4-8g(d) requires a county board to look to West Virginia Code § 18A-4-8e to determine how seniority is accumulated within particular classification categories, such as for those in the Aide category (Aide I, II, III, and IV) and the ECCAT category (ECCAT I, II, and III).

As this Court held in *Mayle*, West Virginia Code § 18A-4-8e does not place the Aide and ECCAT classifications in the same category. *Mayle v. Barbour Cty. Bd. of Educ.*, No. 17-0204, 2018 WL 317375, at *3. Rather, it provides, in relevant part:

Each classification title defined and listed is considered a separate classification category of employment for service personnel and has a separate competency test, except for those class titles having Roman numeral designations, which are considered a single classification of employment and have a single competency test.

W. Va. Code § 18A-4-8e(a) (emphasis added).

The class titles Aide I, II, III, and IV are considered a single classification category because they have Roman numeral designations. Likewise, the class titles ECCAT I, II, and III are considered a single classification category because they, too, have Roman numeral designations.

The only exception to the Roman numeral rule provided above is the reference in West Virginia Code § 18A-4-8e(a)(1)-(3) to the following class titles:

- (1) The cafeteria manager class title is included in the same classification category as cooks and has the same competency test.
- (2) The executive secretary class title is included in the same classification category as secretaries and has the same competency test.

(3) The classification titles of chief mechanic, mechanic and assistant mechanic are included in one classification title and have the same competency test.

W. Va. Code § 18A-4-8e(a)(1)-(3).

Thus, going back to West Virginia Code § 18A-4-8g, that statute tells county boards that “[f]or all purposes including the filling of vacancies and reduction in force, seniority shall be accumulated within particular classification categories of employment as those classification categories are referred to in [W. Va. Code § 18A-4-8e].” W. Va. Code § 18A-4-8g(d). Because the Aide and ECCAT classification titles are separate classification categories of employment, West Virginia Code § 18A-4-8g(d) requires that seniority be accumulated “within [those] particular classification categories of employment,” i.e., seniority within the Aide classification category (Aide I, II, III, and IV) and seniority within the ECCAT classification category (ECCAT I, II, and III).

A. West Virginia Code § 18A-4-8(u) Does Not Place Aides and ECCATS in the Same Classification Category for Purposes of Seniority Determinations.

The Respondents argue in their Brief that contrary to the unambiguous language of West Virginia Code §§ 18A-4-8g and 18A-4-8e, those statutes do not indeed govern the determination of seniority for service personnel. They cite, as authority, West Virginia Code § 18A-4-8(u), which they say “states that aides that become ECCATS hold a multi-classification status in *accordance with section eight-b of this article*.” However, West Virginia Code § 18A-4-8(u) does little to advance the Respondents’ argument because neither West Virginia Code § 18A-4-8(u) nor West Virginia Code § 18A-4-8b place aides and ECCATS in the same category for purposes of seniority determinations.

West Virginia Code § 18A-4-8(u) provides as follows:

A person who has held or holds an aide title and becomes employed as an Early Childhood Classroom Assistant Teacher shall hold a

multiclassification status that includes aide and/or paraprofessional titles in accordance with section eight-b of this article.

Section 18A-4-8(u) clarifies that if a person has worked or is working as an aide, and then becomes employed as an ECCAT, that person “hold[s]” a multiclassification status of aide/ECCAT/or paraprofessional in accordance with West Virginia Code § 18A-4-8b. The term “hold” and the subsequent reference to West Virginia Code § 18A-4-8b clarify the significance and legal import of West Virginia Code § 18A-4-8(u), which, as set forth in more detail below, is that if a person has “held” or “holds” an aide title and then becomes employed as an ECCAT, that person is, under West Virginia Code § 18A-4-8b, “qualified” for the multiclassified position of aide/ECCAT.

