MARY FRANCISCO,

Grievant,

v. **DOCKET NO. 03-10-108**

FAYETTE COUNTY BOARD

OF EDUCATION,

Respondent.

DECISION

Mary Charlene Francisco, (Grievant) filed this grievance against Fayette County Board of Education, (Respondent) on January 13, 2003, stating:

> I am classified as Secretary III/Accountant II/Receptionist/Switchboard Operator/Mail Clerk in the Central Office of Fayette County Schools. I contend that my duties and responsibilities entitle me to the additional titles of Executive Secretary and Coordinator. I allege a violation of WV Code 18A-4-8 and 8a.

Grievant stated the relief sought as:

> I seek reclassification and back pay and benefits retroactive to July 1, 2002, and interest on any sum to which I am entitled.

Having been denied at all lower levels, a level four hearing was held in the Grievance Board's Charleston office on July 15, 2003. Grievant was represented by West Virginia School Service Personnel Association Attorney John E. Roush, Esq., and Respondent was represented by its attorney Erwin Conrad, Esq. This matter became mature for decision on August 12, 2003, the deadline filing of the parties' proposed findings of fact and conclusions of law. Based on a preponderance of the credible evidence contained in the record and adduced at the hearing, I find the following material facts have been proven:

FINDINGS OF FACT

1. Grievant has been regularly employed by Respondent since 1978, and has worked in the Central Office for the past twenty years. Her current multiclassification is Secretary III, Accountant II, Switchboard Operator and Mail Clerk.

2. Grievant's immediate supervisor is Associate Superintendent Nancy Keffer, who assumed that job July 1, 2002.

3. The Superintendent's phone line rings in her (See footnote 1) office, the office of her Executive Secretary, Joyce Lambert and in the Grievant's office. Grievant answers calls on this line for the Superintendent when Ms. Lambert is not available to take the calls. Grievant has no other duties related to the Superintendent.

4. Grievant's former supervisor, Associate Superintendent of Curriculum and Instruction Peggy Freeman, had assumed the duties of Coordinator of Homebound Services. She had originally agreed to take responsibility for the program temporarily, but it has remained assigned to her position since then.

5. Ms. Freeman assigned many of the tasks associated with the homebound program to Grievant, but retained ultimate responsibility for the program. Grievant serves as the liaison between the school principal and the parents of students receiving homebound instruction services, recruits, assesses the qualifications of and assigns homebound instructors, reviews and approves requests for homebound instruction or investigates questionable requests, and reviews hours submitted by homebound instructorsand processes paperwork needed to pay the teachers. She exercises independent judgment over most issues related to the program.

6. After Ms. Keffer took over the Associate Superintendent's position, Grievant assumed the entire workload of the homebound program. Ms. Keffer considered her to be “in charge of that program.” Ms. Keffer retained signature authority, but Grievant merely rubber-stamped her signature on documents that required it. Grievant would consult with Ms. Keffer for advice or to get a second opinion in some circumstances, but Ms. Keffer never exerted any control over the program.

7. Ms. Keffer does not assign Grievant particular tasks to do for the homebound program, and has little knowledge of the day-to-day operations of the program.

8. Respondent asserted that this grievance was not timely filed at level two.

9. In July, 2002, Grievant had filed a grievance seeking unspecified reclassification, along with a number of other service personnel.

10. Grievant withdrew that grievance on July 9, 2002, after all central office secretaries had Accountant II added to their titles, and after Interim Superintendent Charlie Garvin announced the planned formation of a committee to study service personnel reclassification.

11. On November 13, 2002, Grievant notified Ms. Keffer, Superintendent Domingues and Jack Thompson, Director of Personnel, that she had not received any notice that such a committee had actually been formed, that she wished to be reclassified as Executive Secretary and Coordinator, and requested that she be provided the forms for making such a request. Level two Grievant's exhibit No. 1. 12. Mr. Thompson provided her with Grievance forms and told her she needed to file a grievance. Before she could do so, Superintendent Domingues called a meeting with Grievant and Ms. Keffer, and told Grievant not to file a grievance yet.

13. On December 20, 2002, Grievant sent a memo to Superintendent Domingues again requesting that the titles of Executive Secretary and Coordinator be added to her multiclassification title.

14. Mr. Domingues then informed Grievant by letter dated December 24, 2002, that he felt the grievance process was the proper way to address classification concerns, and that she should file a grievance.

DISCUSSION

This is a non-disciplinary grievance in which Grievant bears the burden of proof. Grievant's allegations must be proven by a preponderance of the evidence. *See*, W. Va. Code § 18-29-6, 156 W. Va. C. S. R. 1 § 4.21. In order to prevail in a misclassification grievance, an employee must establish that her duties more closely match those of another classification than that under which her position is categorized. Sammons/Varney v. Mingo County Bd. of Educ., Docket No. 96-29-356 (Dec. 30, 1996). Gregory v. Mingo County Bd. of Educ., Docket No. 95-29-006 (July 19, 1995). Grievant argues her duties have closely fit the classification titles of Coordinator and Executive Secretary. Respondent maintains they do not, and the Grievant is properly classified.

