MELISSA SCHLEICHER,

Grievant,

v. Docket No. 05-DJS-300

DIVISION OF JUVENILE SERVICES/

INDUSTRIAL HOME FOR YOUTH,

Respondent.

D E C I S I O N

Melissa Schleicher ("Grievant"), employed by the Division of Juvenile Services ("DJS") as a Community Resource Coordinator at the Industrial Home for Youth ("IHY"), filed a level one grievance on June 3, 2005, after she was advised that she was required to complete the DJS Services Academy. Grievant requests that a letter be placed in her personnel file stating that her completion of the West Virginia Corrections Academy is equivalent too the DJS Academy, therefore, she had completed all mandatory training requirements. (See footnote 1) **Grievant's immediate supervisor Kevin Kellar, and IHY Superintendent Matthew Biggie lacked authority to grant the requested relief at levels one and two, respectively. Following an evidentiary hearing at level three, the grievance evaluator recommended that Grievant only be required to complete seven of the classes. DJS Acting Director Cynthia Largent-Hill rejected the recommendation, and denied the grievance. A level four appeal was filed on August 24, 2005, and a hearing was conducted in the Grievance Board's Westover office on May 30, 2006. Grievant was represented by G. Thomas Smith, Esq., of Smith, McMunn & Glover, PLLC, and DJS was represented by Steven R. Compton, Esq., Assistant Attorney General. The grievance became mature for decision upon receipt of post-hearing submissions filed on or before June 13, 2006. The following facts have been derived from a preponderance of the credible evidence made part of the record at level four.**

Findings of Fact

1. Following her graduation from Fairmont State College, Grievant was employed by the West Virginia Department of Corrections in 1996. At that time she completed six weeks of instruction at the DOC Training Academy.

2. In 2001 Grievant transferred to DJS as a Recreation Assistant at IHY. (See footnote 2) **At the time of her transfer, then-DJS Director Manfred Holland determined that Grievant could be exempted from attending the DJS Training Academy, and Grievant was not provided an "Acknowledgment of Staff Training Requirements" form used by DJS to set forth the conditions of employment.**

3. On May 13, 2005, Grievant was notified that she was to attend the DJS Training Academy.

4. The DJS Training Academy is a three-week session composed of thirty-two classes which are now provided on-site. Grievant has completed fifteen of the classes since her transfer to DJS. Grievant agrees that she needs to attend seven additional classes, leaving ten classes in contention.

5. Employees who were employed at IHY prior to the creation of DJS were "grandfathered-in" and not required to complete the DJS training.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burdenof proving her claim by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 §§ 4.21 (2004); *Howell v. W. Va. Dep't of Health & Human Res*., Docket No. 89-DHS-72 (Nov. 29, 1990). *See W. Va. Code* §§ 29-6A-6. *See also 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). "The preponderance standard generally requires proof that a reasonable person wouldaccept as sufficient that a contested fact is more likely true than not." *Leichliter v. W. Va. Dep't of Health & Human Res*., Docket No. 92-HHR-486 (May 17, 1993).

Grievant argues that she was exempted from DJS training by Director Holland, and that it is discriminatory for DJS to now require that she, but not other employees, attend the training. Grievant also argues that it is a waste of time and money to require her to repeat classes she has already completed. DJS asserts that Grievant needs to complete the DJS training, which is directed to juvenile detainees, because the DOC training was geared for adult offenders.

"'Discrimination' means any differences in the treatment of employees unless such differences are related to the actual job responsibilities of the employees or agreed to in

writing by the employees." *W. Va. Code* § 29-6A-2(d). A grievant must establish a case of discrimination by showing:

(a) that he or she has been treated differently from one or more similarly-situated employee(s);

(b) that the different treatment is not related to the actual job responsibilities of the employees; and,

(c) that the difference in treatment was not agreed to in writing by the employee.

***The Bd. of Educ. of the County of Tyler v. White*, 605 S.E.2d 814 (W. Va. 2004); *Lusher v. Dep't of Transp./Div. of Highways*, Docket No. 05-DOH-157 (June 15, 2005).**

Grievant relies primarily on DJS Policy 4.04, "Training and Staff Development" which provides a three-phase training program for all employees, with Phase II of the plan as the Training Academy. The policy also allows the Director to grant an exemption from the basis training program requirements to an employee whose credentials have been thoroughly investigated.

Alvin Ross, Superintendent of IHY in 2001 testified that at that time a new addition had been opened at the facility increasing the staff by threefold. The administration was more concerned that correctional officers receive the required training, and other employees would be looked at later, therefore, Grievant's attendance at the academy was not required at the time she was hired. Grievant's testimony was identical: Superintendent Ross told her that she would not have to attend the Academy at that time. Thus, Grievant was never given a waiver, only a temporary reprieve.

Current DJS Director Cynthia Largent-Hill confirmed that employees named by Grievant as not having attended the Academy were grandfathered in since they worked at IHY or the Davis Center at the time DJS was created. Ms. Largent-Hill also confirmed that all non-uniformed personnel will all be required to attend the Academy, as space allows, because it promotes the mission of the agency in providing services to juveniles. While Grievant has completed similar courses at the DOC Academy, a review in the context of juvenile offenders may well provide her with new information and/or insight.

In consideration of this evidence, DJS is acting within its discretion to require Grievant to

attend training. She was never given a permanent waiver of the requirement,and while Grievant believes that it would be a waste of money, she does not identify any harm she will incur. Finally, because all employees will eventually be required to attend the training, DJS has not engaged in discrimination.

In addition to the foregoing findings of fact and discussion, the following conclusions of law support this Decision.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her claim by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 §§ 4.21 (2004); *Howell v. W. Va. Dep't of Health & Human Res*., Docket No. 89-DHS-72 (Nov. 29, 1990). *See W. Va. Code* § 29-6A-6.

2. A grievant must establish a case of discrimination, as defined by *W. Va. Code* § 29-6A-2(d), by showing:

(a) that he or she has been treated differently from one or more similarly-situated employee(s);

(b) that the different treatment is not related to the actual job responsibilities of the employees; and,

(c) that the difference in treatment was not agreed to in writing by the employee.

***The Bd. of Educ. of the County of Tyler v. White*, 605 S.E.2d 814 (W. Va. 2004); *Lusher v. Dep't of Transp./Div. of Highways*, Docket No. 05-DOH-157 (June 15, 2005).**

3. Grievant has failed to prove that DJS has engaged in discrimination by requiring her to attend the Training Academy, or that the requirement is otherwise contraryto any policy, rule or regulation.

Accordingly, this grievance is DENIED.

Any party, or the West Virginia Division of Personnel, may appeal this decision to the Circuit Court of Kanawha County, or to the "circuit court of the county in which the grievance occurred." Any such appeal must be filed within thirty (30) days of receipt of this decision. *W. Va. Code* § 29-6A-7 (1998). 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: JUNE 22, 2006

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SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1 ***Grievant's request for attorney fees cannot be granted by the Grievance Board.***

Footnote: 2 ***Grievant has since been promoted to Community Resource Coordinator.***