PATTY STURM and PEGGY HALL,

Grievants,

v. Docket No. 99-49-170

UPSHUR COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievants, Patty Sturm and Peggy Hall, employed by the Upshur County Board of Education (UCBE) as guidance counselors at Buckhannon-Upshur High School, filed a level one grievance on January 28, 1999, in which they alleged a violation of W. Va. Code §18-5-18b occurred as a result of additional duties which prevent them from spending seventy-five percent of their work time in direct counseling with students. They requested assistance or a reduction of their clerical duties to allow them adequate time with their students. The grievance was denied at levels one and two. Grievants elected to bypass consideration at level three as is permitted by W. Va. Code §18-29-4(c). Appeal was made to level four on April 29, 1999, and an evidentiary hearing was conducted on July 27, 1999. Grievants were represented by William White, WVEA Consultant, and Respondent was represented by Harry M. Rubenstein, Esq., and Kelly Kimble, Esq. The matter became mature for decision when both parties filed responses to proposed findings of fact and conclusions of law on September 13, 1999.

The following findings of fact are derived from the record in its entirety, including the level two transcript, proposed findings and conclusions filed at that level, the level two decision, and the testimony and evidence presented at the level four hearing.

Findings of Fact

1. Grievants are employed by UCBE as guidance counselors at Buckhannon- Upshur High School (BUHS). A total of three individuals are assigned as counselors at the school.

2. A secretary is assigned to the counseling department, but she is responsible for duties outside the department as well as assisting Grievants.

3. Grievant Sturm estimates that she spends approximately forty-one percent of her time in a direct counseling relationship with students. Grievant Hall estimates that she spends approximately

forty-nine percent of her time with students.

4. Grievants list the following duties which they perform, but could be performed by a clerk or secretary:

a. Entering schedule requests into the computer for 400-500 students each year.

b. Moving 26-30 students who have failed, back one grade level in the computer and mails each a non-promotion letter.

c. Entering 400-450 advisor groups into the computer.

d. Checking students' schedules for missing classes in September and January.

e. Completing and filing warranty forms and profile sheets for seniors.

f. Filing final transcripts and prints, and filing immunization records for all seniors.

g. Checking and correcting all linkage problems on the computer for all of her students.

h. Correcting grade errors in the computer four times per year. i. Contacting teachers individually four times per year to check on missing grades and to correct other errors.

j. Entering missing grades on the computer for Buckhannon-Upshur Middle School students who are incoming freshmen.

k. Deleting selected grades on the computer for incoming freshmen.

l. Sending final transcripts to colleges after graduation.

m. Affixing labels to individual student files for the PSTAT/PLAN, Stanford, ACT/SAT, AP, and Sophomore Writing tests.

n. Filing discipline reports.

o. Signing in students who are tardy, monitoring absences, and entering into computer absence excuses for students who have missed school.

p. Miscellaneous activities.

5. Grievant Sturm estimates that she spends 724 hours per year engaging in “non-student-contact” (administrative) duties and 499.25 hours in “direct student contact duties”. Grievant Hall's estimates are 470.50 hours and 452.75 hours, respectively, in those categories.

6. Grievants' time allocations are based on estimates and conjectures, and are not verified by any precise scheduling or time keeping device.

7. Grievants work outside the scheduled work day performing clerical duties so that more time may be spent with students during the instructional day.

8. Grievants exercise a great deal of autonomy in the arrangement of their daily schedules. 9. Prior to the 1999-2000 school year, Grievant Hall taught two classes of French daily. She is no longer responsible for teaching duties, and now functions as a full- time guidance counselor.

Discussion

As this grievance does not involve a disciplinary matter, Grievants have the burden of proving each element of their 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.

Grievants' complaint is simply that they are assigned too many administrative duties, depriving them of the time they are required to provide direct counseling services to the students. Respondent claims that Grievants may organize their day as they please, that a secretary has been assigned to assist them with clerical chores, and that many of the duties which Grievants claim to be administrative are actually part of their counseling responsibilities.

W. Va. Code §18-5-18b provides in pertinent part, “[s]chool counselors shall be full- time personnel, shall spend at least seventy-five percent of work time in a direct counseling relationship with pupils, and shall devote no more than one fourth of the work day to administrative activities: Provided, That such activities are counselor related.” The statute does not define “direct counseling relationship” or “administrative activities”; however, guidance is provided by State Department of Education Policy 2315 (126 C.S.R. 67),“Comprehensive Developmental Guidance Policy”.

Section 4.2 of Policy 2315 provides that “[s]chool counselors spend at least 75% of their time in a direct counseling relationship with pupils through the services identified in section 3 of this policy.”

Section 3.1 states: “[t]he county board of education and local schools shall establish and implement comprehensive developmental guidance programs designed to assist all students with the identification and realization of education, career, and social goals.”

Section 3.2 provides:

Comprehensive developmental guidance programs are based on the following services:

* Orientation - A series of activities designed to help students who are in a new environment to become acquainted with the school, to know the staff and physical plant, to understand the structure

of courses and requirements, to know school customs and activities, to become acquainted with one another, and to develop a sense of purpose and belonging;

* Assessment - The organizing, collecting and managing of cumulative records, testing information and other procedures and techniques of assessing individual growth and performance. This service includes interpretation of assessment data to be available for students, teachers, parents and administrators to assist them in decision-making;

* Information - Collecting and disseminating accurate and current information that will assist students to make intelligent choices about school schedules, four-year plans, postsecondary education programs, and occupations;

* Counseling - Individual or group interactions which employ techniques to assist students in working out solutions to academic, personal, and social problems;

* Consultation - Interaction with parents, teachers, othereducators and community agencies regarding strategies to help students;

* Educational Planning - A process of providing students the assistance needed to select courses in the middle or junior high school years and to formulate their four-year educational plans that will enable them to make a successful transition from high school to postsecondary education or employment;

* Placement - Organized procedures for locating appropriate employment or further training for students;

* Follow Up - A systematic plan for maintaining contact with former students and obtaining data for evaluating the effectiveness of the guidance program.

