

**THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD**

**DONNA S. GREENWALT,
Grievant,**

v.

DOCKET NO. 2016-1592-JefED

**JEFFERSON COUNTY BOARD OF EDUCATION,
Respondent.**

DECISION

Grievant, Donna S. Greenwalt, filed a grievance against her employer, the Jefferson County Board of Education, on April 25, 2016. The statement of grievance filed at level one reads: "Grievant, a regularly employed Clerk/Aide, alleges that she is misclassified and should be reclassified as a Clerk/Aide/Secretary. Grievant also contends that she should not have to take the secretarial competency exam. Grievant alleges a violation of W. Va. Code 18A-4-8." As relief Grievant sought, "reclassification as a Clerk/Aide/Secretary II, retroactive wages, benefits, and seniority in the secretarial classification, and interest on all monetary sums. Grievant also seeks an order that she is not required to take the secretarial competency exam.."

A hearing was held at level one on May 20, 2016, and an undated decision denying the grievance was issued at that level. Grievant appealed to level two on June 21, 2016, and a mediation session was held at level two on August 26, 2016. Grievant appealed to level three on September 15, 2016. A level three hearing was held before the undersigned Administrative Law Judge on December 12, 2016, at the Grievance Board's Westover, West Virginia, office. Grievant was represented by John Everett Roush, Esquire, West

Virginia School Service Personnel Association, and Respondent was represented by Tracey B. Eberling, Esquire, Steptoe & Johnson, PLLC. This matter became mature for decision on February 6, 2017, on receipt of the last of the parties' Proposed Findings of Fact and Conclusions of Law.

Synopsis

Grievant is employed by Respondent as a Clerk/Aide, but believes she should be classified as a Clerk/Aide/Secretary II. Grievant has taken the state competency test for Secretary four times, including twice in 2016, but has not ever passed that test. She has never held the Secretary classification. Grievant cannot be classified as a Secretary II because she has not passed the state competency test for that classification.

The following Findings of Fact are properly made from the record developed at levels one and three.

Findings of Fact

1. Grievant has been employed by the Jefferson County Board of Education ("JBOE") for 23 years. Grievant is classified as a Clerk/Aide, and has been employed in that classification since 1996. She currently works at Wildwood Middle School.
2. Wildwood Middle School also has on staff an office secretary, who is classified as a Secretary II, and finance secretary.
3. JBOE has developed detailed job descriptions for the Clerk II and Secretary II, III classifications.
4. The JBOE job description for Clerk II states in the Job Summary that this "position requires performance of a variety of complex clerical duties in a school or

departmental location.” The job description lists a number of responsibilities of the classification, including maintaining confidentiality, providing clerical, bookkeeping and administrative support, preparing reports and written communications as directed, serving as a liaison with the public, coordinating scheduling of the facility, keeping administrators informed of building/program requirements, ensuring office procedures are established and maintained, greeting visitors, answering the telephone, and data entry.

5. The JBOE job description for Secretary II, III states in the Job Summary that this “position requires performance of a variety of complex secretarial and clerical work in a school or departmental location.” The job description lists a number of responsibilities of the classification, including maintaining confidentiality, providing secretarial, bookkeeping and administrative support, preparing reports and written communications as directed, serving as a liaison with the public, coordinating scheduling of the facility, keeping administrators informed of building/program requirements, ensuring office procedures are established and maintained, greeting visitors, and answering the telephone, just like the duties in the Clerk II classification. The Secretary II, III Job Summary does not list data entry as a responsibility as does the Clerk II Job Summary. It lists one area of responsibility which is not in the Clerk II list of responsibilities: “[a]ccurately prepares county, state and federal reports from raw data, which includes generating charts and graphs on the computer as necessary.”

6. Grievant asked Respondent to review her classification. The information she submitted was reviewed by the JBOE Job Appeal and Analysis Committee. Prior to this review, information was gathered from all the elementary and middle schools in the county

regarding the staffing in the office at each school and the duties performed by clerks and secretaries. The Committee determined that Grievant was properly classified.

7. Grievant assists with the calendar, answering the telephone at Wildwood Middle School, and responding to visitors at the front counter in the office. She works on reports, creating spreadsheets and reports. She collects the data for the civil rights report, prepares discipline reports comparing one year to another, prepares the G.P.A. spectrum report for eighth graders, calculating grades, enters discipline data on the computer, keeps the schedule for in-school suspension, communicates student discipline information to faculty, prepares class rolls, and assists guidance counselors with enrolling and withdrawing students from school. She coordinates the scheduling of building use, keeps the events billboard updated and organized, and keeps the community and parents updated on changes in events due to conflicts such as inclement weather. Grievant prepares letters, charts, and awards for the two Vice-Principals at the school, and prepares reports for the Principal. She also makes copies, does filing, puts in maintenance reports, and assists the Secretary II when needed. Grievant takes care of attendance when the Secretary who handles this is absent, she assists teachers with requisitions when they ask her for assistance, but this is not one of her job duties, and she collects and counts lunch money when the finance secretary is absent. The record does not reflect whether any of the reports Grievant prepares are county, state or federal reports, or whether she generates charts and graphs, as little explanation of the reports she generates was provided. The record also does not reflect the amount of time Grievant spends on any particular duty.

