

**REBECCA GRUBBS,**

**Grievant,**

**v.**

**Docket No. 95-03-467**

**BOONE COUNTY BOARD**

**of EDUCATION,**

**Respondent.**

### **DECISION**

Grievant, Rebecca Grubbs, an "itinerant" [\(See footnote 1\)](#) employee with the Boone County Board of Education (hereinafter, the Board or Respondent), is employed as a 50%, part-time teacher of the visually impaired. Grievant alleges that the Board violated West Virginia Code §18A-2-7 when her work schedule was changed after the beginning of the 1995-96 school year.

The grievance was denied at levels one, two and three, and appealed to level four on October 25, 1995. The parties requested a decision on the lower level record on January 31, 1996. The case became mature upon receipt of the parties' Findings of Fact and Conclusions of Law on March 8, 1996.

The following findings of fact have been properly deduced from the records developed below.

### **FINDINGS OF FACT**

1. Grievant is presently employed as a part-time itinerant teacher of the visually impaired with the Boone County Board of Education.
2. Grievant has been in her current position since 1991 and her supervisor has been Mary Knapp, Director of Special Education for Boone County.
3. Grievant was based at Racine-Peytona School for the 1990-1995 school years.
4. From 1990 to 1995, Grievant commenced her responsibilities at 9:00 a.m. and concluded at 4:30 p.m. on Tuesdays and Wednesdays and 12:30 p.m. on Fridays. In addition, Grievant was not assigned any non-teaching duties.

5. Mary Knapp permitted Grievant to work this flex-schedule due to family obligations.

6. Grievant was transferred to Sherman Elementary as her base for the 1995-1996 school year, and Brenda Hudson, the principal of Sherman Elementary, was her supervisor. Grievant continued to service the same schools. The Board, in accordance with W. Va. Code §18A-2-7, notified Grievant that her home base constituted the only change. Grievant was not informed at that time that her transfer would result in a significant change to her daily schedule.

7. On September 11, 1995, Brenda Hudson notified Grievant that her workschedule would be changed, and offered her the option of either working an elementary or secondary schedule. [\(See footnote 2\)](#) Ms. Hudson also assigned Grievant non-teaching duties. [\(See footnote 3\)](#)

8. All other itinerant teachers assigned to Ms. Hudson's school have also been required to follow either an elementary or a secondary schedule.

9. Grievant services one student at Sherman Elementary.

### **DISCUSSION**

Grievant had a good faith belief that her schedule would not change when she was transferred to Sherman Elementary. She was given no reason to believe that her schedule would change since her home base constituted the only change and she would still service the same schools as in previous years. Grievant maintained her 1994-1995 schedule until September 11, 1995, when Brenda Hudson, offered Grievant the option of either working an elementary schedule or secondary schedule. Grievant alleges that by serving this notice so late and without any warning, the Board violated West Virginia Code §18A-2-7. Grievant contends that the Board did not meet its obligation under the law with respect to Grievant's assignment for the 1995-1996 school year because the Board failed to notify Grievant that her schedule would be radically changed until September 11th of the new school year. Grievant further contends that by denying her the rights under W.Va. Code §18A-2-7 regarding her new schedule/hours, Grievant lost any opportunity to bid on other positions which might have been more conducive to her needs. Grievant states that it was incumbent upon the Board, or at the very least, a central office administrator, to fully inform Grievant of the ramifications of her transfer and that this should have occurred prior to the first Monday in May as per W.Va. Code §18A-2-7. Grievant asserts that it is the intent of §18A- 2-7 is to provide employees with sufficient notice of any change in schedule and assignment. Grievant further alleges that she had been led by

Mary Knapp to believe that her schedule would not change when she was transferred to Sherman Elementary where she only services one student. This schedule was the same schedule she had worked for four years without any problems or complaints. It is undisputed, however, that Grievant was not notified about her change in schedule, inasmuch as Respondent did not inform her of this change until the school term had begun.

Respondent argues that school principals are required to supervise the management and operation of the school or schools to which they are assigned. Respondent explains that under the supervision of the Superintendent, and in accordance with the rules and regulations of the county board of education and according to W.Va. Code §18A-2-9, the principal is required to assume administrative and instructional supervisory responsibility for the planning, management, and operation of the total educational program of the school to which he or she is assigned. Respondent asserts that the Superintendent is entitled to set the starting time and quitting time for teachers that are assigned to the principal's school and therefore, Ms. Hudson has the authority, as principal, to require Grievant to work the same schedule as to starting and quitting time as other employees assigned to Ms. Hudson's school.

