

**THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD**

**LAETITIA CLUTTER,
Grievant,**

v.

Docket No. 2018-1104-HarED

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

DECISION

Grievant, Laetitia Clutter, employed by the Harrison County Board of Education as a paraprofessional/aide, filed a Level One grievance dated April 17, 2018, alleging:

Grievant is certified as a Paraprofessional. Grievant's employment contract has been terminated in order to replace it with a teacher's aide contract. Grievant alleges that the Respondent cannot refuse to classify and to pay her as a paraprofessional since she holds certification as a paraprofessional and alleges a violation of West Virginia Code 18A-4-8(g),(i)(71), (m), (1), and prior case law from the Grievance Board.

For relief, Grievant sought the following:

Grievant seeks the reinstatement of the paraprofessional classification title; retroactive & prospective wages, benefits, and seniority as a paraprofessional. Grievant also seeks an award of interest on all monetary sums.

Superintendent Manchin conducted a Level One conference on April 27, 2018. This grievance was denied at Level One by decision dated May 16, 2016. A Level Two mediation was conducted on August 9, 2018. Grievant perfected her appeal to Level Three on August 14, 2018. A Level Three evidentiary hearing was conducted before the undersigned on December 10, 2018. Grievant appeared in person, and by her counsel, John Everett Roush, American Federation of Teachers-WV, AFL-CIO. Respondent

appeared by its representative, Dora Stutler, and by counsel, Richard S. Boothby, Bowles Rice LLP. This matter became mature for consideration upon receipt of the last of the parties' fact/law proposals on January 29, 2019.

Synopsis

Grievant is currently employed by Respondent as an Aide/Early Childhood Classroom Assistant Teacher. Grievant contends that once she obtained the necessary education and certification to be a paraprofessional, she became entitled to paraprofessional compensation, so long as she works in any aide position and regardless of her actual job duties. The record of this case, and the applicable law, did not support such a conclusion. Grievant failed to prove that she is currently performing paraprofessional duties. Grievant also failed to prove that she was entitled to any more compensation than she already receives in her current position. Accordingly, this grievance is denied.

The following Findings of Fact are based upon the record of this case.

Findings of Fact

1. Grievant is currently employed by Respondent as an Aide/Early Childhood Classroom Assistant Teacher at Simpson Elementary School. Grievant bid into this position during the summer of 2018. Ciara Ware is the teacher of this Kindergarten classroom.
2. Effective September 12, 2016, Grievant worked as a paraprofessional in a distance learning classroom at Liberty High School.

3. In March of 2017, due to decreased enrollment in distance learning course offerings, Respondent sought to reduce the number of paraprofessionals it employed. As a result, Grievant was notified in writing that she was being considered for transfer in a letter dated March 1, 2017. Respondent has only hired paraprofessionals for its distance learning courses.

4. On April 18, 2017, Grievant was properly notified in writing that Dr. Manchin presented her name to Respondent, recommending her placement on the transfer list. During the spring 2017 personnel season, Respondent did not take any action to terminate Grievant's paraprofessional contract.

5. On July 26, 2017, Grievant was notified of her subsequent assignment for the 2017-2018 school year. Grievant was transferred to an aide position at West Milford Elementary School.

6. On October 3, 2017, Respondent voted to approve Grievant's bid into a long-term leave of absence position at Norwood Elementary School as an Aide/Early Childhood Classroom Assistant Teacher.

7. In January of 2018, Grievant elected to bid on an aide position at Bridgeport High School. Grievant started this position at the beginning of the 2018-2019 school year.

8. In a letter dated March 12, 2018, Respondent notified Grievant in writing that her paraprofessional contract was being terminated and replaced with an aide contract.

9. On April 17, 2018, Grievant filed this action against Respondent. According to her grievance form, Grievant, at that time, worked at West Milford Elementary School.

10. The record of this case lacks evidence regarding her job duties as an aide at West Milford Elementary School or her duties as an Aide/Early Childhood Classroom Assistant Teacher at Norwood Elementary School.

11. During the summer of 2018, Grievant bid on her current aide position at Simpson Elementary School.

12. Ciara Ward, third year employee as a Kindergarten teacher at Simpson Elementary, set out the Grievant's job duties as an Aide/Early Childhood Classroom Assistant Teacher in her Kindergarten classroom.

13. Prior to working at Simpson Elementary, Ms. Ware worked at Nutter Fort Elementary School. Mary Beth Cooper was the Aide/Early Childhood Classroom Assistant Teacher assigned to Ms. Ware's Kindergarten classroom at Nutter Fort Elementary.

14. Ms. Ware indicated that Grievant performs the same duties that Mary Beth Cooper performed in her Kindergarten classroom at Nutter Fort Elementary. Mary Beth Cooper was an Aide/Early Childhood Classroom Assistant Teacher, not a paraprofessional.

15. Prior to Grievant, Mrs. Henderson was the Aide/Early Childhood Classroom Assistant Teacher assigned to Ms. Ware's Kindergarten classroom at Simpson Elementary.

16. Ms. Ware indicated that Grievant performs the same duties that Ms. Henderson performed in her Kindergarten classroom at Simpson Elementary. Mrs.

Henderson was an Aide/Early Childhood Classroom Assistant Teacher, not a paraprofessional.

17. At various times, once Ms. Ware teaches a lesson to her Kindergarten students, Grievant will go over simpler concepts to reinforce them. For example, Grievant might show the students how to write letters or the sounds of letters, or how to write their names.

