

GENELDA HICKMAN,

Grievant,

v. Docket No. 96-51-050

WEBSTER COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Grievant, Genelda Hickman, a guidance counselor, filed this grievance alleging the Webster County Board of Education violated W. Va. Code §§ 18-29-2 and 18-5-18b, when it assigned her a substantially larger number of students than it assigned other counselors. In her statement of grievance, Grievant sought a reduction in the number of students assigned to her.

This grievance was denied at Levels I and II, and Grievant appealed directly to Level IV as authorized by W. Va. Code § 18-29- 4(c). The parties agreed that a decision could be made on the lower level record. Grievant filed proposed Findings of Fact and Conclusions of Law on or about March 12, 1996. Respondent did not file written argument. The case became mature for decision on April 30, 1996, upon receipt of the lower level record. For the reasons discussed below, the grievance is granted. [\(See footnote 1\)](#)

The following findings of fact are derived from the limited record developed below:

Findings of Fact

1. Grievant is employed as an elementary guidance counselor at the Webster County Board of Education.

2. During the 1994-95 school year, Grievant provided counseling services at Glade Elementary, which had approximately 670 students to be counseled.

3. Grievant was placed on a transfer list along with one other counselor during the 1994-95 school year.

4. For the 1995-96 school year, Grievant was reassigned to Glade Elementary, Webster Elementary, Diana Elementary and Hacker Valley schools with about 1,003 students to be counseled. About 661 were K-8 students, and the remainder were K-4.

5. Grievant is not able to provide counseling services to all the students assigned to her.

6. Two other counselors have case loads of 505 and 450 students for the 1995-96 school year. One counselor served 450 high school students; the other counselor served 140 high school students and about 260 K-8 students. 7. The Board had funds available to employ an additional half-time counselor at Diana Elementary but did not hire one.

Discussion

Grievant alleges a violation of W. Va. Code § 18-5-18b, dealing with mandated counseling services. W. Va. Code § 18-5-18b states in pertinent part:

Each county board of education, by the school year one thousand nine hundred eighty seven-eighty eight, shall provide counseling services for each pupil enrolled in the public schools of the county.

In addition to alleging a violation of W. Va. Code § 18-29-2, Grievant, at the Level II hearing conducted on October 16, 1995, relied on West Virginia Board of Education Policy 2315, Section 3.3.1, which reads in part: "The county board of education and local [sic] shall establish and implement comprehensive developmental guidance programs designed to assist all students with the identification and realization of educational, career and social goals." Grievant also relies on West Virginia Board of Education Policy 2315, Section 4.44 which reads "County boards of education shall have in place a comprehensive developmental guidance program for schools by September 1, 1992."

As additional support for her claim, Grievant refers to Pauley v. Bailey, Civil Action No. 75-1268, which incorporated a master plan for public education entitled a "Master Plan for a Thorough and Efficient System of Public Education in West Virginia". The plan adopts a comprehensive description of standards for a high quality system of education, necessary to establish a foundation for learning in West Virginia Schools. Respondent asserts that the numerous provisions of the Master Plan and Pauley v. Bailey (See footnote 2) have not been

implemented.

At the Level II hearing, Grievant testified that she is not able to meet the counseling needs of the students assigned to her. (L II Transcript, p. 3.) She submitted evidence showing that two other counselors in the county have approximately 505 and 450 students assigned to them respectively. Ron Williams, Webster County Superintendent of Schools, acknowledged the situation was unfair to Grievant:

I'm hoping we can get this worked out, it's not fair to Genelda to have this load and she knows that I know that and I'm sure the other counselor know [sic] that, he's counted along, and he's needed and it's time for him, and I've given time, you know whether time that is needed, I've given him, now I'm not giving him any more time. (L II, Transcript, p. 8.)

The grievance evaluator at Level II stated in his Decision that Grievant claims a violation of W. Va. Code § 18-29-2(o), favoritism, based on having to serve a substantially higher number of students. W. Va. Code § 18-29-2(o) defines "favoritism" as "unfair treatment of an employee as demonstrated by preferential, exceptional or advantageous treatment of another or other employees." Similarly, W. Va. Code § 18-29-2(m) defines discrimination as "any differences in the treatment of employees unless such differences are related to the actual responsibilities of the employees or agreed to in writing by the employees." At the Level II hearing and in her proposed findings and conclusions, Grievant argues that Respondent acted arbitrarily and capriciously in assigning her a grossly disproportionate number of students to provide counseling services.

Based upon the allegations made and the evidence presented, this case could be properly analyzed as one of discrimination, favoritism, or the arbitrary and capricious assignment of work, or all three. The undersigned administrative law judge believes it appropriate to confine the analysis to that of discrimination and concludes that Grievant has proven a violation of W. Va. Code § 18-29-2(m). The record supports a finding by the preponderance of the evidence that Grievant was similarly situated to the other counselors employed by Respondent, that she was treated differently in regard to a significant condition of employment, and that the difference in treatment was not related to or justified by the actual job responsibilities. Respondent has not alleged or attempted to prove that Grievant's actual workload is similar to that of its other counselors, and it appears to concede that the

counselor-to-student ratio is inequitable. Grievant was assigned about twice as many students as the other counselors, and from all that appears of record her actual workload was twice that of the other counselors, including the other counselor who was transferred at the end of the 1994-1995 school year.

Although a county board of education does have broad discretion in the assignment of duties to professional personnel, such discretion is not boundless, and may be limited by its responsibility not to engage in discrimination or favoritism. The undersigned therefore reaches the following legal determination:

Conclusion of Law

1. Grievant has proven by a preponderance of the evidence that she was discriminated against in violation of W. Va. Code § 18-29-2(m).

Accordingly, this grievance is GRANTED. Respondent is hereby ORDERED to eliminate the gross disparity between the number of students assigned to Grievant and its other counselors for the 1996-1997 school year.

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

RONALD WRIGHT

Administrative Law Judge

Dated: July 19, 1996

Footnote: 1

This case was reassigned for administrative reasons to the undersigned administrative law judge on June 14,

1996.

[Footnote: 2](#)

This case was subsequently heard by the Supreme Court of Appeals of West Virginia and is cited as Pauley v. Bailey, 174 W. Va. 167, 324 S.E.2d 128 (1984). In view of the holding below that Respondent violated W. Va. Code § 18-29-2(m), it is not necessary to address Grievant's other claims.