Ms. Hudson would not consider permitting Grievant to work the same schedule Grievant previously worked. Ms. Hudson testified that she opposes having anyone else supervise Grievant. (L II Transcript, p.63). Ms. Hudson also testified that since she has been assigned as Grievant's supervisor,

I am responsible for the employees within my building... you know I think its, its very important that I make sure that all employees are doing what's expected of them...and I have asked nothing of Rebecca Grubbs that I haven't asked of all 41 other employees, professional employees within the building...(L II Transcript pp 53-54).

Ms. Hudson further testified:

My main concern is that I have 42 professional employees and our starting time is 7:50 with the exception of itinerant staff members, because I offer them that flexibility starting on elementary or secondary, because they service both schools and what every [sic] meets their needs. Also, I offer to those staff members and only those staff members the flexibility that if they can't report there at that particular time, that particular day, then we work out where every [sic] they need to start at that particular day, such as, the gifted teacher. She reports all of those teachers, two of them, I believe

start out at 7:30 in the morning. The gifted teacher with the exception on Friday, starts at Lory-Julian School so therefore I cover her duty. Everyone in our building including the speech therapist. [sic] (L II Transcript, p. 55).

Ms. Hudson additionally testified that now all her employees follow the same rules and that grievances will not be filed because they all follow the same rules. (L II Transcript, p. 56).

The issue, succinctly stated, is: Does the alteration of Grievant's schedule, in and of itself, constitute a "transfer" within the meaning of West Virginia Code §18A-2-7? Grievant contends that the answer to this question is yes. Respondent, however, presented evidence that the schedule was handled in as equitable a fashion as possible and that Grievant was offered a choice in her schedule as were all itinerant teachers based at Sherman Elementary. In Matthews v. Preston County Bd. of Educ., Docket No. 39-88-239 (July 27, 1989), it was held that "a transfer may consist of the reassignment of an employee to a different position, a different location or significantly different duties or responsibilities. The addition of similar duties does not constitute a transfer." Id., Conclusions of Law, nos. 1,2. In Dunleavy v. Kanawha County Bd. of Educ., Docket No. 20-89-008 (Feb. 23, 1989), it was held that "schedule adjustments which do not include duties outside of an employee's presently utilized area of certification, discipline or department...[are generally not] assignments amounting to a transfer..." Dunleavy, Conclusion of Law no. 1, citing, VanGilder v. Mineral County Bd. of Educ., Docket No. 27-87-320-2 (June 16, 1988).

While the above general principles apply, the outcome depends upon the particular facts of this case. See Kidd v. Fayette County Bd. of Educ., 89-10-452 (Dec. 14, 1989). Grievant has not demonstrated that she has been assigned significantly different duties or responsibilities outside her presently utilized area of certification, discipline or department, i.e., teacher of the visually impaired. Thus, Grievant's change in schedule does not constitute a transfer.

### **CONCLUSIONS OF LAW**

1. In a nondisciplinary matter, it is incumbent upon the Grievant to prove her case by a preponderance of the evidence.
2. "[S]chedule adjustments which do not include duties or responsibilities outside of any employee's presently utilized area of certification, discipline or department. . .[are generally not]

assignments amounting to a transfer.." VanGilder v. Mineral County Bd. of Educ., Docket No. 28-87-301-2 (June 16, 1988), at 4. See Matthews v. Preston County Bd. of Educ., Docket No. 39-88-239 (July 27, 1989); Dunleavy v. Kanawha County Board of Educ., Docket No. 20-89-008 (Feb. 23, 1989); Kidd v. Fayette County Bd. of Educ., Docket No. 89-10-452 (Dec. 14, 1989). The change in Grievant's schedule was not a transfer.

3. County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel. Nevertheless, this discretion must be exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious. State ex rel. Melchiori v. Bd. of Educ., 425 S.E.2d 251 (W.Va. 1992)

Accordingly, this grievance is **DENIED**.

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

**DATE: April 30, 1996**

**MARY BETH ANGOTTI-HARE**

**Administrative Law Judge**

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Footnote: 1 *Itinerant teachers travel from school to school in order to serve those students needing their services.*

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Footnote: 2 *The record does not specify what is an elementary or secondary schedule.*

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Footnote: 3 *Non-teaching duties are not directly addressed in the record except for the fact that Grievant now has "morning duty".*