DONNA K. SIMMONS,

Grievant

v. **Docket No. 96-42-385**

RANDOLPH COUNTY BOARD OF EDUCATION,

Respondent

D E C I S I O N

Grievant, Donna K. Simmons, employed by the Randolph County Board of Education (Board or Respondent), as an Aide III, filed a level one grievance on or about July 3, 1996, in which she alleged that she is improperly classified. Grievant requested reclassification as an Aide/Autism Mentor, with backpay, benefits, and seniority. Grievant's immediate supervisor lacked authority to grant the requested relief at level one. Following an evidentiary hearing, Superintendent Larry Pritchard denied the grievance at level two, and the Board waived consideration at level three. The matter was advanced to level four on September 9, 1996. A supplementary hearing was conducted on January 7, 1997, and the matter became mature for decision with the submission of proposed findings of fact and conclusions of law by the parties on or before February 13, 1997. (See footnote 1)

The following facts are made based upon a review of the record it its entirety.

Findings of Fact

1. Grievant was employed by the Board as a substitute aide during the 1990-91 and 1991-92 school years Beginning in 1992, Grievant was employed by the Board as a full-time aide assigned to the West Virginia Children's Home. Grievant worked as a substitute employee until October of the 1993-94 school year. Grievant has been employed by the Board consistently since the 1994-95 school year, apparently on a regular, full-time basis, classified as an Aide III. 2. Grievant has the following work experience with autistic children:

1990-91 and 1991-92 - thirty-five to forty days with an autistic child in a trainable mentally impaired classroom;

1992-93 - five days prior to her assignment to the Children's Home in October;

1993-94 - five days (See footnote 2) ;

1994-95 - October through December worked with a child diagnosed with Ausberger's Disorder, an affliction within the autistic spectrum;

1995-96 and 1996-97 - worked with one autistic student approximately twenty-five percent of the day.

Discussion

W. Va. Code §18A-4-8 defines the service personnel classification of 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."

State Board of Education Policy 5314.01, Section 3, sets forth the following criteria for the position of Autism Mentor:

3.1 Meet the qualifications of "Aide III" as delineated in W. Va. Code §18A-4-8.

3.2 Success completion of a staff development program related to autism as determined by the State Department of Education.

3.3 Two years of successful experience working with autistic students.

3.4 Physical ability and stamina necessary to complete all job tasks, including tasks related to ensuring student safety.

The parties have stipulated that Grievant meets all of the requirements, with the exception of the two years experience. Grievant argues that she has acquired the necessary experience when her work is considered cumulatively. She asserts that the Policy does not require that the experience consist of any particular number of working days, or that it be acquired in two consecutive years. By Grievant's calculation, which included her work in 1993-94 with the student she believed to be autistic, she had accumulated approximately twenty-six months of relevant experience, enough to complete two, one hundred thirty-three-day years, by the end of the 1995-96 school year. (See footnote 3)

Respondent asserts that it requires an employee work one hundred thirty-three days in one school

year on at least a half-time basis in order to quality for a year of experience to meet the Autism Mentor classification. This requirement is based in part on an interpretation by the State Superintendent of Schools that a year of experience, pursuant to W. Va. Code §18A-4-8, shall mean one hundred thirty-three days of employment in any one school year. Respondent further argues that Grievant failed to apply for any of the posted Autism Mentor position which were filled during the 1995-96 school year; therefore, should she prevail, any relief awarded would be limited to eligibility to hold the classification, and not placement into any particular position, of Autism Mentor. The evidence does not support a finding that Grievant was entitled to hold the classification of Autism Mentor in July 1996. First, while Grievant's work with Student A was undoubtedly valuable, it may not be considered for purposes of reclassification because the student was not diagnosed as autistic. Policy 5314.01 is clear in requiring that the experience be earned working with autistic students.

A second consideration involves an interpretation of the State Superintendent of Schools, dated October 19, 1994. In that interpretation the question posed was whether an aide assigned to a class which included an autistic child and his personal aide, would gain the necessary experience to qualify for the classification title of Autism Mentor. The Superintendent advised that the county board has the discretion to determine whether the experience qualifies. Even though he noted that the purpose of Policy 5314.01 is to insure that the aide is aware of the unique and complex problems associated with autistic students, and does not require that the experience be gained by working exclusively with autistic students, the Superintendent's interpretation indicates the determination of qualifying experience lies within the domain of the county board of education. It is well settled that a state Superintendent's opinion is entitled to great weight unless it is clearly erroneous. Lincoln County Bd. of Educ. v. Adkins, 188 W. Va. 430, 424 S.E.2d 775 (1992); Jerden v. Lewis County Bd. of Educ., Docket No. 93-21-349 (Aug. 19, 1994).

Because Respondent's determination of qualifying experience does not appear excessive, or otherwise inappropriate, it may not be determined that its denial of Grievant's request for classification as Autism Mentor was clearly wrong.

In addition to the foregoing findings of fact and discussion it is appropriate to make the following conclusions of law.

Conclusions of Law

1. In matters involving a nondisciplinary issue, Grievant has the burden of proving each element of her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 §4.19 (1996); Bell v. Lincoln County Bd. of Educ., Docket No. 97-22-013 (July 28, 1997); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997). See W. Va. Code §18-29-6.

3. Grievant has failed to prove that she is entitled to classification as Autism Mentor.

Accordingly, the grievance is **DENIED**.

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

Date: November 26, 1997 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

The grievance was transferred to the undersigned in October 1997, for administrative reasons.

Footnote: 2

From October 1993 through June 1994 Grievant worked with Student A, who she understood to be autistic. She was later informed the student was severely mentally retarded instead of autistic. She later worked with this student from June through September, 1995, for an outside agency, Appalachian Community Health.

Footnote: 3

Grievant acknowledges that she cannot present a medical diagnosis confirming that the student suffers an autism disorder, but argues that she and her co-workers believed the child to be autistic, provided services for her as if she were autistic, and determined the child had many of the characteristics of an autism disorder; therefore, she was autistic for practical purposes. In the alternative, accepting that the student was not autistic, Grievant argues that working with her was valuable experience for working with those officially diagnosed with autistic disorders.