This provision indicates that direct counseling services include more than face to face interaction with students. The collection and dissemination of information relating to students is a necessary part of a guidance counselor's duties, and completion of the process provides them with information relating to the students which may be useful during their direct communications. For example, Grievants complain they are required to place test score labels on the students' files, a chore which

could be completed by a clerk or secretary. Viewing it from another angle, BUHS Principal William Carmen opined that Grievants need to review the data on the label, so why not simply affix it to the file at the same time?

Mr. Carmen made similar comparisons to other activities cited by Grievants. For example, they assert that entering data for student scheduling could be completed by a secretary. Mr. Carmen suggests that Grievants simply enter the data at the time they do the scheduling instead of writing it down, and requiring that another employee enter it into the computer. Grievants indicate a considerable number of hours are spent signing intardy and absent students. They suggest this duty could be assigned to a secretary, indeed it was previously performed by a secretary, and they could simply review the report listing the students. Mr. Carmen stated that he asked the guidance counselors to monitor these students so that they would be aware of those individuals who might be developing a problem and attend to it quickly.

Grievants indicate that the secretary assigned to their department is less than helpful. Specifically, they state that she is required to perform duties for other individuals, and Grievant Hall stated that when she asks the secretary to assist her there is always a question and the duty comes back to her for completion.

Certainly, it would be beneficial for the parties to discuss the matter of secretarial support available to Grievants. The mere physical presence of a secretary who primarily works for others offers no meaningful assistance. A clarification of what percentage of her time, and/or duties she is expected to perform for Grievants would at least give everyone a sense of what they might expect, without ongoing disputes.

Previously, the Grievance Board has held that the transfer of school counselors to split counselor/teacher positions, rendered the grievants unable to function in compliance with the W. Va. Code §18-5-18b requirement that school counselors spend at least seventy-five percent of their work time in a direct counseling relationship with students, and was, therefore, arbitrary and capricious. Hartley and Curry v. Lincoln County Bd. of Educ., Docket No. 99-22-201 (July 29,1999). In the present matter, the reassignment of Grievant Hall from a teaching assignment two periods of the day to full-time counseling duties, corrects that defect, and the additional hours devoted to counseling should result in asubstantial benefit to all three counselors at BUHS.

Addressing the matter of counseling verses administrative duties, it cannot be determined that

Grievants have proven a violation of W. Va. Code §18-5-18b. Their claim that many of their duties could be performed by a secretary or clerk is accurate, to a limited degree. Certainly, a secretary or clerk could perform duties including, but not limited to, data entry, affixing labels, and signing in tardy students. However, Principal Carmen is not incorrect in his view that Grievants are processing information which they may use as part of their counseling duties. His philosophy that they should perform the data entry, etc., even to the extent that it is clerical in nature, because it is the most efficient way to complete the process, is a practical allocation of personnel resources. The undersigned agrees that in this computer age, it makes little sense for Grievants to process student schedule changes on paper, only to have another employee enter the information into the data base.

Shroyer v. Harrison County Bd. of Educ., Docket No. 99-17-085 (July 22, 1999), presented a factual situation remarkably similar to the present matter. Ms. Shroyer complained that she was assigned a significant amount of administrative duties which interfered with her ability to provide direct counseling to the students during seventy-five percent of her work time. In that matter it was determined that what grievant perceived to be administrative duties, such as compiling and maintaining student records, and processing grades, transcripts, and test scores, was not purely administrative, but were duties easily encompassed with the categories of “Assessment” and “Information”, and are related to the direct counseling relationship with students. The same holding applies to thepresent grievance.

Grievants' desire to spend more time with their students is understandable and commendable. Unfortunately, as with many employees these days, there is an abundance of record keeping and paperwork attendant to their positions. Because Policy 2315 provides a direct counseling relationship consists of activities other than face to face communications with students, and the other duties are to some degree useful to Grievants in providing a direct counseling relationship, it cannot be determined that Grievants are not prohibited from spending seventy-five percent of their work time in a direct counseling relationship.

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

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievants have the burden of proving each element of their 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. W. Va. Code §18-5-18b provides in pertinent part, "[s]chool counselors shall be full-time personnel, shall spend at least seventy-five percent of work time in a direct counseling relationship with pupils, and shall devote no more than one fourth of the work day to administrative activities: Provided, That such activities are counselor related." 3. The West Virginia Department of Education Policy 2315 (126 C.S.R. 67), "Comprehensive Developmental Guidance Policy", provides that a comprehensive developmental guidance program consists of a number of services, one of which is counseling. Therefore, guidance counselors are not required to spend seventy-five percent of their time counseling students.

4. Grievants have failed to prove that less than seventy-five percent of their time is consumed by duties which constitute a direct counseling relationship with students, in violation of W. Va. Code §18-5-18b.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Upshur 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. 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: October 28, 1999 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE