AILEEN SMITH,

Grievant,

v. **Docket No. 99-06-076**

CABELL COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Aileen Smith, employed as a Guidance Counselor by the Cabell County Board of Education (CCBE), filed a level one grievance on December 16, 1998, in which she alleged violations of W. Va. Code §§18A-2-7 and 18-29-2(a) when she was assigned to chaperon high school students who were “job shadowing”. Grievant requested as relief that she not be required to perform assignments for students not enrolled at her work site, Beverly Hills Middle School (BHMS). The grievance was denied by Grievant's immediate supervisor at level one. At level two, Grievant amended her complaint, without objection from CCBE, to include a violation of W. Va. Code §18A-4-14 when she was deprived of a duty-free lunch period on the days she was required to chaperon the high school students. No additional relief was requested as a result of the amendment. The grievance was denied at level two, and Grievant waived consideration at level three, as is permitted by W. Va. Code §18-29-4(c).

Appeal was made to level four on February 19, 1999, at which time the parties agreed that a decision could be made on the lower-level record. The matter became mature for decision with the submission of proposed findings of fact and conclusions of law on or before March 15, 1999. Grievant was represented by Susan Hubbard, WVEA Consultant, and CCBE was represented by Howard E. Seufer, Jr., Esq. The facts of this matter are undisputed and may be set forth as the following formal findings of fact.

Findings of Fact

1. Grievant has been employed by CCBE for twenty-four (24) years, and has served as a full-time Middle School Counselor at Beverly Hills Middle School since 1994.

2. During the 1998-99 school term, Cabell County Schools implemented a legislatively mandated School-To-Work initiative, set forth in West Virginia State Board of Education Policy 2510,

to better prepare students for post-high school vocations and education. To give students a meaningful introduction to the world of work, and a context for understanding the connection between school and careers, CCBE provided every ninth grade student a worksite experience lasting three (3) to six (6) hours. Referred to as job shadowing, the students were assigned to an employee at an actual employment site, giving them the opportunity to observe daily activities and ask questions about the job and industry. Students completed written assignments relating to the job shadowing, and the experience was made a graduation requirement. The Chamber of Commerce facilitated implementation of the program with local businesses which were trained and inspected for safety, and completed assessments after the job shadowing was completed.

3. Approximately one thousand (1,000) ninth grade students were to participate in the 1998-99 program. Recognizing the need for supervision of the students, chaperons were assigned at the worksites based upon concerns of safety, the number of students at the site, and when a single student was assigned to shadow a worker of the opposite sex. 4. Non-instructional personnel, including elementary, middle, and high school counselors, were assigned as chaperons after it was determined their use would be less disruptive, and more cost efficient, than assigning subject matter teachers the task.

5. On December 10, 1998, Grievant was assigned to supervise Huntington High School (HHS) students in a job shadowing experience at Manpower Temporary Services, a Huntington area business. Grievant met the students at 7:30 a.m. at HHS, rode with them on a school bus to the business, remained with them throughout the experience, and returned to BHMS at 2:30 p.m. BHMS is a feeder school for HHS.

6. On February 2, 1999, Grievant was assigned to supervise HHS and Cabell Midland High School (CMHS) students in a job shadowing experience at Huntington Internal Medicine. Grievant's schedule on this day was the same as the first experience, beginning at 7:30 a.m., and concluding at 2:30 p.m.

7. Grievant was not afforded a duty free lunch period on either December 10, 1998, or February 2, 1999.

8. Grievant's normal workday is from 7:30 a.m. to 3:10 p.m.; however, she frequently works later than the designated end of the day in order to complete her duties.

9. Grievant was unable to perform her counseling duties at BHMS on the two days in question,

and did not get caught up for several days.

10. The job description for Middle School Counselor provides that individuals employed in that classification are to “assist students in making education, occupational and life plans. To work with students individually or in groups to achieve social, emotional and educational success throughout their secondary school experience.” Their responsibilities include assisting “students in deciding whether they want to take collegepreparatory, technical or vocational education in high school and to provide students with an awareness of college scholarships, financial aid and employment opportunities after graduation.”

11. Job shadowing has been scheduled for April 26 and May 11, 1999; however, Grievant has not been advised that she has been assigned to chaperon either of those events.

Argument

Grievant simply argues that first, the assignment was improper because the reassignment of a school employee from one grade level to another requires adherence to the transfer procedure set forth in W. Va. Code §18A-2-7. (See footnote 1) Grievant's second argument is that the assignment constituted a substantial detriment to, and interference with, her ability to perform her job, as contemplated in Code §18-29-2. (See footnote 2) Finally, she asserts that she is entitled to a thirty (30) minute duty-free lunch period each day, as provided by Code§18A-4-14. (See footnote 3) She requests that she not be required to chaperon students who are not assigned to her worksite at BHMS.

