SHERRY A. SKEEN,

Grievant,

v.

DOCKET NO. 97-18-161

JACKSON COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Sherry A. Skeen, is currently employed by the Jackson County Board of Education ("Board") as an Aide III/Autism Mentor. She filed the following grievance on December 17, 1996:

> Grievant, previously employed as a supervisory aide III, was compensated on the E pay grade as a result of the performance of supervisory duties and administering medication to students on a daily basis. Grievant was reclassified as a supervisory aide III/autism mentor by board action effective November 21, 1996. However, Grievant's pay grade did not change. Grievant alleges a violation of West Virginia Code §18A-4-8, §18A- 4-8a, §18-5-22, and §18-5-22a and she seeks compensation on the G pay grade and wages and benefits retroactive to November 21, 1996.

The grievance was denied at level one, a level two hearing held March 10, 1997, and a decision denying the grievance was rendered on March 17, 1997. Grievant bypassed level three in accordance with W. Va. Code § 18-29-4(c), and appealed to level four on March 24, 1997. Hearing was held on May 28, 1997, and this matter becamemature for decision on June 16, 1997, the deadline for the parties' proposed findings of fact and conclusions of law.

SUMMARY OF THE EVIDENCE

Level Two

Ex. 1 - Grievance documents.

Ex. 2 -

Letter dated November 22, 1996, from Carroll L. Staats, Superintendent, to Grievant.

Ex. 3 -

Memorandum dated August 23, 1996, from Superintendent Staats to Grievant.

Ex. 4 -

Jackson County Board of Education Service Personnel Salary Schedule 1996-1997.

Ex. 5 -

Letter Opinion dated October 16, 1996, from State Superintendent of Schools, Henry Marockie, to Mr. Thomas E. Long, Superintendent, Pocahontas County Schools.

Ex. 6 -

Letter Opinion dated October 16, 1996, from State Superintendent of Schools, Henry Marockie, to Mr. James L. Marsh, Associate Superintendent, Nicholas County Board of Education.

Level Four

Jt. Ex. 1 -

Memorandum dated August 20, 1996, from Delores Ranson, Assistant Superintendent, to 1996-97 Supervisor Aides: No Change in Assignment

Jt. Ex. 2 -

Teacher Aide Job Description, April 1994.

Jt. Ex. 3 -

Autism Mentor Job Description, October 1996.

Testimony

Grievant testified in her own behalf. The Board presented the testimony of Laura Casto.

ISSUE

The issue is whether Grievant has proven by a preponderance of the evidence that she is entitled to be compensated in the “G” pay grade for her duties as Supervisory Aide III/Autism Mentor.

FINDINGS OF FACT

I find, by a preponderance of the evidence, the following facts. 1. At the beginning of the 1996-97 school year, Grievant was classified as an Aide III with supervisory duties.

2. The pay grade for Aide III is pay grade “C”, but because of Grievant's supervisory duties, she was paid at pay grade “D”.

3. By memorandum dated August 23, 1996, the Board approved Grievant to provide specialized health care for students, which included the administering of medications. Ex. 3.

4. Consequently, Grievant's pay grade was adjusted to pay grade “E.”

5. On November 22, 1996, The Board approved Superintendent Carroll Staats' recommendation that Grievant be reclassified as a Supervisory Aide III/Autism Mentor, based upon her completion of necessary requirements for the Autism Mentor classification.

6. The Autism Mentor classification is paid at pay grade “E.”

7. The Board continued to pay Grievant at pay grade “E” following her reclassification.

8. Grievant's duties and responsibilities in supervising and administering medications to special education students, including one autistic child, have not changed from the time she was classified as an Aide III. Grievant received the Autism Mentor classification as a result of completing training and education requirements required to obtain that classification.

9. Grievant is a full-time aide.

DISCUSSION

Grievant alleges the Board has violated the applicable provisions of W. Va. Code §§ 18A-4-8, 18A-4-8a, 18A-5-8, 18-5-22, and 18-5-22a, by not compensating her at paygrade “G” following her reclassification. (See footnote 1) A review of the applicable statutes is helpful in understanding the analysis and conclusion in this case.

