KAREN VANCE JONES,

Grievant,

v. **Docket No. 98-19-408**

JEFFERSON COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Karen Vance Jones, regularly employed by the Jefferson County Board of Education (JCBE) as a Paraprofessional/Aide IV, filed a level one grievance on or about June 23, 1998, in which she listed a number of complaints relating to a summer position of bus aide. The level one hearing evaluator lacked authority to grant the requested relief. Following an evidentiary hearing, the grievance was denied at level two, and JCBE waived consideration at level three, as is permitted by W. Va. Code §18-29-4(c). Appeal was made to level four on October 19, 1998, and a level four hearing was conducted in the Grievance Board's Morgantown office on January 20, 1999. The matter became mature for decision with Respondent's reply to Grievant's proposed findings of fact and conclusions of law on March 5, 1999. Grievant was represented by John E. Roush, Esq., West Virginia School Service Personnel Association, and JCBE was represented by Claudia W. Bentley, Esq. (See footnote 1)

Grievant is employed by JCBE as a classroom aide during the regular school term. Since 1995, she has additionally been employed by JCBE as a bus aide during the summer. Grievant's duties as a bus aide consist of assisting and monitoring special needs students while they are being transported from Jefferson County to the Grafton facility inWinchester, Virginia. This grievance addresses that summer assignment. Grievant asserts that during the summer of 1998 JCBE improperly compensated her as a half-time employee, in violation of W. Va. Code §§18A-2-6, 18A-4-8, 18A-4-8a, and 18-5-39. Additionally, Grievant alleges a violation of W. Va. Code §18-29-2, evidenced by a continuing pattern of harassment and discrimination. Grievant requests reimbursement for lost wages, with interest, and benefits incurred as a result of the improper designation of her position, cessation of the harassment, and reassignment to a supervisor qualified to deal with issues in special education.

As this grievance does not involve a disciplinary matter, 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); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ. Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code §18-29-6.

Grievant supports her allegations as follows:

- In 1995, Grievant initially accepted the bus aide assignment as a half-time position, defined as three and one-half hours, or less. From the beginning, she questioned the half- time designation, noting that the bus operator assigned to that run is employed on a full- time basis, and because her own schedule was so close to three and one-half hours. At some point during Summer 1995, the position was upgraded to full-time, and Grievant was required to perform clerical tasks to make up the seven and one-half hours of a full-time position. - In 1997 Grievant 's first paycheck reflected a half-time position. Grievant brought that matter to the attention of JCBE Director of Personnel, Beverly Hughes, and Grievant's salary was corrected. Her fourth and final check was not received in a timely manner. Upon inquiry, Grievant was advised that the delay had been caused by her failure to sign a time sheet. Grievant asserts that she had not signed time sheets for the first three pay periods without such a problem. Grievant notes that the time sheet procedure for her regular position differed from that utilized by the transportation department and was changed from 1996 to 1997, but Transportation Supervisor Becky Stokes never explained the procedure, or any changes, to Grievant.

- When Grievant and her representative met with Ms. Hughes to discuss the time sheet/paycheck situation, Grievant perceived Ms. Hughes to imply that she had somehow acted dishonestly in applying for the position as a full-time assignment, and accused Grievant of ignoring a written directive concerning the assignment, sent through the mail. Grievant asserts that when she stated that she had never received the directive, Ms. Hughes responded sarcastically, and again implied that she was not being honest.

- The bus aide position was posted as a full-time assignment in 1998; however, at the time Grievant filed her application, she was advised that the position was to be re- posted as a half-time position.

- Grievant was initially directed to board the bus at the bus garage, but then was contacted by Ms. Stokes and told to board the bus at the post office in Ranson. The change was initially proposed as a

convenience to Grievant since she lives in Shepherdstown. Grievant advised Ms. Stokes that she lives in Inwood, and the changewas not a convenience to her. Then Ms. Stokes responded that the change was due to the time aspect of the run.

- When Grievant boarded the bus at Ranson, one child was already on the bus, without the services of an aide. Grievant brought this matter to the attention of the Director of Pupil Services, and Grievant was again directed to board the bus at the garage, effective June 23, 1998.

- Boarding the bus at the garage increased Grievant's daily schedule to nearly three and one-half hours. Grievant worked more than the designated time on a number of days, and was compensated accordingly.

- Grievant found reporting the days when her work time exceeded the three and one-half hours to be inconvenient. She was not provided time sheets on a daily basis, but only at or near the end of the pay period, requiring that she remember, or otherwise keep track of the days she worked overtime. The time sheets were also submitted to her for signature at a time when to ask that changes be made would hold up her fellow employee, the bus operator, and inconvenience her. She also found the process of counting minutes frustrating. She could not estimate the numbers of days she worked overtime, but opined that it occurred more often than she reported. Further, her “short” days were never much less than the three and one-half hours.

Grievant raises a number of issues. First, she asserts that the summer assignment is extracurricular in nature since it is not a regular position or extra-duty assignment. Second, she claims that pursuant to W. Va. Code §18A-2-6, she has attained continuing contract status in the summer position, having completed three years of acceptableservice. Third, W. Va. Code §18A-4-8a, states that a school service employee may not have her daily schedule changed without her written consent. Therefore, prior to changing a term or condition of her contract, Grievant was entitled to notice and the opportunity for a hearing prior to a final decision being made, as provided by W. Va. Code, §18A-2-6. Fourth, reduction of a position from full-time to half-time requires the termination of the employee's contract of employment. Prior to terminating her extracurricular assignment, Grievant was entitled to notice and opportunity for a hearing, as provided by W. Va. Code §18A-2-7. Fifth, Grievant argues that the incidents addressed collectively herein constitute a continuing practice of harassment. (See footnote 2)

JCBE argues that because the position is dependent on the students it serves, the duration of the

run, and consequently the full or part-time status of the position, may vary from year to year. Addressing those matters relating to Grievant's salary, JCBE states that they were simple errors which were promptly corrected. JCBE notes that all of the concerns raised by Grievant, such as where and when she should board the bus, have been resolved in her favor. Addressing the alleged statutory violations, JCBE denies that it has engaged in harassment, and argues that Grievant's claims relating to continuing contract status and due process are erroneously applied to the summer assignment. The undersigned agrees.