West Virginia Code § 18A-4-8b provides that county boards must give priority to qualified applicants when filling school personnel positions:

(a) A county board shall make decisions affecting promotions and the filling of any service personnel positions of employment or jobs occurring throughout the school year that are to be performed by service personnel as provided in [§ 18A-4-8], on the basis of seniority, qualifications and evaluation of past service.

(b) Qualifications means the applicant holds a classification title in his or her category of employment as provided in this section and is given first opportunity for promotion and filling vacancies. Other employees then shall be considered and shall qualify by meeting the definition of the job title that relates to the promotion or vacancy, as defined in section eight of this article.

W. Va. Code § 18A-4-8b(a)-(b) (emphasis added). Thus, West Virginia Code § 18A-4-8b(b) provides that a person is qualified for a position if that person “holds” a classification title in his or her category of employment, such as the Aide category or the ECCAT category. Section 18A-4-8b(b) then sets forth the priority that must be given to applicants in seven different categories of employment with a school board, beginning with regularly employed school personnel within the classification category of the posted vacancy and ending with new service personnel:

Qualified applicants shall be considered in the following order:

- (1) Regularly employed service personnel who hold a classification title within the classification category of the vacancy;
- (2) Service personnel who have held a classification title within the classification category of the vacancy whose employment has been discontinued in accordance with this section;
- (3) Regularly employed service personnel who do not hold a classification title within the classification category of vacancy;
- (4) Service personnel who have not held a classification title within the classification category of the vacancy and whose employment has been discontinued in accordance with this section;
- (5) Substitute service personnel who hold a classification title within the classification category of the vacancy;
- (6) Substitute service personnel who do not hold a classification title within the classification category of the vacancy; and
- (7) New service personnel.

W. Va. Code § 18A-4-8b(b)(1)-(7). As is abundantly clear from the above language, in order to determine whom county boards must give priority to in filling vacancies, the county board must know if that person “holds” a classification title in the classification category of the vacancy.

West Virginia Code § 18A-4-8(u) helps county boards answer that question with regard to aides and ECCATs. It tells county boards that, for instance, if an employee was previously employed as an Aide, and then becomes employed as an ECCAT, then the employee “shall hold a multiclassification status that includes aide and/or paraprofessional titles.” It thus instructs county boards that, under West Virginia Code § 18A-4-8b(b), such an employee would receive first priority in filling a multiclassified aide/ECCAT vacancy, because that person would “hold a classification title within the classification category of the vacancy,” which, in our example, is an aide/ECCAT vacancy.

What West Virginia Code § 18A-4-8b does not do, however, is instruct county boards on how to make seniority determinations. Particularly, contrary to the argument of the

Respondents, there is no section in West Virginia Code § 18A-4-8b stating that, for purposes of reductions in force, seniority in the aide classification is the same as ECCAT seniority. As more fully addressed in the County Board’s initial brief, West Virginia Code § 18A-4-8b(d), the linchpin of Respondents’ argument, merely defines a “promotion,” and then, in the subsections of section 8b(d), it defines classification categories of employment for purposes of a promotion.

B. West Virginia Code § 18A-4-8e(i) Supports the County Board’s Argument that Aide and ECCAT Seniority Accrue Independently.

Moreover, although the Respondents’ brief does not cite to the specific subsection in question, the Respondents appear to argue that West Virginia Code § 18A-4-8e(i) supports their argument that, under West Virginia Code § 18A-4-8b(d), seniority in the aide classification is synonymous with ECCAT seniority. Contrary to the Respondents’ argument, West Virginia Code § 18A-4-8e(i) is perfectly consistent with this Court’s holding in *Mayle v. Barbour Cty. Bd. of Educ.*, No. 17-0204, 2018 WL 317375 (W. Va. Jan. 8, 2018) (memorandum opinion), that, under West Virginia Code 18A-4-8g, “ECCAT seniority accrues independently of aide seniority[.]”