CCBE asserts that because the relief Grievant requests is prospective only, and it is not certain that she will be assigned to chaperon with the job shadowing programs, the relief is speculative and must be denied. Even if Grievant had proven that she would be assigned to chaperon the ninth graders in the future, CCBE argues that to be transferred, she must be assigned significantly different duties or responsibilities outside her presently utilized area of certification, discipline or department, and in the present situation, the duties were not outside any of those three factors, and were not significant in terms of her overall responsibilities.

The claim that the assignment was a substantial detriment to or interference with her job performance at BHMS is disputed by CCBE, which suggests that the chaperoning assignment might well enhance her performance at the middle school, giving her keen insights into the next step in developmental guidance for her eighth graders. CCBE concludes that the assignment was well within

its substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel, and was reasonable given the importance of the job shadowing program, and the disruption of the educational process which would have occurred had classroom teachers been assigned the duties.

Discussion

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 claims that the chaperoning assignment amounted to a change in her job assignment after the beginning of the school year, in violation of the transfer provisions set forth in Code §18A-2-7. This claim is without merit. Grievant was certainly not transferred, formally or informally, when she was assigned to chaperon ninth graders. She was simply directed to perform job related services to students outside her school, on a very limited basis. Grievant's situation could be compared to teachers who participate in county-wide science and social studies fairs or math field days. Those teachers work with students who are not enrolled in their own classes, or in their home schools, throughout the completion of the event. Similarly, Grievant was assigned to a county-wide project for a limited time. She offers no authority to substantiate a claim that a county board of education cannot require such participation by its professional personnel, or that such a limited assignment requires or constitutes a transfer. Therefore, Grievant has failed to prove a violation of W. Va. Code §18A-2-7.

Because Grievant was not in attendance at BHMS on the two days in question, it is accepted that she was unable to complete her regular duties on those days. Nonetheless, Grievant has failed to prove that the chaperoning assignment constituted a substantial detriment to or interference with her job at BHMS. In her level two testimonyGrievant stated that after her absence on December 10, 1998, she returned to twenty-five (25) telephone messages and two (2) students to enroll. In February, she returned to a mailbox full of correspondence, and an uncounted number of telephone messages. This accounting does not constitute a substantial detriment to or interference with her work at BHMS for several reasons.

First, Grievant was absent from school the two days prior to December 10, 1998, so it is

impossible to determine the amount of work which accumulated as a result of her absence on the tenth. Second, the work she cited does not appear to be a quantity which would constitute a substantial detriment to, or interference with, her job performance. James Isaac, principal at BHMS, testified that he knew of no complaints or crisis which were unattended on the days Grievant was absent. Finally, Grievant testified that she misses school when attending conferences or skiing, and those absences do not constitute a substantial detriment to or interference with her job performance. On cross examination, counsel inquired of Grievant: “So, it's okay when you decide to let your work pile up; to let the phone go unanswered and the crises unhandled, I suppose and the students unenrolled. But it's wrong when the school system makes you participate in a day like December the 10th. Is that your argument?” Grievant responded, “Yeah, that is my argument.” (Level II Trans. p. 77)

CCBE does not contest Grievant's complaint that she was deprived of a duty-free lunch period the two days she was chaperoning. While Grievant is entitled to the duty-free time, she asks for no specific relief relating to that claim, and it warrants no further consideration. Although Grievant unquestionably does not wish to participate as a chaperon for ninth grade students in a job shadowing program, her participation a few days a year is a minimal part of her total employment and does not require, or result, in a transfer. Neither does the short-term assignment constitute substantial detriment to, or interference with, her job performance at BHMS. She has requested no relief for the previous assignments, and has not been advised that she will be required to participate in this program in the future. In any event, Grievant has failed to prove that continued participation in the program would be improper or contrary to law.

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

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. Grievant has failed to prove that her assignment as a chaperon to job shadow high school

students constitutes a transfer under the provisions of W. Va. Code §18A-2-7.

3. Grievant has failed to prove that her assignment as a chaperon to job shadow high school students constitutes a substantial detriment to, or interference with, her job performance as a middle school counselor. 4. Grievant has proven that she was deprived of a duty-free lunch for two days; however, no relief was requested and none is awarded

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Cabell 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: March 23, 1999 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

W. Va. Code §18A-2-7 requires that a board of education notify an employee on or before the first Monday in April if he or she is being considered for transfer, and provide an opportunity for the employee to protest the proposed transfer at a hearing held prior to board action.

Footnote: 2

W. Va. Code §18-29-2(a) defines "grievance" as "any claim by one or more affected employees . . . alleging a violation, a misapplication or a misinterpretation of the statutes, policies, rules, regulation or written agreements under which such employees work, including . . . ***any action, policy or practice constituting a substantial detriment to or interference with effective classroom instruction, job performance*** *or the health and safety of students or employees." (Emphasis added)*

Footnote: 3

W. Va. Code §18A-4-14 requires that every teacher who is employed more than one-half of the class periods of the regular school day be provided a daily lunch recess of not less than thirty (30) consecutive minutes, during which time the employee shall not be assigned any responsibilities.