ROSA PIERSON, .

.

Grievant, .

.

v. . DOCKET NO. 93-20-484 .

KANAWHA COUNTY BOARD OF EDUCATION, .

.

Respondent. .

D E C I S I O N

This is a grievance by Rosa Pierson (hereinafter Grievant) alleging a violation of W. Va. Code §18A-4-7a in regard to the rejection of her application for employment as a classroom teacher by the Kanawha County Board of Education (hereinafter KCBE) based upon a county policy prohibiting nepotism. This matter was initially grieved at Level I on September 20, 1993. Following denial of her grievance at Level I, a hearing was held at Level II on November 3, 1993. After her grievance was denied at Level II, Grievant appealed directly to Level IV as provided under W. Va. Code §18-29-4(c). Grievant elected to waive her right to a hearing at Level IV and have this grievance decided upon the basis of the record developed below. (See footnote 1)

Grievant, who is currently employed as a substitute school teacher by KCBE, was not selected for a one-half time kindergarten teaching position at Clendenin Elementary School (hereinafter CES) on the basis that such employment would conflict with Kanawha County Schools Policy IV-H-12. T at 19. That policy relates to "Job Assignment of Members of Immediate Family" and includes a provision that "No service personnel (See footnote 2) will be placed under the direct supervision of a member of his immediate family by hire." KCS Ex 1. "Immediate family" is defined in the policy to include "husband, wife, parent, son, daughter, brother, sister, or the spouse thereof." KCS Ex 1. (See footnote 3)

At the time of Grievant's application, Grievant's mother was employed as a classroom teacher's aide working in the same kindergarten classroom at CES where Grievant was applying to teach.

Grievant argues that her mother would not come under her direct supervision because W. Va. Code §18A-2-9 provides that the school principal is the officially designated "supervisor" for allpersonnel assigned to a given school. (See footnote 4) Moreover, Grievant's mother testified that she was hired, assigned to a classroom and evaluated exclusively by the school principal. T at 14-16.

On the other hand, KCBE's Director of Personnel testified that placing Grievant in the position in question would have required her to supervise her mother. T at 20. Moreover, KCBE's standard job description for aides provides that "[t]he aide is under the supervision of the principal, teacher or supervisor and provides general assistance to students and assists with clerical tasks." KCS Ex 2. The job description further describes an aide as "[g]enerally closely supervised. Performs basic tasks for teacher." KCS Ex 2. The job description also provides that an aide "[r]eceives close supervision and verbal instruction from the principal or others as delegated." KCS Ex 2.

Grievant's proposed interpretation of the term "supervisor," as it applies to KCBE's anti-nepotism policy, is unpersuasive. While a teacher's aide may formally be hired, assigned and evaluated by the school principal, an aide's day-to-day classroom activities must necessarily be directed by the classroom teacher who is primarily responsible for instructing and counselingstudents. W. Va. Code §18A-1-1(c)(1) (1993). Certainly, KCBE's interpretation of its own written policy, concluding that a teacher is the "direct supervisor" of her assigned teacher's aide, does not appear arbitrary, capricious or irrational. (See footnote 5) Indeed, requiring KCBE to hire the Grievant, thereby making her responsible for the day-to-day direction of her mother in their kindergarten classroom, would create the appearance of a conflict, as well as the potential for the appearance of favoritism in the workplace, the exact situation which KCBE's lawful anti-nepotism policy was enacted to prevent.

In addition to the foregoing discussion, the following findings of fact and conclusions of law are appropriate in this matter:

FINDINGS OF FACT

1. Grievant applied for a one-half time kindergarten teacher position at Clendenin Elementary School.

2. At the time of Grievant's application, KCBE had a written anti-nepotism policy in effect which prohibited placing service personnel under the direct supervision of a member of his or her immediate family. KCS Ex 1.

3. At the time of Grievant's application, Grievant's mother was employed as a teacher's aide in the kindergarten classroomwhere Grievant was applying to become the assigned classroom teacher.

4. KCBE's job description for teacher's aides indicate that they may be supervised by teachers and that aides "perform basic tasks for teacher[s]." KCS Ex 2.

5. Grievant's application was rejected by KCBE based upon a conflict with its stated anti-nepotism policy.

CONCLUSIONS OF LAW

1. County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel so long as that discretion is exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious. Dillon v. Bd. of Educ., 351 S.E.2d 58 (W. Va. 1986).

2. Assigning Grievant as a kindergarten teacher in a classroom where her mother was employed as a teacher's aide would have required Grievant to directly supervise a member of her immediate family in contravention of KCBE's established anti-nepotism policy.

3. KCBE's rejection of Grievant's application for a classroom teaching position based upon its established anti-nepotism policy did not violate W. Va. Code §18A-4-7a. See Townshend v. Bd. of Educ., 396 S.E.2d 185 (W. Va. 1990); Albani v. Mineral County Bd. of Educ., Docket No. 90-28-016 (Nov. 30, 1990).

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha 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 not 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.

_____

LEWIS G. BREWER

Administrative Law Judge

Dated: March 17, 1994

CERTIFICATE OF SERVICE

I, **Lewis G. Brewer**, Administrative Law Judge for the West Virginia Education and State Employees Grievance Board, do hereby certify that I have this day of , served true copies of the foregoing **DECISION** upon the following by Certified United States Mail in properly addressed and stamped envelopes to their addresses as follows:

_____

LEWIS G. BREWER

Administrative Law Judge

Footnote: 1 *Upon receipt of written submissions from the parties and the transcript of the hearing at Level II, this case became mature for decision on December 27, 1993.*

Footnote: 2 *There is a parallel provision for professional personnel. The service personnel restriction appears most applicable here since aides fall under the category of school service personnel. See W. Va. Code §§18A-1-1(e) and 18A-4-8 (1993).*

Footnote: 3 *Grievant does not contest KCBE's authority to establish an anti-nepotism policy. Both the West Virginia Supreme Court of Appeals and this Board have previously found such policies to constitute a reasonable exercise of a board of education's authority to prevent favoritism, a conflict of interest or the appearance thereof. Townshend v. Bd. of Educ., 396 S.E.2d 185 (W. Va. 1990); Albani v. Mineral County Bd. of Educ., Docket No. 90-28-016 (Nov. 30, 1990).*

Footnote: 4 *W. Va. Code §18A-2-9 sets forth the "[d]uties and responsibilities of school principals." This statute makes principals responsible for supervising "the management and the operation of the school or schools to which they are assigned" and for assuming "administrative and instructional supervisory responsibility for the planning, management, operation and evaluation of the total educational program of the school or schools to which he is assigned." Contrary to grievant's contention, nothing in the statute precludes classroom teachers from exercising day-to-day supervision over teacher's aides.*

Footnote: 5 *This interpretation is supported by reading W. Va. Code §18A-5-8 (1993), which discusses the circumstances under which aides exercise parental authority over pupils, specifically allowing this arrangement "when requested by the principal, assistant principal or professional employee to whom the aide is assigned." (emphasis added)*