West Virginia Code § 18A-4-8e(i) merely provides that “[t]he requirements of this section do not alter the definitions of class titles as provided in section eight of this article [W. Va. Code § 18A-4-8] or the procedure and requirements of section eight-b of this article [W. Va. Code § 18A-4-8b].” The County Board agrees. The definitions set forth in West Virginia Code § 18A-4-8 are not altered by West Virginia Code § 18A-4-8e. For example, an Aide is defined separately from an ECCAT. Likewise, the procedure and hiring hierarchy for employees (such as whether an employee “holds” a classification title), based upon their qualifications are not altered by West Virginia Code § 18A-4-8e. Because West Virginia Code § 18A-4-8b does not state that, under West Virginia Code § 18A-4-8b(d), seniority in the aide classification is synonymous with ECCAT seniority, there is no conflict between West Virginia Code § 18A-4-8b, § 18A-4-8g, or § 18A-4-8e.

C. West Virginia Code § 18A-4-8g is the Specific Statute Governing the Determination of Seniority for School Service Personnel and Takes Precedent Over West Virginia Code § 18A-4-8b, Which Does not State that Aides and ECCATs are in the Same Classification Category for Seniority Purposes.

The Respondents' next argue that West Virginia Code § "18A-4-8b is not a promotion statute, but an all purpose provision that provides for seniority rights for service personnel generally." Following therefrom, the Respondents appear to argue that because there is a statement (without listing the subsection) in West Virginia Code § 18A-4-8b that "all decisions by county boards concerning reductions in force of service personnel shall be made on the basis of seniority, as provided in this section," then West Virginia Code § 18A-4-8b is the more specific statute dealing with seniority determinations, as opposed to West Virginia Code § 18A-4-8g.

That argument obfuscates the difference between "seniority rights for school service personnel" (W. Va. Code § 18A-4-8b) and the "determination of seniority for service personnel." For instance, West Virginia Code § 18A-4-8b(e) provides that "a service person's seniority begins on the date that he or she enters into the assigned duties"; subsection 8b(i) explains that seniority is based upon the "length of time the employee has been employed by the county board within a particular job classification"; and subsection 8b(j) explains that following a reduction in force, the employee with the least amount of seniority within a classification is released. It thus tells county boards, in part, how to calculate seniority, such as finding the date that a service person first enters his or her assigned duties, and tells county boards how to count that seniority moving forward.

On the other hand, West Virginia Code § 18A-4-8g specifically orders county boards that "[f]or all purposes including the filling of vacancies and reduction in force, seniority shall be accumulated within particular classification categories of employment as those classification categories are referred to in section eight-e of this article." (emphasis added). *Barber*

v. Camden Clark Mem'l Hosp. Corp., 240 W. Va. 663, 670–71, 815 S.E.2d 474, 481–82 (2018) (holding that when it is not reasonably possible to give effect to both statutes, the more specific statute will prevail); *see also*, Syl. Pt. 1, *UMWA by Trumka v. Kingdon*, 174 W. Va. 330, 325 S.E.2d 120 (1984) (“The general rule of statutory construction requires that a specific statute be given precedence over a general statute relating to the same subject matter where the two cannot be reconciled.”); *Int’l Union of Operating Eng’rs v. L.A. Pipeline Constr. Co., Inc.*, 237 W. Va. 261, 267, 786 S.E.2d 620, 626 (2016) (“[W]here two statutes apply to the same subject matter, the more specific statute prevails over the general statute.”); *Newark Ins. Co. v. Brown*, 218 W. Va. 346, 351, 624 S.E.2d 783, 788 (2005) (“When faced with a choice between two statutes, one of which is couched in general terms and the other of which specifically speaks to the matter at hand, preference is generally accorded to the specific statute.”).

The Respondents would have this Court ignore this clear mandate of the Legislature, which specifically orders that seniority “shall” be accumulated within classification categories as those classification categories are referred to in West Virginia Code § 18A-4-8e. There is no clearer, more specific legislative mandate in the education code than West Virginia Code § 18A-4-8g as to how a county board must calculate seniority.

