**IDA SIPPLE, .**

**.**

**Grievant, .**

**.**

**v. . Docket No. 95-29-487**

**.**

**MINGO COUNTY BOARD OF EDUCATION, .**

**.**

**Respondent. .**

## D E C I S I O N

Ida Sipple (Grievant) is employed by Respondent Mingo County Board of Education (MCBE) as a Special Education Aide. Grievant contends that MCBE violated W. Va. Code § 18A-4-8a (See footnote 1) by changing her bus assignment shortly after the start of the 1995-96 school year. Following a Level II hearing on October 26, 1995, a decision denying the grievance was issued by the Superintendent's designee, John Fullen, on November 2, 1995. Grievant waived Level III in accordance with W. Va. Code § 18-29-4(c) appealing to Level IV on November 6, 1995. A hearing in this matter was held in this Board's office in Charleston, West Virginia, on January 31, 1996,and this matter became mature for decision at the conclusion of the hearing.

The pertinent facts in this matter are not in dispute. Accordingly, the following Findings of Fact have been derived from the record created at Levels II and IV.

## FINDINGS OF FACT

1. Grievant is employed by MCBE as a Special Education Aide. 2. During the 1994-95 school year, Grievant was assigned to MCBE's Thacker Grade School.

3. Pursuant to W. Va. Code § 18A-2-7, Grievant was trans ferred to Matewan Elementary School (MES), effective the beginning of the 1995-96 school year.

4. At the beginning of the 1995-96 school year, Grievant was assigned to assist a special

education student by riding to and from MES on the "Beech Creek" bus run.

5. The student's parents elected to provide transportation but did not notify MCBE of their election until after the beginning of the school year. The student never actually rode the bus to which Grievant was assigned.

6. Once MCBE's Transportation Director learned that the special education student would not be transported on the Beech Creek bus run, Grievant was relieved of bus aide duties, reporting directly to MES for four days.

7. While Grievant was assigned to the Beech Creek bus run, she caught the school bus at her residence at 6:15 a.m., arrivingat MES at 7:30 a.m. Grievant returned home at approximately 3:35 p.m.

8. After reporting directly to MES for four days, Grievant was reassigned to the "Thacker" bus run to assist another special education student being transported to MES. Grievant replaced a special education aide assigned to Matewan Middle School (MMS), Peggy Runyon. Ms. Runyon was relieved of transportation duties and instead began reporting directly to MMS.

9. In order to assist the student on the Thacker bus run, Grievant drives from her residence to Thacker Hollow, meets the bus at 7:15 a.m., and arrives at MES between 7:45 and 7:50 a.m. Grievant's afternoon bus run duties are completed by 3:15 p.m.

10. During the four days Grievant reported directly to MES, her duties began at 7:50 a.m. and were completed at 2:20 p.m.

11. All special education aides were advised during an inservice training session conducted at the beginning of the school term on August 28, 1995, that, depending on the student population, they might or might not be required to ride a bus with a special education student.

12. Grievant did not consent, either verbally or in writing, to any change in her assignment or work schedule.

13. Grievant did not contest her reassignment from the Beech Creek bus run to MES with no transportation duties.

## DISCUSSION

In grievances that are not disciplinary in nature, Grievants bear the burden of proving the allegations in their complaints bya preponderance of the evidence. Weaver v. Mason County Bd. of Educ., Docket No. 94-26-129 (Nov. 22, 1994); Runyon v. Mingo County Bd. of Educ., Docket No. 93-

29-481 (Apr. 4, 1994). See W. Va. Code § 18-29-6.

W. Va. Code § 18A-4-8a(7), provides:

> No service employee shall have his or her daily work schedule changed during the school year without such employee's written consent, and such employee's required daily work hours shall not be changed to prevent the payment of time and one-half wages or the employment of another employee.

Grievant contends that MCBE violated the above-quoted provision of § 18A-4-8a when it assigned her to ride the "Thacker Creek" bus run without her consent. The outcome of this grievance is controlled by this Grievance Board's decision in Conner v. Barbour County Board of Education, Docket Nos. 93-01-543/544 (Jan. 31, 1995). In Conner, § 18A-4-8a was applied in the context of changes to a bus operator's route to correct an "overload" situation on another driver's route. These changes, which transpired after the second or third week of school, lengthened the operator's route and increased her driving time by 10 to 15 minutes on both her morning and afternoon runs.

