PATRICIA A. SMITH,

Grievant,

v. **Docket No. 02-21-028**

LEWIS COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Patricia A. Smith ("Grievant") initiated this proceeding on October 17, 2001, alleging her schedule was improperly changed during the 2001-2002 school year. (See footnote 1) She seeks a ruling stating that her employer, the Lewis County Board of Education ("LCBOE"), was not allowed by law to alter her schedule in the manner alleged. The grievance was denied at level one, and a level two hearing was held on December 19, 2001. A level two decision, denying the grievance, was issued on December 27, 2001. Grievant appealed to level three, and a hearing was held before LCBOE on January 28, 2002, at the conclusion of which the Board voted to deny the grievance. Grievant filed a level four appeal on February 4, 2002, and a hearing was held in the Grievance Board's office in Elkins, West Virginia, on May 9, 2002. Grievant was represented by counsel, John E. Roush, and Respondent was represented by counsel, Harry M. Rubenstein. This matter became mature for consideration on June 17, 2002, the deadline for submission of the parties' final written arguments.

The following findings of fact pertinent to resolution of this matter are made basedupon a preponderance of the evidence of record.

Findings of Fact

1. Grievant has been employed by LCBOE as a classroom aide for approximately ten years.

2. Since the fall of 1997, Grievant has been assigned to Robert L. Bland Middle School ("RLBMS") as a special education aide.

3. Since being assigned to RLBMS, Grievant has worked exclusively in Mrs. Currence's MI/LD

classroom.

4. Aides at RLBMS have historically been provided two “consultation” or “planning” periods, during which times they were not in charge of any children. Grievant and Mrs. Currence used at least some of this time to “collaborate” with one another regarding the class.

5. At the beginning of the 2001-2002 school year, Grievant was scheduled to be in Mrs. Currence's classroom for the entire day and would have two planning periods totaling approximately 90 minutes.

6. Shortly after school began in September of 2001, it became apparent that the county, including RLBMS, had more special education students than expected. School officials decided that the additional students' needs could be met by modifying the schedules of the existing special education aides assigned to RLBMS.

7. After revisions were proposed and the aides were provided input, changes were made to Grievant's schedule which resulted in elimination of both of her planning periods, beginning in late November. Grievant was also assigned to another teacher's classroom for two class periods each day. 8. On March 14, 2002, LCBOE voted to terminate the contracts of all special education aides and reissue them as itinerant aide positions.

9. When the 2002-2003 school year begins, Grievant will be assigned to RLBMS as an itinerant special education aide. (See footnote 2)

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her claims by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2000); 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 does not dispute that, since the 2001-2002 school year has now concluded, any ruling from this Grievance Board regarding the issues she has raised will have no effect on her schedule for the upcoming school year. Since the Board has transferred her to itinerant status for the 2002-2003 school year, over which a separate grievance has been filed, Grievant is not seeking to have her schedule returned to its status as of the beginning of the 2001-2002 school year. Rather, she seeks

as relief in this grievance to have this Grievance Board issue a ruling stating that it was legally improper for LCBOE to alter her schedule as it did in November of 2001.

Because it is not possible for any actual relief to be granted, any ruling issued by the undersigned regarding the question raised by this grievance would merely be an advisory opinion. “This Grievance Board does not issue advisory opinions. Dooley v. Dep't ofTransp., Docket No. 94-DOH-255 (Nov. 30, 1994); Pascoli & Kriner v. Ohio County Bd. of Educ., Docket No. 91-35-229/239 (Nov. 27, 1991).” Priest v. Kanawha County Bd. of Educ., Docket No. 00-20-144 (Aug. 15, 2000).

The following conclusions of law support the decision reached.

Conclusions of Law

1. In a non-disciplinary matter, Grievant has the burden of proving her claims by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2000); 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. “This Grievance Board does not issue advisory opinions. Dooley v. Dep't of Transp., Docket No. 94-DOH-255 (Nov. 30, 1994); Pascoli & Kriner v. Ohio County Bd. of Educ., Docket No. 91-35-229/239 (Nov. 27, 1991).” Priest v. Kanawha County Bd. of Educ., Docket No. 00-20-144 (Aug. 15, 2000).

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or the Circuit Court of Lewis 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 tosuch 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 21, 2002 _____

DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

Two other aides were initially included in this grievance, but they have since withdrawn their grievances.

Footnote: 2

Grievant testified at level four that she has filed a grievance regarding the Board's action.