The Respondents then further convolute the issue and erroneously argue:

Thus, 18A-4-8e specifically discusses seniority in the context of a reduction in force, refers to the section itself in how to determine seniority and states that for the purpose of seniority, aides and ECCAT seniority is one and the same, so long as the aide is qualified to be an ECCAT. If anything, the fact that 18A-4-8e specifically discusses seniority in the context of a reduction in force and 18A-4-8g does not, that is further grounds for upholding the Circuit Court’s ruling.

Respondent’s Brief, 10. It appears that by “18A-4-8e,” the Respondents mean West Virginia Code § 18A-4-8b. However, as set forth in the above quote, the Respondents then argue that because

“18A-4-8e [which the undersigned assumes is meant to be West Virginia Code § 18A-4-8b] specifically discusses seniority in the context of a reduction in force and 18A-4-8g does not, that is further grounds for upholding the Circuit Court’s ruling.” That is simply incorrect. West Virginia Code § 18A-4-8g(d), as noted multiple times, specifically provides “[f]or all purposes including the filling of vacancies and reduction in force, seniority shall be accumulated within particular classification categories of employment as those classification categories are referred to in section eight-e of this article.”

Because West Virginia Code § 18A-4-8g specifically tells county boards that seniority shall be accumulated within particular classification categories as those classification categories are referred to in West Virginia Code § 18A-4-8e, that is where county boards must go to determine seniority for the particular classification categories. As noted herein, West Virginia Code § 18A-4-8e does not place aides and ECCATs in the same classification category. Rather, it provides:

Each classification title defined and listed is considered a separate classification category of employment for service personnel and has a separate competency test, except for those class titles having Roman numeral designations, which are considered a single classification of employment and have a single competency test.

- (1) The cafeteria manager class title is included in the same classification category as cooks and has the same competency test.
- (2) The executive secretary class title is included in the same classification category as secretaries and has the same competency test.
- (3) The classification titles of chief mechanic, mechanic and assistant mechanic are included in one classification title and have the same competency test.

W. Va. Code § 18A-4-8e(a). Aides and ECCATs are defined separately and are not listed among the exceptions set forth in subsections (1) through (3).

On the other hand, West Virginia Code § 18A-4-8b(d) places aides and ECCATs in the same classification category for purposes of promotions, by providing:

(d) A promotion means any change in employment that the service person considers to improve his or her working circumstance within the classification category of employment.

(1) A promotion includes a transfer to another classification category or place of employment if the position is not filled by an employee who holds a title within that classification category of employment.

(2) Each class title listed in section eight of this article is considered a separate classification category of employment for service personnel, except for those class titles having Roman numeral designations, which are considered a single classification of employment:

(A) The cafeteria manager class title is included in the same classification category as cooks;

(B) The executive secretary class title is included in the same classification category as secretaries;

(C) Paraprofessional, autism mentor, early classroom assistant teacher and braille or sign support specialist class titles are included in the same classification category as aides; and

(D) The mechanic assistant and chief mechanic class titles are included in the same classification category as mechanics.

W. Va. Code § 18A-4-8b(d)(1)-(2). Thus, while including aides and ECCATs in the same category for purposes of a promotion, in West Virginia Code § 18A-4-8e the Legislature did not include aides and ECCATs in the same category for purposes of determining seniority.

D. This Court Should Presume that the Legislature is Aware of Prior Enactments and Not Rewrite the Statutory Language on the Basis that, as Written, It Produces What Respondents Believe is an Undesirable Policy Result.

Recognizing the distinction between the above two statutes, the Respondents ask this Court to violate a cardinal rule of its statutory construction jurisprudence by arguing as follows:

Clearly, what has happened is that the Legislature simply did not add the language in sub-part 18A-4-8b(2)© [sic], stating that ECCATs and others are to have the same classification as Aides, to part 18A-4-8e(a) when it created the ECCAT position.

