WILLIAM ARNOLD

v. DOCKET NO. 93-28-290

MINERAL COUNTY BOARD OF EDUCATION

DECISION

Grievant, William Arnold, employed by the Mineral County Board of Education (Board) as a teacher of the Behaviorally Disordered (B.D.), filed a level one grievance on May 10, 1993, in which he alleged that he had been improperly placed on the transfer list because the reason given for the action was invalid. Grievant's immediate supervisor stated that he lacked the authority to grant the requested relief at level one; the grievance was denied at level two and appeal was made to level four on July 28, 1993. Both parties agreed that a decision could be made based upon the lower-level record supplemented with proposed findings of fact and conclusions of law which were submitted by September 27, 1993.

A review of the record reveals that the events leading to this grievance began in the spring of 1993 when Robert Miller, Directorof Special Education, advised Grievant, who was then assigned full-time at Keyser Primary-Middle School, that his services would be required part-time at Fort Ashby Primary School (FAPS) during the 1993-94 school year. Mr. Miller advised Grievant that he could agree to a voluntary transfer which would guarantee his placement at the two designated schools or, in the alternative, his name would be placed on the involuntary transfer list which would open him to the possibility of assignment anywhere in the county. During the level two hearing Grievant stated that he felt coerced and threatened by this conversation leading him to agree to the voluntary transfer.

Sometime later Grievant learned that his caseload at FAPS would be composed of two students diagnosed as having autistic-like tendencies. He then began an investigation to determine whether a Behavior Disorders Specialist was actually needed at FAPS. Grievant's review consisted of observation of the students, conferring with the school principal, and reviewing the students' Individualized Educational Programs (IEPs). He testified that the principal opined that a Behavior Disorders Specialist was not needed and that the IEPs contained no Behavior Disorders

componentfor either student. (See footnote 1)

Grievant asserts that he has no training, nor is he certified to teach autistic students and that his lack of qualifications, together with the lack of need, establishes that the transfer was an arbitrary and capricious act by the Board in violation of W.Va. Code §18A-2-7. Grievant additionally raises the issue of whether the Board has acted in compliance with federal and state policies regarding the placement of children in special education programs. (See footnote 2)

The Board responds that the transfer was properly implemented to provide behavioral management plans for the two students already identified and to "search and serve" other, previously unidentified students who may be in need of special services. Mr. Miller explained that B.D. services were deemed necessary for the twostudents in question as part of the special education program which provides cross-categorical services for students who may be classified in one area but require some assistance in another:

Behavior management strategies, again are referred to in the guidelines for the identification of... students with behavioral disorders from the State Department. The items listed in that document appear to require assistance from an individual with certification in behavior disorders and experience in working with young elementary students with behavior management problems as reviewed in the question and answer earlier. Students do not necessarily have to be classified with a behavior disorder in order to have a need established for behavior management activities. At Fort Ashby Primary School our main special education teacher has a case load of 35 students which is the maximum allowable and again Mr. Arnold has a case load between 7 and 10 which is approximately one-third of the case load allowable. So in addition to the experience and training, it would appear that Mr. Arnold would have more time available for dealing with that student and teacher currently at Fort Ashby Primary School. Mr. Arnold looked through the records April and May [sic] there was no indication of behavior disorders for those students and that has never been an issue with the administration. We had indicated that these students would need behavioral management services regardless of whether they were classified as behavior disordered or not...we have been advised by...the State Department for the past several years that such behavior management plans should not be entered into the IEP process because they are subject to change. They should be developed on the consultancy basis with the classroom teachers and then subject to revision as needed without the full encumbrances of the IEPprocess. To this point our plans for the students at Fort Ashby do not

have...have not been formalized for written behavior management plans because the actual need will depend somewhat on the regular classroom teachers' strengths and weaknesses in developing the items....

(Level II Trans., pp. 14-15).

The essence of Grievant's argument appears to be that he cannot instruct children unless they are specifically diagnosed as Behaviorally Disordered and those services must be included within the IEP. This position is unsupported by the evidence of record because it does not appear that Grievant is required to actually instruct the two students at FAPS. By memorandum dated August 25, 1993, Mr. Miller provided Mr. Arnold with the following information regarding the FAPS assignment:

The workload at FAP currently amounts to approximately 5 hours per week....