There is no statutory authority in support of Grievant's claim that the summer assignment is extracurricular in nature, or that summer employees gain continuing contractstatus. On the contrary, W. Va. Code §18-5-39 provides in pertinent part:

Notwithstanding any other provision of the code to the contrary, the county board of education is authorized to employ school service personnel to perform any related duties outside the regular school term, as defined in section eight [18A-4-8], article four, chapter eighteen-a of this code. An employee who was employed in any service personnel job or position during the immediate previous summer shall have the option of retaining such job or position **if such exists during any succeeding summer**. . . .” (emphasis added).

Consistent with this provision, Grievant holds a regular, summer position. As such an employee she certainly holds some statutory rights; however, Grievant clearly did not accrue any type of tenure or continuing contract status relating to the summer appointment. Grievant only has the option of retaining the job, if it exists. JCBE may alter, or eliminate, the position without giving Grievant notice or an opportunity for a hearing. There was no contract to terminate prior to posting the position as a half-time assignment.

“Harassment” is defined under W. Va. Code §18-29-2(n) as “repeated or continual disturbance, irritation or annoyance of an employee which would be contrary to the demeanor expected by law, policy, and professionalism.” Harassment has been found in cases in which a supervisor has constantly criticized an employee's work and created unreasonable performance expectations, to a degree where the employee cannot perform her duties without considerable difficulty. See Moreland v. Bd. of Trustees, Docket No. 96- BOT-462 (Aug. 29, 1997). Repeated comments of a sexual nature by a supervisor have also been found to constitute harassment. Hall v. W. Va. Dept. of Transp., Docket No. 96- DOH-433 (Sept. 12, 1997).

In 1997, JCBE erred in producing Grievant's first pay check, and delayed the lastcheck, due to her failure to sign a time sheet. In 1998, Grievant's boarding site was moved from the garage to a post office, but was moved back after she pointed out that a student boarded the bus earlier. These matters do not constitute harassment. Clearly, Grievant has been displeased when the assigment was scheduled to be a half-time rather than full- time assignment. However, when she has convinced JCBE of the need, it has been made full-time. She has also indicated that it was inconvenient for her to record her overtime, and that a supervisor has spoken to her in an offensive manner. While Grievant finds these matters annoying, they seem to be of her own making or interpretation. The evidence of record does not support a conclusion that JCBE has engaged in harassment, as defined by statute.

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

Findings of Fact

1. Grievant is regularly employed by JCBE as a Paraprofessional/Aide IV. Since 1995, Grievant has been employed by JCBE during the summer as a bus aide.

2. Grievant's summer assignment involves the transportation of special needs students from Jefferson County to the Grafton facility in Winchester, Virginia.

3. The position of bus aide was originally posted as being half-time. Because of the needs of the students, the position was increased to full-time in 1995, and remained at that status in 1996 and 1997.

4. In 1998, the position was originally posted as full-time. That posting was withdrawn, and the assignment was subsequently re-posted as a half-time position. 5. In 1997, Grievant's first pay check reflected that she was assigned part-time rather than full-time. Her last pay check was delayed when she had not completed a time sheet. Both of these matters were timely resolved.

6. At the beginning of the 1998 summer term of employment Grievant was notified that she was to board the bus at the Ranson post office rather than the bus garage. When she advised a supervisor that a student boarded the bus prior to the Ranson post office, her boarding location was changed back to the bus garage.

7. The bus operator assigned to the Grafton run has always been a full-time position because the completion of pre- and post-trip inspections, and reports, requires that individual to work more

than three and one-half hours per day.

8. Grievant is paid overtime when she reports working more than three and one- half hours on any day.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, 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); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ. Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code §18-29-6.

2. Pursuant to W. Va. Code §18-5-39, a county board of education may employee school service personnel to perform any related duties outside the regular school term. An individual employed in any service personnel job or position during the immediate previoussummer shall have the option of retaining such job or position if it exists during any succeeding summer.

3. Service personnel employed by boards of education during the summer do not acquire a continuing contract, and are not entitled to the statutory due process, set forth in W. Va. Code §§18A-2-6 and 18A-2-7, relating to termination or schedule changes, granted to regular employees.

4. "Harassment" is defined under W. Va. Code §18-29-2(n) as "repeated or continual disturbance, irritation or annoyance of an employee which would be contrary to the demeanor expected by law, policy, and professionalism."

5. Grievant has failed to prove by a preponderance of the evidence that she has been subject to repeated or continual disturbance, irritation, or annoyance by JCBE administrators, that would constitute harassment.

Accordingly, the grievance is **DENIED.**

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Jefferson County. Any 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 andState Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. However, the appealing party is required by W. Va. Code §29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Board with the civil

action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

Date: June 1, 1999 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

This matter was transferred to the undersigned on May 26, 1999, due to administrative reasons.

Footnote: 2

Grievant did not pursue the claim of discrimination, and it is determined to have been abandoned.