Regardless of the reason for the change in language, looking at the two statutes together and harmonizing both shows that the part © [sic] of 18A-4-8b should be read into Code Section 18A-4-8e. Indeed, there is no reason to believe that the Legislature intended to treat the calculation of Aide and ECCAT seniority differently depending on whether there was a promotion or some other event. Indeed, the opposite is the case. That would make no sense and simply confuse the issue of seniority. In fact, if Appellant's position is correct, then county boards of education will have to keep two separate seniority lists—one for promotions and one for everything else. Surely, the Legislature did not intend this. Logic suggests that the Legislature would want the calculation of seniority of ECCATS to be the same, regardless of whether the issue was for promotion or some other issue. Thus, part C of 18A-4-8b should be read into 18A-4-8e.

Respondent's Brief, 11-12 (emphasis added). The Respondents' argument is flawed for multiple reasons. First, the Respondents argue that the Legislature simply forgot to "add the language in sub-part 18A-4-8b(2)© [sic], stating that ECCATs and others are to have the same classification as Aides, to part 18A-4-8e(a) when it created the ECCAT position."

However, this Court has repeatedly held that "[t]he Legislature, when it enacts legislation, is presumed to know its prior enactments." Syl. Pt. 4, *Murrell B. v. Clarence R.*, 242 W. Va. 358, 836 S.E.2d 9 (2019); Syl. Pt. 12, *Vest v. Cobb*, 138 W. Va. 660, 76 S.E.2d 885 (1953)." Syl. Pt. 5, *Pullano v. City of Bluefield*, 176 W. Va. 198, 342 S.E.2d 164 (1986); *see also Stamper*

by *Stamper v. Kanawha Cty. Bd. of Educ.*, 191 W. Va. 297, 302, 445 S.E.2d 238, 243 (1994) (“We do not assume that the legislature is not aware of its prior legislation”). The Respondents would have this Court presume that the Legislature was not aware of its prior enactment in West Virginia Code § 18A-4-8e, arguing that the Legislature made a mistake by adding in West Virginia Code § 18A-4-8b(d) that the paraprofessional, autism mentor, ECCATs and Braille or sign support specialist class titles are included in the same classification category as aides, but failing to add the same in West Virginia Code § 18A-4-8e.

Further, Respondents argue that “there is no reason to believe that the Legislature intended to treat the calculation of Aide and ECCAT seniority differently depending on whether there was a promotion or some other event.” However, there is a very good reason to believe that because that is precisely what the legislature said. *See Martin v. Randolph County Bd. of Educ.*, 195 W. Va. 297, 312, 465 S.E.2d 399, 414 (1995) (quoting *Connecticut Nat’l Bank v. Germain*, 503 U.S. 249, 253–54, 112 S. Ct. 1146, 1149, 117 L.Ed.2d 391, 397 (1992)) (“[C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there.”); *Taylor-Hurley v. Mingo Cty. Bd. of Educ.*, 209 W. Va. 780, 788, 551 S.E.2d 702, 710 (2001) (same).

Respondents apparently argue that the Legislature must have intended for ECCAT (and presumably paraprofessional, autism mentor, etc.) seniority to be synonymous and interchangeable with aide seniority because the Respondents disagree with the resulting policy. However, this Court has countenanced against rewriting statutes based upon speculation of what a party or court considers an undesirable policy result:

[T]he absurd results doctrine should be used sparingly because it entails the risk that the judiciary will displace legislative policy on the basis of speculation that the legislature could not have meant what it unmistakably said. The absurd results doctrine merely

permits a court to favor an otherwise reasonable construction of the statutory text over a more literal interpretation where the latter would produce a result demonstrably at odds with any conceivable legislative purpose. *See State ex rel. McLaughlin v. Morris*, 128 W. Va. 456, 461, 37 S.E.2d 85, 88 (1946) (citing *Newhart v. Pennybacker*, 120 W. Va. 774, 200 S.E. 350 (1938)). It does not, however, license a court to simply ignore or rewrite statutory language on the basis that, as written, it produces an undesirable policy result.