18. It is rare for Grievant to work with students while Ms. Ware is working one-on-one with a specific student. More routinely, during such times, Grievant observes the students while they are resting, or reads a book to the students.

19. Record failed to demonstrate that Grievant performs any job duties at Simpson Elementary that are different from the job duties performed by other Aide/Early Childhood Classroom Assistant Teachers who have worked in a Kindergarten classroom at Simpson Elementary.

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 W. Va. Public Employees Grievance Board 156 C.S.R. 1 § 3 (2018); *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). "A preponderance of the evidence is evidence of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." *Petry v. Kanawha County Bd. of Educ.*, Docket

No. 96-20-380 (Mar. 18, 1997). In other words, “[t]he 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).

The issue presented to the undersigned is about the amount of compensation to which Grievant is entitled in her current Aide/Early Childhood Classroom Assistant Teacher position. Grievant contends, as a matter of law, that once she obtained the necessary education and certification to be a paraprofessional, she was entitled to paraprofessional compensation and classification, so long as she works in an aide position and regardless of her job duties. As counsel for Respondent aptly points out, the relevant law relied upon by Grievant has been amended by the legislature.

By way of background, during the 2016-2017 school year, Grievant worked as a paraprofessional in a distance learning classroom at Liberty High School. That position was posted as a paraprofessional position and required Grievant to supervise high school students with no teacher present in the room. During the Spring 2017 RIF and Transfer season, Grievant was transferred into an aide position at West Milford Elementary School, effective at the start of the 2017-2018 school year. Respondent, in error, did not also terminate Grievant’s paraprofessional contract during the 2017 RIF and Transfer season. As a result, Grievant was entitled to be paid as a paraprofessional during the 2017-2018 school year, despite the fact that she was hired to work as an aide, not a paraprofessional. During the 2018 RIF and Transfer season, Respondent corrected the 2017 oversight, and terminated Grievant’s paraprofessional contract.

Grievant argues that because she possesses paraprofessional education and certification, despite the undisputed fact that she is performing duties that are no different from other Kindergarten Aide/Early Childhood Classroom Assistant Teachers, she should be paid as a paraprofessional. In support of this position, Grievant has cited to *Sites, et al. v. Pendleton County Bd. of Educ.*, Docket No. 94-36-1112(May 31, 1995) and *Veach, et al. v. Mineral County Bd. of Educ.*, Docket No. 96-28-103 (Sept. 30, 1996). Both of these cases were decided before the current definition of “paraprofessional” was enacted by the West Virginia Legislature. *Sites* quotes the 1993 statutory definition of “paraprofessional,” and *Veach* also cites the 1993 definition of “paraprofessional.”¹

The current definition of “paraprofessional,” is as follows:

(71) “Paraprofessional” means a person certified pursuant to section two-a, article three of this chapter to perform duties in a support capacity including, but not limited to, facilitating in the instruction and direct or indirect supervision of students under the direction of a principal, a teacher or another designated professional educator.

(A) A person employed on the effective date of this section in the position of an aide may not be subject to a reduction in force or transferred to create a vacancy for the employment of a paraprofessional;

(B) A person who has held or holds an aide title and becomes employed as a paraprofessional shall hold a multiclassification status that includes both aide and paraprofessional titles in accordance with section eight-b of this article; and

¹“Paraprofessional” means a person certified pursuant to section two-a [§ 18A-3-2a], article three of this chapter to perform duties in a support capacity including, but not limited to, facilitating in the instruction and direct or indirect supervision of pupils under the direction of a principal, a teacher, or another designated professional educator: Provided, That no person employed on the effective date of this section in the position of an aide may be reduced in force or transferred to create a vacancy for the employment of paraprofessional. WEST VIRGINIA CODE § 18A-4-8 [1993].

(C) When a service person who holds an aide title becomes certified as a paraprofessional and is required to perform duties that may not be performed by an aide without paraprofessional certification, he or she shall receive the paraprofessional title pay grade;

WEST VIRGINIA CODE § 18A-4-8(i)(71). The law now appears to make clear that unless an aide, who is qualified and certified as a paraprofessional, is performing job duties that may not be performed by an aide without said paraprofessional certification, he or she is not entitled to paraprofessional pay. The record established that Grievant performed the exact same Aide/Early Childhood Classroom Assistant Teacher duties as other Kindergarten Aide/Early Childhood Classroom Assistant Teachers with whom Ms. Ware worked. Grievant, by her own witness, Ms. Ware, proved that she performs the same duties as other Aide/Early Childhood Classroom Assistant Teachers. In general, the purpose of a paraprofessional position is to supervise students and to make certain they complete their work as assigned by their teachers. Grievant failed to establish that her current position is anything other than an aide position. As Dr. Manchin pointed out, Grievant failed to prove that she has, is, or will be performing duties that may not be performed by an aide without paraprofessional certification.

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 Board 156 C.S.R. 1 § 3 (2018); *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. Grievant failed to prove that she is currently performing paraprofessional duties. Record established that Grievant performs the same duties as other Aide/Early Childhood Classroom Assistant Teachers.

3. Grievant failed to establish that she would be entitled to any more compensation than she already receives in her current position as an Aide/Early Childhood Classroom Assistant Teachers.

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 Civil Action number should be included so that the certified record can be properly filed with the circuit court. See *also* 156 C.S.R. 1 § 6.20 (eff. July 7, 2018).

Date: March 1, 2019

Ronald L. Reece
Administrative Law Judge