As noted in Froats v. Hancock County Board of Education, Docket No. 89-15-414 (Dec. 18, 1989), a strict, literal interpreta tion of § 18A-4-8a, as urged by Grievant, would preclude a school board from ever changing a service employee's schedule, even slightly, as one school year technically ends on June 30 and a new school year begins each July 1. Froats, supra, at 8 n. 20. Such a literal interpretation would produce an absurd result, inconsistent with the apparent legislative intent of protecting school service employees from involuntary changes in their shift assign ments. See State ex rel. Frazier v. Meadows, 193 W. Va. 20, 454 S.E.2d 65 (1994). Moreover, like bus operators, aides who assist special education students commuting to and from school on school-provided transportation, are assigned duties of an itinerant nature. See Conner, supra, at 9; Titus v. Wood County Bd. of Educ., Docket No. 92-54-023 (Apr. 30, 1992). Thus, this Grievance Board recognized in Froats and Conner that county boards of education must have freedom to make reasonable changes in a service employee's schedule, so long as the alterations do not extend the employee's workday beyond the parameters of her current contract. Conner, supra, at 15. Grievant's work schedule was not extended beyond these limits.

It is undisputed that a board of education is obligated to assign a special education aide with the appropriate training and experience to provide necessary assistance to a special education student riding to and from school on a county bus. Grievant's quarrel is not with performing those duties, but

with the fact that she replaced another aide from an adjacent school. However, this is merely a distinction without a difference. Just as a school bus operator's schedule must undergo revisions when a bus route expands or contracts as students move in or out of an area during the school year, a special education aide may or may not have transpor tation duties, depending on the needs of the student population. Clearly, MCBE's election to match a special education student fromMatewan Elementary School with a special education aide assigned to that same school was not arbitrary and capricious under the circumstances.

In addition to the foregoing discussion, the following Conclusions of Law are appropriate in this matter.

## CONCLUSIONS OF LAW

1. Grievant has the burden of proving the allegations in her complaint by a preponderance of the evidence. Weaver v. Mason County Bd. of Educ., Docket No. 94-26-129 (Nov. 22, 1994); Runyon v. Mingo County Bd. of Educ., Docket No. 93-29-481 (Apr. 4, 1994). See W. Va. Code § 18-29-6.

2. A county board of education has discretion to make job assignments and transfers pursuant to W. Va. Code § 18A-2-7. Mullins v. Logan County Bd. of Educ., Docket No. 94-23-283 (Sept. 25, 1995).

3. Grievances contending an employee's schedule has been changed in violation of W. Va. Code § 18A-4-8a, which limits changes in a school service employees' daily work schedule during the school year to those which are consented to in writing by the employee, must be decided on a case-by-case, fact-specific basis. See Conner v. Barbour County Bd. of Educ., Docket Nos. 93-01-543/544 (Jan. 31, 1995); Roberts v. Lincoln County Bd. of Educ., Docket No. 92-22-131 (Aug. 31, 1992).

4. Courts may venture beyond the plain meaning of a statute in those instances where a literal application would produce anabsurd result. State ex rel. Frazier v. Meadows, 193 W. Va. 20, 454 S.E.2d 65 (1994).

5. Notwithstanding the language in W. Va. Code § 18A-4-8a, restricting changes in a service employee's daily work schedule, a county board of education must have freedom to make reasonable changes to a service employee's daily work schedule, within the parameters of her contract, some of which cannot reasonably be effected until shortly after school starts. See Conner, supra; Froats v.

Hancock County Bd. of Educ., Docket No. 89-15-414 (Dec. 18, 1989). Accord, Conner v. Barbour County Bd. of Educ., Docket No. 94-01-1100 (Aug. 2, 1995).

Accordingly, this Grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Mingo 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.

**LEWIS G. BREWER**

**Administrative Law Judge**

**Dated: March 27, 1996**

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*Footnote: 1*

*Grievant invoked "§ 18A-4-4a" in her statement of grievance. However, it is apparent that Grievant meant to invoke § 18A-4-8a, governing school service personnel, rather than § 18A-4-4a, which does not exist, or § 18A-4-4, which addresses salaries for teachers having specialized training.*