Service personnel classification titles are defined in W. Va. Code § 18A-4-8(i). Those relevant to this discussion are as follows:

> (34) "Director or coordinator of services" means personnel who are assigned to direct a department or division. Nothing in this subdivision may prohibit professional personnel or professional educators as defined in section one, article one of this chapter, from holding this class title, but professional personnel may not be defined or

> classified as service personnel unless theprofessional personnel held a service personnel title under this section prior to holding class title of "director or coordinator of services." Directors or coordinators of service positions shall be classified as either a professional personnel or service personnel position for state aid formula funding purposes and funding for directors or coordinators of service positions shall be based upon the employment status of the director or coordinator either as a professional personnel or service personnel;
>
> (40) "Executive secretary" means personnel employed as the county school superintendent's secretary or as a secretary who is assigned to a position characterized by significant administrative duties;

Grievant's minimal duties on behalf of the Superintendent, consisting solely of answering her telephone when the executive secretary is unavailable to do so, do not render her misclassified. Simply because an employee is required to undertake some responsibilities normally associated with a higher classification, even regularly, does not render her misclassified *per se*. Carver v. Kanawha County Bd. of Educ., Docket No. 01- 20-057 (Apr. 13, 2001). The question as to whether the secretary of an Associate Superintendent is an executive secretary has been tangentially addressed by this Grievance Board, and it was found that she is not.

"The distinction between the Secretary III and Executive Secretary classifications depends upon the duties and responsibilities of the individual to whom the secretary is assigned, not the secretary's own duties and responsibilities. Thus, the language in the Executive Secretary classification referring to 'a secretary who is assigned to a position characterized by significant administrative duties' refers to the administrator or superior to whom the secretary is assigned, not the secretary." O'Neal v. Fayette County Bd. of Educ., Docket No. 02-10-369 (Feb. 7, 2003); Sanders v. Putnam County Bd. of Educ., Docket No. 01-40-630 (Mar. 28, 2002). In O'Neal, it was found that the secretary of an Associate Superintendent in Fayette County was not an Executive Secretary. As a general rule, thisGrievance Board adheres to the doctrine of *stare decisis* in adjudicating grievances that come before it. Chafin v. W. Va. Dep't of Health & Human Resources, Docket No. 92- HHR-132 (July 24, 1992), citing Dailey v. Bechtel Corp., 157 W. Va. 1023, 207 S.E.2d 169 (1974). Grievant presented no other evidence that would support ruling differently in her case, and has not met her burden on this issue.

The Coordinator of Services title is reserved for "personnel who are assigned to direct a department or division." W. Va. Code § 18A-4-8(i)(34). *See* O'Neal, *supra*. Respondent argues that

although Grievant does the work, she has not been assigned to direct the Homebound program - Ms. Keffer has. In reality, Grievant has been assigned to do all the work for the Homebound program, supervised very minimally by the Associate Superintendent. Although Ms. Keffer is nominally the head of the program, and her name is on the documents that go out related to the program, she has no actual knowledge of its day to day operation, and her name is signed by Grievant (with Ms. Keffer's permission). However, there is no evidence that the Homebound program is a “department or division.”

Although grievant has been assigned the work of the program, and performs it with skill and alacrity, she has not proven that it is the work of a “department or division.” The homebound program is one of several programs assigned to an Associate Superintendent, and is not a stand-alone department. There is no evidence it has its own staff, budget, or organizational framework. When an employee is responsible for performing the work of a particular program that has actually been assigned to a person with responsibility for several programs, she does not “direct a department or division” as contemplated by the Director or Coordinator of Services classification. *See* Newcome v Kanawha County Bd. of Educ., Docket No. 98-20-080 (June 25, 1998). Even if the Homebound program were found to be a department or division, Grievant would not be entitled to the classification. In a similar case, an employee who performed the same work as other coordinators was found to be not entitled to that title because she did not share the same level of responsibility for the work. *See*, Woofter v. Harrison County Bd. of Educ., Docket No. 01-17-464 (Dec. 20, 2001). Although grievant performs the work, ultimate responsibility for the program rests with her supervisor. It is Ms. Keffer's signature that appears on al documents related to the program, and it is she who must answer to the Superintendent for any failings in the program. It is also her responsibility to make any final decisions on questionable cases, even though she delegates some of her decision-making authority on routine matters. Accordingly, an employee who performs the work of a coordinator without being assigned the responsibility of a coordinator is not entitled to the classification.

