SHERRI L. ELLIOT,

Grievant,

v.

DOCKET NO. 98-42-305

RANDOLPH COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Sherri L. Elliot, filed the following grievance against her employer, the Randolph County Board of Education ("Board") on May 15, 1998:

> Grievant is currently employed as regular secretary by Respondent. Grievant contends that she is entitled to receive an extra pay grade above what she is receiving for performance of specialized health procedure, i.e., administration of medications, pursuant to West Virginia Code §§ 18-5-22 and 18-5-22a. Grievant seeks back pay with interest. (See footnote 1)

A level two hearing was held on June 9, 1998, and a decision denying the grievance was rendered by the Superintendent's designee, Cynthia Kolsun, on August 5, 1998. The grievance was by-passed at level three, and Grievant appealed to level four on August 18, 1998. The matter was set for hearing before Administrative Law Judge Randy Miller, and following several continuances for good cause, the parties agreed to submit the grievanceon the record developed at the level two hearing. (See footnote 2) Grievant is represented by John E. Roush, Esq., West Virginia School Service Personnel Association, and the Board is represented by Basil Legg, Esq. This matter became mature for decision on January 21, 1999, upon receipt of all lower level documents, as well as the parties' proposed findings of fact and conclusions of law.

FINDINGS OF FACT

I find, by a preponderance of the evidence, the following facts.

1. Grievant is employed by the Board as a secretary/accountant, and was assigned to Elkins High School at the time of the filing of this grievance.

2. There are students at Elkins High School who receive medication during the time the students are attending school. For the 1997-98 school year, there were six students who required medication on a year-round basis. In addition, many other students required medication on an interim basis throughout the school year,

3. Tom Pritt, Principal at Elkins High School, requested that Grievant assume the responsibility for dispensing medication to students, and she agreed to do so. On the days Grievant is not available to dispense medication, Mr. Pritt dispenses the medication personally.

4. Grievant is required to keep the medications secure and to keep a log of all medications dispensed.

5. None of the students referred to in Finding of Fact 2 are in the special education program, or have an aide assigned to them. 6. Most of the medications in question are administered orally. Grievant is also required to give medications by Epipen and, in one case, by injection with a hypodermic needle if the need arises. Grievance received training for administration of medication by these latter two methods from Margaret McFarland, the school nurse, during the 1997-98 school year. Grievant also took one child's blood pressure periodically during the 1997-98 school year.

7. No teacher or aide is available at Elkins High School to perform these duties.

8. Grievant requested a pay increase from her Principal for performing these duties, which was turned down. Instead, Principal Pritt allowed Grievant to take compensatory time in return for agreeing to dispense medication.

9. The administration of medication to students by injection is a specialized health procedure.

DISCUSSION

Grievant contends that she is entitled, by law, to additional compensation for dispensing medication at Elkins High School, upon the request of the Principal.

W. Va. Code § 18-5-22 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. After assessing the health status of the individual student, a school nurse, in collaboration with the student's physician, parents and in some instances an individualized education program team, may delegate certain health care procedures to a school employee who shall be trained pursuant to this section, considered competent, have consultation with, and be monitored or supervised by the school nurse. . . . For the purposes of this section "specialized health procedures" means, but is not limited to, catheterization, suctioning of tracheostomy, naso-gastric tube feeding orgastrostomy tube feeding. "School employee" means "teachers", as defined in . . . § 18-1-1, . . . and "aides", as defined in . . . § 18A-4-8.
>
> Any 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 § 18-5-22a 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 ninety-nine, may be required to administer medications after receiving training as provided herein.

The Board argues that dispensing medications under Code § 18-5-22a does not fall under the category of "performing specialized health procedures" referred to in Code § 18- 5-22, and thus, Grievant is not entitled to any additional compensation for these duties.

This issue has not presented itself before to the Grievance Board; however, at least one other county board of education considers the dispensing of medication to students to be "performing specialized health procedures." See Skeen v. Jackson County Bd. of Educ., Docket No. 97-18-161 (Sept. 18, 1997)(where issue was not whether dispensing of medication was specialized health procedure, but whether aide assigned to perform that duty was entitled to additional pay grade). The undersigned is no expert in health care procedures, and the only person apparently knowledgeable in this case, Nurse McFarland, did not testify. There was also no explanation why teachers, aides, and Nurse McFarland herself, were unavailable to administer medications during the day to these certainstudents. If Grievant's duties were limited to dispensing oral medications, in pill or liquid form, I

would be less inclined to find that these were “specialized health procedures”. However, Grievant has also been charged with administering injections to students, either with Epipens or hypodermic needles. She has received specific instruction from Nurse McFarland on how to administer this type of medication. While taking notice that many lay individuals are trained to administer injections of various types, either to themselves or others, I do not believe that administering injections is within the average individual's knowledge or expertise with regard to medical care, and thus must be considered “special” in this instance, especially when that duty is performed on students in a school setting.

It is of some interest that W. Va. Code § 18-5-22 appears to limit the persons who are to receive training for “specialized health procedures” to teachers and aides. If that is indeed the case, then the Board violated the statute by allowing Grievant to administer medications. However, just because she may not be authorized by statute to perform these duties, the fact is that she has performed them at least for the entire 1997-98 school year. To deny Grievant the additional pay grade contemplated by the statute because the Board erred in permitting her to do so in the first place would be unfair.

CONCLUSIONS OF LAW

1. In a non-disciplinary grievance, the Grievant bears the burden of proving her case by a preponderance of the evidence. Tenney v. Barbour County Bd. of Educ., Docket No. 89-01-576 (May 30, 1990).

2. “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: . . .” W. Va. Code § 18-5-22a. 3. “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.” W. Va. Code § 18-5-22.

4. Grievant performed specialized health procedures at Elkins High School for the 1997-98 school year. According to the plain language of W. Va. Code § 18-5-22, she is entitled to compensation at least one pay grade above the highest pay grade for which she is paid.

Accordingly, this grievance is **GRANTED**. The Board is hereby **ORDERED** to compensate

Grievant for the difference between the pay grade she received during the 1997-98 school year, and one pay grade above the highest pay grade for which was paid during that time, with interest. If Grievant has continued to perform those duties during the 1998-99 school year, and has not been additionally compensated, she shall be paid according to W. Va. Code § 18-5-22, plus back pay, with interest, to the date of this decision. In addition, if Grievant will continue to perform those duties in the future, she shall likewise be compensated in accordance with Code § 18-5-22.

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.

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MARY JO SWARTZ

Administrative Law Judge

Dated: March 11, 1999

Footnote: 1

The grievance statement filed at level four differs somewhat from the grievance statement filed at level one, but the content is the same.

Footnote: 2

This grievance was reassigned to the undersigned on January 11, 1999, for administrative reasons.