W. Va. Code § 18A-4-8 (1996) defines Aide III as, “those personnel referred to in the “Aide I” classification who hold a high school diploma or a general educational development certificate, and

have completed six semester hours of college credit at an institution of higher education or are employed as an aide in a special education program and have one year's experience as an aide in special education."

W. Va. Code § 18A-4-8 (1996) defines Autism Mentor as, "personnel who work with autistic students and who meet standards and experience to be determined by the state board: Provided, That the state board shall determine these standards and experience on or before the first day of July, one thousand nine hundred ninety-two: Provided, however, That if any employee has held or holds an aide title and becomes employed as an autism mentor, the employee shall hold a multiclassified status that includes aide and autism mentor title, in accordance with . . . § 18A-4-8b . . .".

W. Va. Code § 18A-4-8b (1996) provides, in pertinent part, that, "[p]araprofessional, autism mentor and braille or sign language specialist class titles shall be included in the same classification category as aides."

W. Va. Code § 18A-4-8a provides State Minimum Pay Scale Grades for service personnel, and designates an Aide III at pay grade C, and an Autism Mentor at pay grade E. Code § 18A-4-8 defines "Multi-classification" as "personnel employed to perform tasksthat involve the combination of two or more class titles in this section. In such instances the minimum salary scale shall be the higher pay grade of the class titles involved." In this instance, Grievant is being paid on the "E" pay grade in accordance with this provision.

Code § 18A-4-8a also provides:

> (10) For the purpose of qualifying for additional pay as provided in . . . § 18A-5-8 . . ., an aide shall be considered to be exercising the authority of a supervisory aide and control over pupils if the aide is required to supervise, control, direct, monitor, escort or render service to a child or children when not under the direct supervision of certificated professional personnel . . . .

W. Va. Code § 18A-5-8 (1996) provides, in pertinent part:

> An aide designated by the principal under this subsection shall receive a salary not less than one pay grade above the highest pay grade held by the employee under . . . § 18A-4-8a. . ., and any county salary schedule in excess of the minimum requirements of this article.

Further, W. Va. Code § 18-5-22 (1996) provides, in pertinent part:

> Specialized health procedures that require the skill, knowledge and judgment of a licensed health professional, shall be performed only by school nurses, other licensed school health care providers as provided for in this section, or school employees who have been trained and retrained every two years who are subject to the supervision and approval by school nurses. . . . "School employee" means "teachers", as defined in . . . § 18-1-1. . ., and . . . "aides", as defined in . . . § 18A-4-8. . .
>
> Any school employee who elects, or is required by this section, to undergo training or retraining to provide, in the manner specified in this section, the specialized health care procedures for those students for which the selection has been approved by both the principal and the county board, shall receive additional pay of at least one pay grade higher than the highest pay grade for which the employee is paid: . . .

Finally, W. Va. Code § 18-5-22a (1994) provides, in pertinent part:

> All county boards of education shall develop a specific medication administration policy which establishes the procedure to be followed for the administration of medication at each school.
>
> No school employee shall be required to administer medications: Provided, That nothing herein shall prevent any school employee to elect to administer medication after receiving training as provided herein: Provided, however, That any school employee in the field of special education whose employment commenced on or after the first day of July, one thousand nine hundred eight-nine, may be required to administer medications after receiving training as provided herein. (See footnote 2)

There is no dispute that, prior to Grievant's reclassification, she was entitled by statute to an advancement of one pay grade above her Aide pay grade of C to a D for performing supervisory duties. In addition, because Grievant underwent training or retraining to provide specialized health care procedures, in the form of administering medications to students under her care, she was entitled to another pay grade advancement beyond her highest pay grade, D, to a pay grade of E. Grievant's contention is, that once she was reclassified to Supervisory Aide III/Autism Mentor, her base pay grade became E, in accordance with Code § 18A-4-8, and thereafter, her pay grade should have been advanced again by two pay grades to bring her to the pay grade of G.