As it has been determined that Grievant is not entitled to relief in this matter based on the merits of her case, the issue of timeliness raised by Respondent at levels two and four need not be addressed.

The following conclusions of law support this decision:

CONCLUSIONS OF LAW

1. This is a non-disciplinary grievance in which Grievant bears the burden of proof. Grievant's allegations must be proven by a preponderance of the evidence. *See*, W. Va. Code § 18-29-6, 156 W. Va. C. S. R. 1 § 4.21. "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." Leichliter v. W. Va. Dep't. of Health and Human Resources, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the party bearing the burden has not met its burden. Id.

2. "In order to prevail in a misclassification grievance, an employee must establish that her duties more closely match those of another classification than that under which her position is categorized. Sammons/Varney v. Mingo County Bd. of Educ., Docket No. 96-29-356 (Dec. 30, 1996); Savilla v. Putnam County Bd. of Educ., Docket No. 89-40- 546 (Dec. 21, 1989). A school service employee who establishes, by a preponderance of the evidence, that he is performing the duties of a higher W. Va. Code §18A-4-8 classification than that under which he is officially categorized, is entitled to reclassification. Gregory v. Mingo County Bd. of Educ., Docket No. 95-29-006 (July 19, 1995); Hatfield v. Mingo County Bd. of Educ., Docket No. 91-29-077 (Apr. 15, 1991); Holliday v. Marshall County Bd. of Educ., Docket No. 89-25-376 (Nov. 30, 1989); Scarberry v. Logan County Bd. of Educ., Docket No. 89-23-63 (Oct. 30,1989). However, simply because an employee is required to undertake some responsibilities normally associated with a higher classification, even regularly, does not render him misclassified per se. Hatfield, *supra*." Carver v. Kanawha County Bd. of Educ., Docket No. 01-20-057 (Apr. 13, 2001).

3. "The distinction between the Secretary III and Executive Secretary classifications depends upon the duties and responsibilities of the individual to whom the secretary is assigned, not the secretary's own duties and responsibilities. Thus, the language in the Executive Secretary classification referring to "a secretary who is assigned to a position characterized by significant administrative duties" refers to the administrator or superior to whom the secretary is assigned, not the secretary." Sanders v. Putnam County Bd. of Educ., Docket No. 01-40-630 (Mar. 28, 2002).

4. As a general rule, this Grievance Board adheres to the doctrine of stare decisis in adjudicating grievances that come before it. Chafin v. W. Va. Dep't of Health & Human Resources, Docket No. 92-HHR-132 (July 24, 1992), citing Dailey v. Bechtel Corp.,157 W. Va. 1023, 207 S.E.2d 169 (1974). This adherence is founded upon a determination that the employees and employers

whose relationships are regulated by this agency are best guided in their actions by a system that provides for predictability, while retaining the discretion necessary to effectuate the purposes of the statutes applied. Consistent with this approach, this Grievance Board follows precedents established by the Supreme Court of Appeals of West Virginia as the law of this jurisdiction. Likewise, prior decisions of this Grievance Board are followed unless a reasoned determination is made that the prior decision was clearly in error. Shaffer v. Kanawha County Bd. of Educ., Docket No. 00-20-085 (June 12, 2000); Belcher v. W. Va. Dep't of Transp., Docket No. 94- DOH-341 (Apr. 27, 1995).

5. Grievant did not meet her burden of proving she should be reclassified as an Executive Secretary.

6. The Coordinator of Services title is reserved for "personnel who are assigned to direct a department or division." W. Va. Code § 18A-4-8(i)(34). A brief and impermanent undertaking of some of the duties of a position with such responsibility does not equate to an assignment to "direct a department or division."

7. When an employee is responsible for performing the work of a particular program that has actually been assigned to a person with responsibility for several programs, she does not "direct a department or division" as contemplated by the Director or Coordinator of Services classification. *See* Newcome v Kanawha County Bd. of Educ., Docket No. 98-20-080 (June 25, 1998).

8. An employee who performs the work of a coordinator without being assigned the responsibility of a coordinator is not entitled to the classification. *See,* Woofter v. Harrison County Bd. of Educ., Docket No. 01-17-464 (Dec. 20, 2001). 9. Grievant did not meet her burden of proving she should be classified as a Coordinator or Director of Services.

For the foregoing reasons, this grievance is hereby **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or to the Circuit Court of Fayette County. Any 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 Grievance Board with the civil action number so that the record can be prepared and transmitted to the circuit court.

Date: August 21, 2003 _____

M. Paul Marteney

Administrative Law Judge

Footnote: 1

At the time this grievance was filed, Fayette County's Superintendent of Schools was Manuel Domingues. The Superintendent is now Helen Whitehair.