JULIA QUINTRELL,

Grievant,

v. **Docket No. 95-22-051**

LINCOLN COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Julia Quintrell, is employed as a bus operator with the Lincoln County Board of Education ("LCBOE"). She states LCBOE violated W. Va. Code §18A-4-8e when it failed to provide her with a full day of inservice training prior to taking the aide competency test. (See footnote 1) Grievant requested a day of inservice training, an opportunity to retake the test to be given by a neutral party, and if she passed the test to be instated into the aide position with all wages, benefits, and seniority retroactive to November 15, 1994. Assistant Superintendent Larry Prichard stipulated at the Level II hearing that if Grievant prevailed on the W. Va. Code §18A-4-8e issue Grievant would be instated into the position. Trans. Level II at 6.

This grievance was denied at Levels I and II and waived at Level III. The grievance was appealed to Level IV, and a hearing was held on May 20, 1995. This case became mature for decision on July 14, 1995, after the submission of proposed findings of fact and conclusions of law.

The majority of the facts in this case are not in dispute and are set out below.

Findings of Fact

1. Grievant has worked as a bus operator for LCBOE for seventeen years.

2. In November 1994, LCBOE posted numerous aide positions at Midway Elementary. These positions were for "Supervisory Aide I, II, III, IV."

3. Grievant applied for an aide position and was informed by then Assistant Superintendent Prichard she would need to take the aide competency exam. His secretary scheduled a date for the inservice and testing.

4. Grievant arrived at the vocational school at approximately 9:00 a.m. after her morning run. She did not make plans for anyone to cover her afternoon run as Assistant Superintendent Prichard told her she would be through with her testing in time to perform this duty.

5. The aide test consists of three parts: 1) an 85 question multiple choice test; 2) a 6 part written performance test; and 3) a 5-point writing test. An individual is required to achieve a raw score of 59 or 70 percent on the multiple choice test and acombined raw score of 60 or 70 percent on the last two sections to pass. An individual may also pass with a combined raw score of 128 or 75 percent on the total test.

6. Mr. Gregory Miller, Guidance Counselor at the Vocational Center and the individual in charge of service personnel competency testing, took Grievant to a vacant room and gave her all the required materials from the State Department of Education ("SDE"). These materials consisted of the "Primary Duties and Tasks Performed" by a School Aide, a sample test with a self-grading sheet, information on the test itself, and a discussion of the writing sample section with possible topics.

7. Grievant reviewed this material and took the sample test. Grievant asked Mr. Miller a few questions about the test procedure and scoring.

8. After approximately forty-five minutes, Mr. Miller asked Grievant if she had any questions. Grievant said she did not. Mr. Miller asked Grievant if she was ready to take the actual test, and Grievant either started taking the test or said yes and started taking the test. Grievant did not ask for any additional time to study or review.

9. SDE requires a county to give a copy of the "Primary Duties and Tasks Sheet," a sample test with answer sheet, and writing samples to each individual during the inservice. The evaluator is also required to familiarize the test-takers with the general test content, the test environment, the necessary equipment and materials, and the time, date, length, and location of thetest. No other direction or materials for providing inservice is given to the counties. Test., Level IV, Dr. Stanley Hopkins, Assistant Division Chief for Technical and Adult Education Services with SDE.

10. SDE does not state in writing that each inservice training session be eight hours long. SDE has left the details of the inservice content up to the counties. Test., Level IV - Hopkins.

11. The required information listed in Finding of Fact 9 was given to Grievant.

12. Grievant received a raw score of 52 points or failing on the multiple choice section and 64 points or passing on the performance section for a total of 116 points. Her writing test was not graded

because even a perfect score of 5 would have only increased her score to 121 points, 7 points below the required combined score (128) for passing.

13. The process used to administer Grievant's test was the same as had been followed in the past. No applicant has ever requested more than fifty minutes to study for the aide's test.

Both Dr. Hopkins and Mr. Miller testified that the content of the aide's material is insufficient for a full day of training. Dr. Hopkins also stated inservice training that deals with skill building and "brushing up" on technical knowledge, such as keyboarding and welding "lends" itself more readily to a full eight hours of inservice. Because the aide test deals primarily with academic principles of basic math, grammar, and punctuation itwould be difficult to provide a full eight hours of inservice training. Test. Level IV - Hopkins.

Mr. Miller testified the inservice is not to teach the applicants the answers to the test, but to acquaint the applicant with the test content, scoring and format, and to offer the applicant a chance to practice or "brush up on" the necessary skills. Dr. Hopkins testified that because the aide's test deals primarily with academics, about all that could be done to make a full day would be to offer numerous tests which deal with basic principles of math and grammar. Dr. Hopkins also stated that in his opinion, to force applicants to stay after they feel they are ready to take the test would present a problem. In his opinion, when an applicant is satisfied with the information he receives and feels comfortable taking the test, he should be allowed to take the test.

There is one major discrepancy between Grievant's version of the test taking and Mr. Miller's. Grievant states that before she started the third and last portion of the test, the writing sample, she discovered, for the first time, that she was entitled to have a full day of inservice. After she completed the test she asked Mr. Miller if she could have or was supposed to have had a day of inservice training. She stated she received no clear response to this inquiry. Mr. Miller testified Grievant never discussed a need or desire for more inservice of any kind. It is noted W. Va. Code §18A-4-8e states "a minimum of one day of appropriate inservicetraining shall be provided employees to assist them in preparing to take the competency tests."

Issues

Grievant argues the Respondent did not provide her with the full, eight hour day of inservice training required by W. Va. Code §18A-4-8e. Respondent contends the content of the aide

competency exam is of insufficient length and difficulty for eight hours of inservice preparation.

Discussion

W. Va. Code §18A-4-8e states in pertinent part:

Competency tests shall be administered to applicants in a uniform manner under uniform testing conditions.

. . .

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

The above-stated Code Section is clear on its face. Since the word "shall" is deemed to be mandatory, county boards are required to provide at least one full day, or eight hours, of inservice training for each competency exam. Marion County Bd. of Educ. v. Bonfantino, 366 S.E.2d 650 (W. Va. 1988).

The fact that the educators involved in this grievance do not think the aides exam lends itself to eight hours of inservice does not change the Legislative mandate. By the same token, it is also clear test-takers should not be required to set through eight hours of inservice training they do not want or need. Accordingly, a test-taker may sign a written waiver stating they do not wish toreceive further inservice and are ready to take the competency test.

The above discussion is supplemented by the following conclusions of law.

Conclusions of Law

1. Grievant has the burden of proving a violation of W. Va. Code §18A-4-8e by a preponderance of the evidence.

2. Grievant has demonstrated LCBOE failed to provide her with eight hours of inservice training prior to taking the aides' competency test, thus violating the clear mandate of W. Va. Code §18A-4-8e.

Accordingly, this grievance is **GRANTED**. Grievant shall be allowed to retake the aides'

competency test after a full, eight hour day of inservice. Mr. Miller may be the inservice instructor and/or test-giver or LCBOE may appoint another individual. If Grievant passes the test she shall be instated into the position pursuant to the stipulation of the parties. (See footnote 2)

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Lincoln 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.

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JANIS I. REYNOLDS

Administrative Law Judge

Dated: August 31, 1995

Footnote: 1Initially, Grievant also argued she was given an incomplete or improper test. This issue was resolved at Level IV when it was discovered all answers in the sections questioned by Grievant were scored in her favor, thus she received credit for questions she did not answer. All parties agreed during the hearing this issue was resolved and dropped from the grievance.

Footnote: 2It must be noted the record before the undersigned would have been insufficient to make an independent assessment of Grievant's entitlement of the position.