This assignment and the activities listed below are based on my current assessment of the needs at FAP. If the situation, in regard to the need for behavioral management services, changes in the next few weeks or months the amount of time spent or specific activities undertaken by you at FAP may also need to change. You are aware that [Student A]'s program will be initiated with the use of a transitional aide. It is our plan to fade the useof the aide in order to simultaneously promote [the student's] independence and reliance on the classroom teacher.

The time at FAP should be centered around the following activities:
1. Observe [the two students] to develop behavioral management plans.
2. Discuss and assist in the implementation and/or revision of these plans.
3. Review the current special education files to determine if other students at FAP need behavioral management plans.
4. Develop and assist in the implementation of behavioral management plans as needed for any student at FAP.
5. Participate in SBAT meetings that involve discussions of either [of the two identified students].
6. Participate in SBAT meetings as requested by Mr. Amtower for any student exhibiting behavioral problems.
7. At the request of Mr. Amtower review student records and make recommendations for behavioral management.

8. Assist in the formal evaluation of students in regard to possible special education eligibility in behavior disorders.
9. Other duties consistent with the role of behavioral management consultant.

Thus, Grievant has been assigned to spend a fraction of his workweek offering supplemental assistance to another teacher by developing and implementing behavioral management plans for two students and screening other students who may be identified as also needing such a plan. Although thesestudents have not been diagnosed as behaviorally disordered, the cross programming format allows the special education department to offer assistance as needed. In this case, the two students, and their teachers, need assistance in managing their behavior. Grievant has offered no evidence to support a finding that he may not assist other teachers in developing corrective plans for students who exhibit behavior problems. Further, the Board has set forth a valid reason for the partial transfer of Grievant to a school which does not have a teacher of the Behaviorally Disordered on staff. Therefore, there has been no violation of W.Va. Code §18A-2-7.

In addition to the foregoing narration it is appropriate to make the following specific findings of fact and conclusions of law.

FINDINGS OF FACT

1. Grievant is employed by the Mineral County Board of Education and was assigned as a teacher of the Behaviorally Disordered at Keyser Primary-Middle School during the 1992-93 school year.
2. In March 1993 Robert Miller, Director of Special Education, advised Grievant of his intention to transfer Grievant to Fort Ashby Primary School, part-time, to assist with two autistic-like, elementary students.
3. Grievant observed the students, spoke with the principal at FAPS, who opined that B.D. services were not needed, and reviewed the students' files, finding no B.D. component in their IEPs.
4. Grievant attempted to withdraw the voluntary transfer form which he had signed; however, on April 20, 1993, the Board approved his partial transfer to FAPS.
5. Grievant's duties apparently do not require that he instruct the students at FAPS but only that he assist the teachers in the development and implementation of behavior management plans, and

that he screen other students who may also be in need of such assistance.

CONCLUSIONS OF LAW

1. The Board has established a legitimate basis for the transfer since Grievant will be providing consultativeservices for two children in need of behavioral management plans and will screen other students who might also need such services.

2. Grievant has failed to prove a lack of need for services at FAPS or that the transfer was arbitrary or capricious.

Accordingly, the grievance is DENIED.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Mineral County and such appeal must be filed within thirty (30) days of receipt of this decision. W.Va. Code §18-29-7. 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. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

DATED January 31, 1994

SUE KELLER

SENIOR ADMINISTRATIVE

LAW JUDGE

Footnote: 1Grievant submitted a letter addressed to his representative, Harvey Bane, and dated September 14, 1993, in which Principal Robert Amtower unequivocally stated that there was no need for Grievant's services at FAPS. The record contains no evidence of Mr. Amtower's expertise in this area.

Footnote: 2Questions concerning violations or misinterpretations of placement or service of special education students must properly be resolved through federal regulations pursuant to the Individuals with Disabilities Education Act. Weese v. Berkeley County Bd. of Educ., Docket No. 92-02-491 (April 8, 1993).