KAREN VANCE,

Grievant,

v. **Docket No. 02-19-030R**

JEFFERSON COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant Karen Vance filed a level four grievance appeal on February 2, 2002, in which she alleged a violation of W. Va. Code § 18A-4-8b when the Jefferson County Board of Education (JCBE or Respondent) posted Aide positions as "Itinerant." Following an evidentiary hearing, the grievance was denied at level four. (See footnote 1) Upon appeal to the Circuit Court of Kanawha County, the matter was remanded to the Grievance Board with direction to receive any additional evidence required to review and decide the issue of Grievant's standing to pursue the grievance, and, if necessary, the statute-based issues raised by Grievant upon appeal.

A conference call was conducted with counsel, Curtis Cooper of Crandall Pyles Haviland & Turner for Grievant, and Claudia W. Bentley of Bowles Rice McDavid Graff & Love for JCBE on September 24, 2002. Counsel agreed that no further evidentiary development would be necessary, and that memoranda of law or other written submission would be filed. The matter became mature for decision upon receipt of JCBE's Reply Brief on November 1, 2002.

The undisputed facts of this matter are as follows:

Findings of Fact

1. Grievant has been employed by JCBE since 1992, and has been classified as an Aide/Paraprofessional, at all times pertinent to this grievance.

2. In October 2001 JCBE posted a vacancy for the position of "Special Education/Transportation/General/Classroom Aide - ITINERANT." The attached job description noted that "Changes in job assignment/job site and responsibilities can occur throughout the year. Initial site located in Charles Town Middle/Jr. High School."

3. JCBE had similarly posted six Aide positions as itinerant on July 27, 2001.

4. Grievant did not apply for any of the positions identified as "itinerant." 5. The

determination whether a position will be posted as itinerant is made a on a case-by-case basis, taking into account the needs of the students and the schools in which those students are served.

Discussion

Initially, JCBE asserts that Grievant lacks standing because she alleged no injury in fact, economic or otherwise, which is the result of the challenged action. Grievant asserts that she has alleged a concrete injury in that she is interested in Aide positions that become available, but cannot understand the particulars of the positions, and would have no stability in those positions in the format being used. Grievant denies that she was required to apply for the vaguely posted itinerant position in order to obtain standing, that as an interested individual she has a statutory right to a detailed job description and to an assurance that she will not be transferred except when there is a real need.

"Standing, defined simply, is a legal requirement that a party must have a personal stake in the outcome of the controversy." McElroy v. Monongalia County Bd. of Educ., Docket No. 01-30-020 (Sept. 17, 2001); Wagner v. Hardy County Bd. of Educ., Docket No.95-16-504 (Feb. 23, 1996). In order to have a personal stake in the outcome, a grievant must have been harmed or suffered damages. The grievant "must allege an injury in fact, either economic or otherwise, which is the result of the challenged action and shows that the interest he seeks to protect by way of the institution of legal proceedings is arguably within the zone of interests protected by the statute, regulation or constitutional guarantee which is the basis for the lawsuit." Shobe v. Latimer, 162 W. Va. 779, 253 S.E.2d 54 (1979). Without some allegation of personal injury, a grievant is without standing to pursue the grievance. Lyons v. Wood County Bd. of Educ., Docket No. 89-54-501 (Feb. 28, 1990). Beard v. Bd. of Directors/Shepherd College, Docket No. 99-BOD-268 (Apr. 27, 2000); Elliott v. Randolph County Bd. of Educ., Docket No. 98-42-304 (May 26, 1999); Farley v. W. Va. Parkways Econ. Dev. Auth., Docket No. 96-PEDTA-204 (Feb. 21, 1997). A general claim of unfairness or an employee's philosophical disagreement with a policy does not, in and of itself, constitute an injury sufficient to grant standing to grieve. See Olson v. Bd. of Trustees/Marshall Univ., Docket No. 99-BOT-513 (Apr. 5, 2000), citing Skaff v. Pridemore, 200 W. Va. 700, 490 S.E.2d 787 (1997).

In the instant case, it is clear that notwithstanding the rather broad allegation that she could not understand the particulars of the itinerant positions, Grievant's only concern is the possibility that she may be transferred. The postings include a job description which provides a listing of responsibilities,

performance standards, and the initial site location. There is no doubt the assignment is for an Aide in the Special Education program. While it understandable that Grievant would want to bid on a more desirable position, and the itinerant designation is not desirable to her, she has not suffered any injury, and lacks standing. Even if it should be determined that Grievant has standing, she cannot prevail on the claim that JCBE is prohibited by W. Va. Code § 18-20-1c(5) from posting these positions as itinerant. The provision relied upon by Grievant states, "[t]hat aides in the area of special education cannot be reassigned to more than one school without the employee's consent."

The Grievant Board has previously held that special education aides are in a unique setting i.e., they are not really assigned to a location, but to a particular child who happens to attend a particular school. If a child to whom she is assigned moves to another school, and JCBE cannot move Grievant with the child, JCBE will have to hire another aide to assist the child, while it continues to pay Grievant for a job she no longer performs. Since that would not be a reasonable use of resources, the language of the statute has been held to mean that an aide cannot be assigned after the start of the school year ("reassigned"), to two or more schools. Conrad v. Nicholas County Bd. of Educ., Docket No. 97-34-388 (Jan. 12, 1998). (See footnote 2) The record does not reflect any evidence that JCBE has assigned any itinerant aide to serve at more than one school at a time. JCBE's practice is to assign an Aide to report to one school so long as the student to whom she is assigned remains at that school, and if the student transfers to another school, she may be moved with him or her to another location. This is simply utilizing resources in an efficient manner. There isno evidence that multiple assignments or a series of temporary assignments has been or will be made.

The following conclusions of law support the decision reached.

Conclusions of Law

1. "Standing, defined simply, is a legal requirement that a party must have a personal stake in the outcome of the controversy." McElroy v. Monongalia County Bd. of Educ., Docket No. 01-30-020 (Sept. 17, 2001); Wagner v. Hardy County Bd. of Educ., Docket No. 95-16-504 (Feb. 23, 1996). 0 S.E.2d 787 (1997).

2. Grievant lacks standing to pursue this grievance because she has suffered no harm or damages as a result of some Aide positions being designated as Itinerant.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Jefferson 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: November 20, 2002 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

Vance v. Jefferson County Bd. of Educ., Docket No. 02-19-030 (Mar. 28, 2002).

Footnote: 2

See also Sipple v. Mingo County Board of Education, Docket No. 95-29-487 (Mar. 27, 1996) which held, "[bus] aides who assist special education students commuting to and from school on school-provided transportation, are assigned duties of an itinerant nature." It was determined that a special education aide could be reassigned to another bus run after the school year had begun when the special education student to whom she was originally assigned was not going to be riding a school bus.