Taylor-Hurley v. Mingo Cty. Bd. of Educ., 209 W. Va. 780, 787–88, 551 S.E.2d 702, 709–10 (2001) (emphasis added).

Regardless, the Legislature may have had good reason to legislate that the paraprofessional, autism mentor, early classroom assistant teacher, and Braille and sign support specialist class titles are not included in the same classification category as aides for purposes of determining seniority. Those classifications are specialized and require different certifications and training. Contrary to the Respondents' argument, the following scenario would also be an undesirable policy result: A county board has, for instance, a vacant aide/autism mentor position for a classroom that will have a relatively large number of children with autism. The administration believes that it is important that the successful applicant have a large amount of time working with children with autism. Two people, both of whom are qualified, apply. Applicant One has 6 years of aide seniority and only one year of autism mentor seniority; Applicant Two has 5 years of aide seniority and 5 years of autism mentor seniority. Although the administration knows that seniority in the autism mentor position is important for the position, the county board must choose Applicant One under the Respondents' interpretation because aide seniority is always controlling. The legislature may have very well tried to avoid such an absurd result. In summary, it is neither the Respondents' nor the courts' province to ignore or rewrite statutory language on the basis that, as written, it produces an undesirable policy result—especially when, as here, there are perfectly valid reasons for the result.

E. This Court Should Affirm its Decisions in *Mayle v. Barbour Cty. Bd. of Educ.* and *Bowyer v. Fayette Cty. Bd. of Educ.* and Hold that Aide and ECCAT Seniority Accrue Independently for Purposes of a Reduction in Force.

Finally, the Respondents' attempt to set aside this Court's holding in *Mayle v. Barbour Cty. Bd. of Educ.* that, under West Virginia Code 18A-4-8g, "ECCAT seniority accrues independently of aide seniority," by arguing that the holding was merely dicta. That is simply incorrect.

In *Mayle*, the county board posted a notice of vacancy for an Aide/ECCAT position. The grievant in the case did not hold an ECCAT certification but had more seniority in the Aide classification than the successful applicant for the job, Ms. Jones. Although Ms. Jones had less Aide seniority than the grievant, she was certified as an ECCAT. After the county board awarded the job to Ms. Jones, the grievant filed a grievance, alleging, among other things, that seniority in the aide classification was interchangeable with and the same as seniority in the ECCAT classification. This Court phrased the issue as follows:

Petitioner contends that, as a result, employees holding any classification within the aide classification category are qualified for ECCAT positions, that all employees within the aide classification category are to be given first priority in filling ECCAT positions, and that no specific ECCAT seniority accrues; rather, "[s]ervice in ECCAT positions results in the accrual of 'aide' seniority." Consequently, because petitioner had more aide seniority than Ms. Jones, she maintains that she was qualified for the position at issue and should have been appointed to it.

Id. at *2 (emphasis added). Accordingly, as the underscored language above clearly provides, the grievant, in *Mayle*, argued that "service in ECCAT positions results in the accrual of 'aide' seniority." The circuit court, in *Mayle*, rejected the grievant's argument, holding "[p]etitioner's seniority as an [a]ide did not count as seniority as an ECCAT[.]" *Id.* (brackets in original). Thus, one of the specific issues before this Court in *Mayle* was whether the lower court correctly held

that the grievant's seniority as an aAide did not count, as seniority as an ECCAT. That is the exact issue before this Court in the case at bar: whether ECCAT and aide seniority are interchangeable.