The Board argues that once Grievant became multiclassified, she lost full-time Aide status and is not entitled to any pay grade advancements beyond her base pay grade of E. It relies upon two State Superintendent of Schools opinions which interpret Code § 18- 5-22 to mean an employee must be a full-time aide in order to receive the additional pay grade increases for performing supervisory duties

and for providing specialized health care to students. The first State Superintendent's opinion is an October 16, 1996 State Superintendent's Opinion to the Pocahontas County Schools (Ex. 5.) That county board asked the Superintendent whether it was required to pay an aide/paraprofessional, who was performing supervisory duties and paraprofessional duties, and who was paid on the paraprofessional pay grade of F, one pay grade higher because of those supervisory duties, in accordance with W. Va. Code § 18A-5-8. The State Superintendent opined that, in order to receive an additional pay grade for supervisory duties, an employee must be a full-time aide, and concluded that if a county hires an aide/paraprofessional, the employee would only be performing the duties of an aide part of the time and the duties of the paraprofessional part of the time. Thus, the multiclassified aide/paraprofessional, not being a full-time aide, would not be eligible for the additional pay grade for supervisory duties. This Grievance Board ultimately concluded, in Doss v. Pocahontas County Bd. of Educ, Docket No. 97-38-054 (Aug. 28, 1997), that the State Superintendent's opinion was not clearly wrong and denied an employee's claim that she was entitled to an additional pay grade for supervisory duties she was performing as an aide/paraprofessional. See also Sites and Murphy v. Pendleton County Bd. of Educ., Docket No. 97-36-113 (Aug. 28, 1997).

The Board also relies on an October 16, 1996 State Superintendent's Opinion to the Nicholas County Board of Education (Ex. 6). That county board asked whether employees trained in specialized health care procedures actually had to be performing those duties to be eligible for the advanced pay grade authorized by W. Va. Code § 18-5-22. The State Superintendent opined that, “only full-time aides who elect and undergo training andretraining who are actually providing these specialized health care procedures for the approved students should be paid the additional pay grade.”

The Board's reliance on these opinions rests with the proposition espoused by the State Superintendent that only “full-time” aides are eligible for the advanced pay grades under the applicable statutes. The Board contends that, because Grievant is multiclassified as Aide III/Autism Mentor, she is performing aide duties part of the time, and autism mentor duties part of the time, and thus, is not a full-time aide. I disagree.

First, regarding the opinion to the Pocahontas County Schools (Ex. 5), because that opinion speaks only to the paraprofessional category of employment, it is not applicable to the instant case, especially in view of the fact that the definitions in W. Va. Code § 18A- 4-8 for paraprofessional and

autism mentor are significantly different. (See footnote 3) I decline to accept the Board's argument that it should be given blanket precedence over this case.

With regard to the Nicholas County Board of Education opinion, the Superintendent opines that only "full-time" aides who elect to undergo the training necessary to provide specialized health care procedures to students under Code § 18-5-22 are eligible to be paid additional pay grade.

In this case, there is no question but that Grievant is a full-time aide. Since the amendment of Code § 18A-4-8b in the spring of 1996, the autism mentor classification title is now a part of the aide classification category. Therefore, when speaking of an aide ingeneric terms we refer not only to employees holding the classification titles of aide, I, II, III or IV, but also to employees holding classification of paraprofessional, autism mentor, and braille/sign language specialist. Therefore, an aide/autism mentor is a full-time "aide". Indeed, an autism mentor alone would be a full-time "aide." (See footnote 4)

Consequently, I find that Grievant, who holds an aide classification category of employment, at pay grade E, is entitled by statute to an advancement in pay grade for providing supervisory duties, and another advancement in pay grade for providing specialized health care procedures, i.e., administering medications to special education students.