8. Grievant took the state competency test for the Secretary classification in 1993, 2003, and twice in 2016, and did not pass the test on any of these occasions. She took the state competency test in 2016 because she was applying for Secretary vacancies.

9. At some point when the Job Appeal and Analysis Committee was reviewing Grievant's request for review of her classification, JBOE's new legal counsel advised the Committee that an employee could not be reclassified to a job title until that employee passed the state competency test for the classification to which it was proposed the employee be assigned. The Committee decided that it would from that point require employees who were being recommended for reclassification to pass the competency test for the classification, and the Committee then developed and adopted a new Standard Operating Procedure which reflected this decision. Prior to this, employees who were being reclassified were not required to take the state competency test for their new classification.

10. Dorrie Blue, an employee of JBOE, was reclassified by the addition of Secretary III to three other titles she already possessed on September 14, 2015. Ms. Blue was not required to take the state competency test for the Secretary classification. Mr. Willingham, Barbara Beard, and Terry Young were also reclassified without being required to take the state competency test for the new classification.¹ This occurred prior to the time the JBOE Job Appeal and Analysis Committee was advised by counsel that employees were required to take the state competency test for the new classification prior to being reclassified.

¹ This information was stipulated to by the parties at the beginning of the level three hearing.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). 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 would accept 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).

Typically, "[i]n 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). A brief and impermanent undertaking of some of the duties of a position. . . does not equate to an assignment to 'direct a department or division.'" *O'Neal v. Fayette County Bd. of Educ.*, Docket No. 02-10-369 (Mar. 6, 2003). Further, "because of similarities in the nature of certain jobs, two or more definitions may encompass the same duties. Performance of such crossover duties does not necessarily mandate reclassification. *Graham v. Nicholas County Bd. of Educ.*, Docket No. 93-34-224 (Jan. 6, 1994)." *Gillespie v. Monongalia County Bd. of Educ.*, Docket No. 00-30-041 (June 29, 2000).

W. VA. CODE § 18A-4-8 establishes an employment term and class titles for service personnel. It defines each listed class title. The definitions of the class titles at issue are as follows:

"Aide I" means a person selected and trained for a teacher-aide classification such as monitor aide, clerical aide, classroom aide or general aide;

"Clerk I" means a person employed to perform clerical tasks;

"Clerk II" means a person employed to perform general clerical tasks, prepare reports and tabulations, and operate office machines;

"Secretary II" means a person employed in any elementary, secondary, kindergarten, nursery, special education, vocational, or any other school as a secretary. The duties may include performing general clerical tasks; transcribing from notes[,] stenotype, mechanical equipment or a sound-producing machine; preparing reports; receiving callers and referring them to proper persons; operating office machines; keeping records and handling routine correspondence. Nothing in this subdivision prevents a service person from holding or being elevated to a higher classification.

"County boards of education may expand upon the W. VA. CODE § 18A-4-8 classification definitions in a manner which is consistent with those definitions. *Brewer v. Mercer Co. Bd.*

of Educ., Docket No. 91-27-002 (March 30, 1992)." *Pope and Stanley v. Mingo County Bd. of Educ.*, Docket No. 91-29-068 (July 31, 1992).

With regard to the class titles at issue here, the Grievance Board has previously noted that "[t]here is significant overlap between clerk and secretary functions. Both perform clerical tasks, prepare reports, and operate office machines. So, while it is true that Grievant performs some tasks that secretaries perform, clerks perform the same tasks. The functions that distinguish secretaries by definition, receiving callers, transcription, and handling routine correspondence, Grievant does not do. She does not answer calls for her department or supervisors, but only takes calls relating to her specific tasks, other than acting as occasional back up for the secretaries in the two departments. She does not handle the correspondence for the department or her supervisors, again, dealing only with correspondence relating to her specific tasks." *Stewart v. Lincoln County Bd. of Educ.*, Docket No. 2014-0620-LinED (Oct. 30, 2014); *aff'd* No. 16-0123, 2017 W. Va. Lexis 96 (Feb. 21, 2017). Thus, Grievant has a significant burden to prove that her job entails performing the duties of a Secretary II, in addition to those of a Clerk.