Regarding that specific issue, this Court held:

We also find that the circuit court was not clearly wrong in concluding that ECCAT seniority accrues independently of aide seniority. West Virginia Code § 18A-4-8g, titled "[d]etermination of seniority for service personnel," sets forth that "[f]or all purposes including the filling of vacancies and reduction in force, seniority shall be accumulated within particular classification categories of employment as those classification categories are referred to in [West Virginia Code § 18A-4-8e]." West Virginia Code § 18A-4-8e does not place aides and ECCATs into the same classification category. To the contrary, the statute provides that "[e]ach classification title defined and listed is considered a separate classification category of employment[.]" As set forth above, aides and ECCATs are defined separately. Accordingly, we find that the circuit court's conclusion that "the Board was not permitted to count [p]etitioner's [a]ide seniority as ECCAT seniority" was not clearly wrong.

Id. at *3 (emphasis added). In summary, the Respondents now try to relitigate an issue that was already addressed by this Court in *Mayle*. This Court should reaffirm its holding in *Mayle* and rule in this case, again, that under West Virginia Code § 18A-4-8g(d) and West Virginia Code § 18A-4-8e, aide and ECCAT seniority accrue independently.

Relatedly, Respondents misconstrue and misapply this Court's decision in *Bowyer v. Fayette Cty. Bd. of Educ.*, No. 14-0261, 2014 WL 6607691 (W. Va. Nov. 21, 2014) (memorandum decision). To be clear, in *Bowyer*, the grievant and the other candidate for the aide/autism mentor position were qualified for the aide/autism mentor position at the time the employees were to begin their duties. *Id.* at *3. The successful applicant had more seniority in the aide classification, while the grievant had more seniority in the autism mentor classification. *Id.* at *1. Regarding the county board's decision to award the job to the candidate with the most aide seniority, this Court held:

We find that it was not unreasonable for the board to examine the primary responsibilities of the job position and then look to an applicant's seniority as part of the selection process . . . In this case, the board's actions in determining that the majority of the responsibilities of the aide/autism mentor position would be aide duties and looking to candidates with the most seniority in the aide classification was not arbitrary and capricious.

Id. at *3-4. The Respondents' argument would effectively overrule this Court's decision in *Bowyer* because the Respondents argue that, in all cases, the county board must select the candidate with the most aide seniority. Under the Respondents' argument, a county board would no longer have discretion to look to the primary responsibilities of the job position and then look to the applicant's seniority.

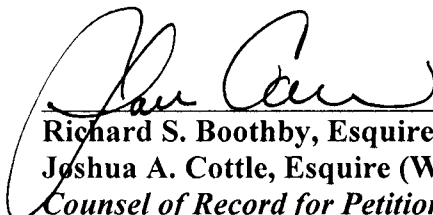
CONCLUSION

For the reasons set forth herein, and for all those apparent from the record, the County Board respectfully asks that this Court reaffirm and hold that seniority in the Aide and ECCAT classifications of employment accrues independently, reverse the Circuit Court's decision, and affirm the decision of the Grievance Board, which held that the County Board appropriately calculated the Respondents' seniority in the Aide and ECCAT classifications.

Respectfully submitted,

THE BOARD OF EDUCATION OF THE
COUNTY OF WEBSTER,
Petitioner,

By Counsel.



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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
CASE NO. 19-1028

BOARD OF EDUCATION OF WEBSTER COUNTY,

Respondent Below, Petitioner,

v.

Appeal from a final order of the Circuit
Court of Kanawha County, West
Virginia, Civil Action No. 19-AA-42

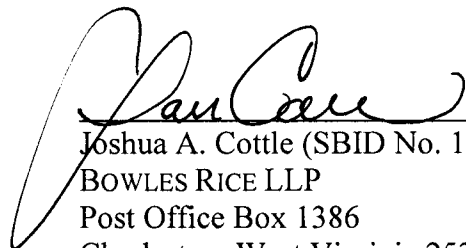
DONNIS DAVIS, KAREN HOLCOMB,
AUDREY FLANAGAN, and SAMANTHA
McCOURT,

Petitioners Below, Respondents.

CERTIFICATE OF SERVICE

I, Joshua A. Cottle, hereby certify that on this 18th day of May 2020, the foregoing
Petitioner's Reply Brief was served via U. S. Mail, postage prepaid, upon the following:

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