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EMPLOYEES GRIEVANCE BOARD**

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TINA CHANEY, MARY CRADDOCK,
DELORES TAYLOR and KATHY ERWIN

v.

Docket No. 40-86-278-1

PUTNAM COUNTY BOARD OF EDUCATION

DECISION

Grievants are employed by the Putnam County Board of Education as Kindergarten Aides II in various schools throughout the county. On July 29, 1985, they filed a joint grievance alleging that they should be reclassified as Aides III because they had each worked with students requiring a special education program for one year as per W.Va. Code, 18A-4-8. A level two hearing was conducted on August 12, 1985, and a level four hearing was conducted on January 5, 1987.¹

¹ Originally the parties desired to submit the grievance to the hearing examiner on the transcript of evidence of the level two hearing. Counsel for the grievants requested that the transcript be prepared on February 11, 1986, and it was filed in the Education Employees Grievance Board office on September 29, 1986. However, on October 1, 1986, counsel for the grievants requested an evidentiary hearing and the hearing was conducted on January 5, 1987.

The grievance was submitted to the hearing examiner on the transcript of the level two hearing, (T. ___), the evidence adduced at the level four hearing and findings of fact and conclusions of law submitted by counsel for the board of education on January 21, 1987.

Each of the grievants are classified as kindergarten classroom aides and assigned to a regular kindergarten classroom under a supervising teacher; each had varying degrees of contact with children they characterized as "exceptional" during the 1984-85 school year and it is on that basis that it is contended that they are entitled to reclassification to Aide III pursuant to W.Va. Code, 18A-4-8.² These contacts may be summarized as follows.

Mary Lou Craddock worked at West Teays Elementary and met a mongoloid student at the bus and watched over him for approximately an hour. The child was actually a student at Lakeside Elementary School and grievant would take him to her classroom and care for him until his bus arrived. (T. 23-27).

Tina Chaney worked at Hurricane Town Elementary and had two students with behavior problems. One of the students, a little girl, had to be bathed and dressed and required individual teaching and other assistance; the other child cried all day, was listless and wasn't aware of his surroundings. Neither of these children

² W.Va. Code, 18A-4-8 defines Aide III as follows:

"Aide III" means those personnel referred to in the "Aide I" classification who hold a high school diploma or a general educational development certificate and have completed six semester hours of college credit at an institution of higher education or are employed as an aide in a special education program and have one year's experience as an aide in special education. (Emphasis added).

The underlined portion of the definition was added in 1984, effective July 1, 1984, and is the language relied upon by grievants.

Counsel for the grievants contends that since the Legislature used the broad term of "special education program" rather than "federally funded program" or otherwise the school board was given discretion to reclassify aides working with such students for the extra compensation; that it was a salary provision. (T. 60).

had been identified as special education students as of August, 1985.³ (T. 35).

Delores Taylor worked at Conner Street Elementary and had three special children, one of whom was identified after fifty two days in the classroom and transferred to Lakeside Elementary in the Educationally Impaired (EI) class. Another child was later identified as a behavior disordered (BD) child and during the year in grievant's kindergarten class had been very disruptive of the class. (T. 12). A third child had been identified during the year in kindergarten as a BD student, placed in a BD classroom and later mainstreamed back to the kindergarten class the latter part of the year. (T. 20).

Kathy Erwin alternated at Hurricane Town Elementary and West Teays Elementary Schools, working three days one week at West Teays Elementary and two days the next week. While at West Teays Elementary she looked after a mongoloid boy for approximately an hour until a special education bus arrived to pick him up. (T. 37-39).

School officials assert that the area of exceptional education is governed by strict federal and state law and the characterization of a special education program or of a child as an exceptional child is not as casual as grievants present. The identification

³ At the level four hearing Ms. Nellie West, a bus monitor aide, testified that the little girl had since been identified as a special education student and rode the special ed bus to Lakeside Elementary to a special education class. Ms. West had been reclassified as an Aide III under the amended statute as a result of her experience as a special education bus monitor aide.

of a child as exceptional involves a multi-disciplinary approach and must be strictly followed. More specifically, referral is generally received from a parent, teacher, physician or agency and a school based assistance team at the local school initially determines if a solution can be reached at the local school level. If not, the referral is forwarded to the central office where it is assigned to a diagnostician and ultimately to a psychologist for testing. When all the records are collected a placement advisory committee (PAC) meeting is conducted and the product is an individualized education program (IEP) for that particular child. When it is determined the services which are required the decision is made as to where the child will receive the services, the overriding consideration being always that it will be the least restrictive environment.⁴ A child is never deemed to be exceptional without first going through this process.

⁴ The least restrictive environment means, to the maximum extent possible, that the child will be educated with regular students.

Kindergarten is an attempt to get the child into a school environment and much of the conduct described by grievants such as breaking crayons, fighting, crying, etc., is not deemed "exceptional" by special education people. It is conceivable that a child could be in a regular classroom for a year while the process was being completed and the options were being worked out; however, these students would not be classed as "exceptional" until the process was completed. Separation should never occur until after an IEP has been written.

In addition to the foregoing factual account the following specific findings of fact are appropriate.

FINDINGS OF FACT

1. Grievants are classified as Kindergarten Aides II and serve in various schools throughout Putnam County. Each of the grievants had varying degrees of contact with students in their regular kindergarten classes whom grievants characterized as "exceptional" or as requiring a special education program.

2. Putnam County Schools employs Aides in three categories, kindergarten aides, monitor aides and teacher aides. No regular classroom, except kindergarten, has an Aide.

3. In addition to regular kindergarten classes, kindergarten students are also served in programs for "exceptional education students" who have been identified by an established procedure mandated by state and federal law. The contact relied upon by grievants to establish their right to reclassification occurred in a regular classroom or related setting and prior to any of these students having been identified as "exceptional".

4. Grievants were not employed as Aides in a special education program and did not have one year of experience as an Aide in special education as a result of the contact they had with students needing special care during the school year 1984-85.

CONCLUSIONS OF LAW

1. W.Va. Code, 18A-4-8 defines as "Aide III" as a monitor aide, clerical aide, classroom aide or general aide who holds a high school diploma or a general education development certificate and have completed six semester hours of college credit at an institution of higher education or are employed as an aide in a special education program and have one year's experience as an aide in special education.

2. A statutory provision which is clear and unambiguous will not be interpreted but will be applied. Lavender v. McDowell County Board of Education, 327 S.E.2d 691 (W.Va. 1984).

3. Grievants have failed to prove the material allegations of the grievance as a matter of law. Liebold and McCartney v. Tyler County Board of Education, Docket No. 48-86-171-3.

Accordingly, the grievances are DENIED.

Either party may appeal this decision to the Circuit Court of Kanawha County or Putnam County and such appeal must be filed within thirty days of receipt of this decision. (W.Va. Code, 18-29-7). Please advise this office of your intent to do so in order that the record can be prepared and transmitted to the Court.



LEO CATSONIS

Chief Hearing Examiner

Dated: February 27, 1987