

**THE WEST VIRGINIA PUBLIC EMPLOYEES  
GRIEVANCE BOARD**

**PAMELA D. HESS,  
Grievant,**

**v.**

**Docket No. 2019-0394-BerED**

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

**DECISION**

Grievant, Pamela Hess, employed by the Berkeley County Board of Education as a transportation aide, filed a Level One grievance form dated September 20, 2018, stating:

I received a letter in the mail on 9/10 dated 9/5 informing me [from Justin Schooley] my paraprofessional title and pay had been dropped due to switching from bus 470 to bus 475. My same duties and certification are the very same.

For relief, Grievant seeks the following:

Reinstate my title "Paraprofessional" and my pay.

A Level One conference was conducted on October 4, 2018, by Respondent's Assistant Superintendent Justin Schooley. A Level Two mediation session was conducted on December 17, 2018. Grievant perfected her appeal to Level Three on January 11, 2019. A Level Three evidentiary hearing was conducted before the undersigned on May 3, 2019, in Martinsburg, West Virginia. Grievant appeared in person, and by her representative, Richard Calhoun, West Virginia Education Association. Respondent appeared by its representative, Karen Hensell, and by its counsel, Laura

Sutton, Bowles Rice LLP. This matter became mature for consideration upon receipt of the last of the parties' fact/law proposals June 18, 2019.

### **Synopsis**

Grievant is currently employed by Respondent as a Supervisory Special Education Bus Aide IV. 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 duties. The record of this case, and the applicable law, did not support such a conclusion. The record of this case failed to demonstrate that Grievant is performing paraprofessional duties. Grievant also failed to prove that she was entitled to any more compensation than she currently receives in her current position.

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

### **Findings of Fact**

1. Grievant is employed by the Berkeley County Board of Education as a bus aide. Grievant has been employed in different positions, including a classroom aide, and on two bus runs as a bus aide since being hired in August of 1994. Grievant applied for and was hired as a bus aide on her current bus run in the summer of 2018.

2. On May 31, 2017, Respondent issued a memorandum to all bus aides, referencing West Virginia Board of Education Policies 5314 and 5202, informing them that these policies required aides holding the classifications of Autism Mentor and/or Paraprofessional must work in a classroom, facilitating instruction under the direct or indirect supervision of a professional educator in order to retain the classification and pay grade.

3. The May 31, 2017, memorandum stated that Bus Aides holding the Autism Mentor and/or Paraprofessional classifications as of the 2016-2017 school year would be “grandfathered” into their current classifications, despite the fact that they were not performing Autism Mentor and/or Paraprofessional duties, so long as they did not bid out of their current bus run.

4. Grievant acknowledged that she received the May 31, 2017, memorandum and understood the consequences of bidding out of her current bus run.

5. During the summer of 2018, Grievant elected to bid on a Supervisory Special Education Bus Aide IV.

6. On August 20, 2018, Respondent voted to approve Grievant’s bid into the position of Supervisory Special Education Bus Aide IV from her position as a Paraprofessional Supervisory Special Education Aide IV.

7. By letter dated September 5, 2018, Respondent notified Grievant that the Board approved her for the Supervisory Special Education Bus Aide IV.

8. On September 20, 2019, Grievant filed this action against Respondent seeking reinstatement of her Paraprofessional title and pay grade.

9. The record established that there was a 2015 amendment to the statutory definition of the Paraprofessional classification, and that Respondent interprets that definition to mean a Paraprofessional must provide instruction. The record also established that Bus Aides are not under the direct supervision of a professional, since the director of special education transportation was not a professional educator position.

10. Joann Kulp, Paraprofessional at Rosemont Elementary, appeared at the evidentiary hearing on behalf of the Grievant. Ms. Kulp indicated that her job duties

included checking folders, lunch duty, communicating messages to parents, maintaining student records, cleaning the room, complying with IEPs, and other tasks assigned.

11. As a Supervisory Special Education Bus Aide IV, Grievant acknowledged that she does not perform any duties similar to those of Ms. Kulp, as she does not work in a classroom, facilitating instruction under the direct or indirect supervision of a professional educator. The record failed to demonstrate that Grievant performed any job duties that are required of a Paraprofessional.

### **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 Supervisory Special Education Aide IV. 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.

The record reflects that during her employment the Grievant worked as a paraprofessional in a Kindergarten classroom from 2009 through 2014. While serving in that position, she was required to work in a classroom and facilitated instruction under the direct or indirect supervision of a professional educator. On October 7, 2014, Grievant bid into the position of Paraprofessional Supervisory Special Education Aide IV. Then in the summer of 2018, she bid into the position of Supervisory Special Education Aide IV, and lost her status that had allowed her to keep her paraprofessional title and pay grade, despite the fact that she was not working in a classroom facilitating instruction under the supervision of a teacher.

Grievant argues that because she possesses paraprofessional education and certification, despite the undisputed fact that she is not performing duties required of a paraprofessional, 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 *Veatch* also cites the 1993 definition of “paraprofessional.”<sup>1</sup>

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

(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

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<sup>1</sup>“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].

paraprofessional pay. The record established that Grievant, being fully aware of the May 31, 2017, memorandum, elected to bid out the position that allowed her to maintain her status as a paraprofessional and that she elected to bid into another position that was posted as a Supervisory Special Education Aide IV.

In general, the purpose of a paraprofessional position is to supervise students and to make certain they complete their work as assigned by their teacher. Grievant failed to establish that her current position is anything other than a bus aide position. Grievant failed to prove that she is currently 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 bus aides.

3. Grievant failed to establish that she would be entitled to any more compensation than she already receives in her current position as a Supervisory Special Education Aide IV .

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: July 19, 2019**

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**Ronald L. Reece**  
**Administrative Law Judge**