STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Elizabeth Spearman,

Appellant,

v.

Hancock County,
Board of Developmental Disabilities,

Appellee.

Case Nos. 10-REM-02-0044
10-SUS-02-0045

ORDER

This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeals.

After a thorough examination of the record and a review of the Report and Recommendation of the Administrative Law Judge, along with any objections to that report which have been timely and properly filed, the Board hereby adopts the Recommendation of the Administrative Law Judge.

Wherefore, it is hereby **ORDERED** that the instant appeals be **DISMISSED** due to lack of subject matter jurisdiction, pursuant to O.R.C. §§ 124.03, 124.11 and 124.30.

Lumpe - Aye
Sfalcin - Aye
Tillery - Not Participating

J. Richard Lumpe, *Chairman*

CERTIFICATION

The State of Ohio, State Personnel Board of Review, ss:

I, the undersigned clerk of the State Personnel Board of Review, hereby certify that this document and any attachment thereto constitute (the original/a true copy of the original) order or resolution of the State Personnel Board of Review as entered upon the Board's Journal, a copy of which has been forwarded to the parties this date, [illegible], 2010.

Clerk

NOTE: *Please see the reverse side of this Order* ***or*** *the attachment to this Order for information regarding your appeal rights.*

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Elizabeth Spearman	Case Nos. 10-REM-02-0044 10-SUS-02-0045
Appellant	
v.	April 16, 2010
Hancock County Board of Developmental Disabilities	
Appellee	Marcie M. Scholl *Administrative Law Judge*

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on for consideration on April 16, 2010 upon Appellee's Motion to Consolidate and Dismiss Appeals, filed on March 8, 2010. To date, Appellant Spearman has not filed a memorandum *contra*.

Appellee's Motion to Consolidate is hereby **GRANTED**.

Appellee argues in its Motion to Dismiss that this Board is without jurisdiction to consider these appeals as Appellant Spearman was employed by Appellee as a substitute teacher, which is an intermittent position. Pursuant to statute, intermittent employees are unclassified. Specifically, section 124.30(B) of the Ohio Revised Code states:

> (B) Persons who receive temporary or intermittent appointments are in the unclassified civil service and serve at the pleasure of their appointing authority.

Also, section 124.11(A)(29) of the Ohio Revised Code states "Employees who receive intermittent or temporary appointments under division (B) of section 124.30 of the Revised Code" are in the unclassified service.

Pursuant to section 124.03 of the Ohio Revised Code, this Board does not possess jurisdiction over unclassified employees. Unlike a court of general jurisdiction, this Board has only the authority granted to it by statute and that authority does not extend to unclassified employees. Therefore, this Board does

not have jurisdiction over substitute teachers as they necessarily are intermittent employees, or employees that do not work a regular schedule.

Attached to Appellee's Motion to Dismiss, marked as Exhibit A, is an affidavit of Constance Ament, Superintendent of Appellee. She states in her affidavit that Appellant Spearman was hired as an intermittent or substitute instructor assistant on September 28, 2009. She also states that Appellant Spearman was not suspended for any length of time, but instead, she was simply not called into work and was then subsequently removed. Since she was an intermittent, substitute teacher, it follows that if she was not needed, she would not be called to work.

Also attached to Appellee's Motion to Dismiss is Exhibit 1, which is the offer of employment letter to Appellant Spearman, which clearly states the position is one of a substitute. Exhibit 2 is a copy of the position description for the position, and it also clearly states that the position is a substitute one. Once again, this Board does not have jurisdiction over intermittent employees, as they are unclassified by statutue.

Therefore, I respectfully **RECOMMEND** that Appellee's Motion to Dismiss be **GRANTED** and the instant appeals be **DISMISSED** due to a lack of subject matter jurisdiction pursuant to sections 124.03, 124.11 and 124.30 of the Ohio Revised Code.

Marcie M. Scholl
Administrative Law Judge

:mms