CONCLUSIONS OF LAW

1. It is incumbent upon Grievant to prove her claim by a preponderance of the evidence.

2. "Paraprofessional, autism mentor and braille or sign language specialist class titles shall be included in the same classification category as aides." W. Va. Code § 18A-4- 8b (1996).

3. "Multi-classification" means "personnel employed to perform tasks that involve the combination of two or more class titles in this section. In such instances the minimum salary scale shall be the higher pay grade of the class titles involved." W. Va. Code § 18A-4-8. 4. Grievant has proven by a preponderance of the evidence that she is multi- classified as an Aide III/Autism Mentor at pay grade E. Because Code § 18A-4-8b specifically provides that an autism mentor class title shall be included in the same classification category as aides, Grievant has also proven by a preponderance of the evidence that she is a full-time aide.

5. An aide designated by the principal under this subsection shall receive a salary not less than one pay grade above the highest pay grade held by the employee under . . . § 18A-4-8a . . ., and any

county salary schedule in excess of the minimum requirements of this article. W. Va. Code § 18A-5-8.

6. Grievant has proven by a preponderance of the evidence that she is designated by the principal as a supervisory aide and is entitled to receive a salary not less than one pay grade above the highest pay grade she holds under Code § 18A-4-8a, which is E. Thus, Grievant has proven she is entitled to an advanced pay grade of F, in accordance with Code § 18A-5-8.

7. "Any school employee who elects, or is required by this section, to undergo training or retraining to provide, in the manner specified in this section, the specialized health care procedures for those students for which the selection has been approved by both the principal and the county board, shall receive additional pay of at least one pay grade higher than the highest pay grade for which the employee is paid: . . .". W. Va. Code § 18-5-22.

8. W. Va. Code § 18-5-22 defines school employees for the purpose of that section to be teachers, as defined in § 18-1-1, and aides, as defined in § 18A-4-8. 9. Grievant has proven that she is an aide who has been approved by the principal and the county board to provide specialized health care procedures, in the form of administering medications, to special education students under her care, and is thus entitled to additional pay at least one pay grade higher than the highest pay grade she is being paid. The highest pay grade she should be paid is pay grade F in accordance with Conclusion of Law 6; therefore, she is entitled to advancement to pay grade G.

Accordingly, this grievance is **GRANTED**, and the Board is hereby **ORDERED** to begin compensating Grievant at the G pay grade, and to compensate her in the form of backpay from November 22, 1996, the date of her reclassification by the Board, to the date her pay grade is changed in accordance with this Decision.

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

MARY JO SWARTZ

Administrative Law Judge

Dated: September 18, 1997

Footnote: 1

Grievant alleges a violation of W. Va. Code § 18A-4-8. That Code Section merely describes the various service personnel classifications, including Aide III and Autism Mentor. Grievant does not allege she is misclassified, thus her claim that the Board violated Code § 18A-4-8 is denied.

Footnote: 2

Grievant alleges in her grievance statement that the Board violated this Code provision. However, there is no evidence that the Board required Grievant to administer medications without her consent; indeed, the basis for the grievance is that Grievant was trained to administer medications, for which she desires a higher pay grade. Thus, her allegation that this Code provision has been violated fails.

Footnote: 3

Paraprofessional is defined as "a person certified . . . to perform duties in a support capacity including, but not limited to, facilitating in the instruction and direct or indirect supervision of pupils under the direction of a principal, a teacher, or another designated professional educator: Provided, That no person employed on the effective date of this section in the position of an aide may be reduced in force or transferred to create a vacancy for the employment of a paraprofessional.

Footnote: 4

It must be noted that neither the State Superintendent's opinion to the Pocahontas County Schools, nor the Doss decision supporting that opinion, mentioned the amendment to Code § 18A-4-8b, which specifies that paraprofessional, autism mentor, and braille/sign language specialists shall be included in the same classification category as aides. Because the Doss decision included other rationales for finding the grievant was not entitled to the advanced pay grade, that decision will not be disturbed here.