Respondent pointed out that, even if Grievant were performing the duties of a Secretary, it was precluded from reclassifying Grievant because she has not passed the state competency test for the Secretary classification. WEST VIRGINIA CODE § 18A-4-8e sets forth the requirement that the State Board of Education development competency tests for class titles, the purpose of which "is to provide county boards a uniform means of determining whether school service personnel who do not hold a classification title in a particular category of employment meet the definition of the classification title in another category of employment" The Grievance Board has previously addressed the issue

of whether a grievant must pass the state competency test for a class title before the grievant can be reclassified, concluding that this is required. “[E]mployees cannot be classified in a particular classification unless they pass the required [competency] test.” *Edmonds v. Lincoln County Bd. of Educ.*, Docket No. 97-22-120 (May 27, 1998). “Competency tests shall be administered to service personnel to determine whether school service personnel can hold a classification title in a particular category of employment. W. VA. CODE § 18A-4-8[e]. Quite simply, employees cannot be classified in a particular classification unless they hold the classification title, or they pass the required competency test. Grievant has never held the classification of Secretary II, nor has she taken the required competency test, and it would be unlawful for the Board to reclassify her as a Secretary II, even if her duties more closely matched that of the Secretary II classification.” *Rogers v. Fayette County Bd. of Educ.*, Docket No. 02-10-004 (Apr. 29, 2003).

This Grievance Board follows the principle of *stare decisis*, meaning that it follows the rulings of its own cases in deciding subsequent grievances, and the fact that Grievant has not passed the state competency test for Secretary is dispositive in this case. Because Grievant has not passed the state competency test for Secretary, and has never held the Secretary class title, she cannot be reclassified as a Secretary. The facts of this case are especially compelling inasmuch as Grievant has applied for Secretary vacancies, but has not been considered for any of them because she cannot pass the competency test. Grievant is attempting to obtain the class title without having to meet the requirements those employees who competed for a vacancy were required to meet.

Grievant asserted that she is not required to pass the state competency test because she is not seeking to demonstrate her qualifications for a new job, as she is

already performing the duties of a Secretary. Grievant further noted that Respondent has reclassified other employees in the past without requiring them to pass a competency test. Respondent has admitted this error, but argued it has corrected its prior erroneous practice, pointing to Grievance Board cases which have stated that “boards of education should be encouraged to correct their errors as early as possible.” Whether Respondent corrected this practice or not, and whether Grievant has been performing the duties of a Secretary, however, are of no relevance. The undersigned cannot require Respondent to reclassify Grievant as a Secretary because, as noted above, it would be unlawful to do so when she has not passed the state competency test for Secretary. Further, if Grievant has been performing the Secretary job, Grievant has pointed to no law which would then exempt her from passing the state competency test. The proper remedy would be to revise Grievant’s job duties, a remedy which she does not seek.

The following Conclusions of Law support the Decision reached.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008); *Howell v. W. Va. Dep’t of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). *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 would accept 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).

2. Typically, "[i]n order to prevail in a misclassification grievance, an employee must establish that [his] 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).

3. 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). A brief and impermanent undertaking of some of the duties of a position. . . does not equate to an assignment to 'direct a department or division.'" *O'Neal v. Fayette County Bd. of Educ.*, Docket No. 02-10-369 (Mar. 6, 2003). Further, "because of similarities in the nature of certain jobs, two or more definitions may encompass the same duties. Performance of such crossover duties does not necessarily mandate reclassification. *Graham v. Nicholas County Bd. of Educ.*, Docket No. 93-34-224

(Jan. 6, 1994).” *Gillespie v. Monongalia County Bd. of Educ.*, Docket No. 00-30-041 (June 29, 2000).

4. “Competency tests shall be administered to service personnel to determine whether school service personnel can hold a classification title in a particular category of employment. W. VA. CODE § 18A-4-8[e].” *Rogers v. Fayette County Bd. of Educ.*, Docket No. 02-10-004 (Apr. 29, 2003).

5. “Quite simply, employees cannot be classified in a particular classification unless they hold the classification title, or they pass the required competency test. Grievant has never held the classification of Secretary II, nor has she taken the required competency test, and it would be unlawful for the Board to reclassify her as a Secretary II, even if her duties more closely matched that of the Secretary II classification.” *Id.*

6. It would be unlawful to reclassify Grievant as a Secretary when she has failed the state competency test for the Secretary classification.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. See W. VA. CODE § 6C-2-5. Neither the West Virginia Public 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 certified record can be prepared and properly transmitted to the Circuit Court of Kanawha County. See *also* 156 C.S.R. 1 § 6.20 (2008).

Date: March 9, 2017

BRENDA L. GOULD
Deputy Chief Administrative Law Judge