

**JANELLE VEACH, et al.,**

**Grievants,**

**v. DOCKET NO. 96-28-103**

**MINERAL COUNTY BOARD OF EDUCATION,**

**Respondent.**

### **DECISION**

Grievants, Janelle Veach, Ann Mullenax, Joyce Fike, and Donna Canan, are employed as Instructional Aide IVs by the Mineral County Board of Education (Respondent). Grievants allege "that Respondent has violated West Virginia Code §§18A-4-8 and 18A-5-8." As relief, Grievants seek "reclassification to Paraprofessional/Aide with back pay, [and] seniority retroactive to the date of their certification as Paraprofessionals."

At Level I, Grievants Veach, Mullenax, Fike, and Canan, were denied relief by the principal at the school at which they teach on January 30, 1996, February 2, 1996, January 30, 1996, and February 1, 1996, respectively. At Level II the grievances were consolidated. On February 28, 1996, a hearing was conducted by Superintendent Kalbaugh, and the grievance was subsequently denied. At Level III, pursuant to W. Va. Code §18-29-4(c), Grievants appealed to Level IV on March 13, 1996. An evidentiary hearing was held on June 11, 1996, at the Grievance Board's office in Elkins, West Virginia. On July 15, 1996, the case matured upon receipt of Grievants' proposed findings of fact and conclusions of law.

The following Findings of Fact were derived from the record developed below.

### **FINDINGS OF FACT**

1. Grievants are employed by Respondent as school service personnel. They hold the "Aide IV" classification.

2. Each Grievant has received a Regents Bachelor of Arts degree from Shepherd College, and holds paraprofessional certification.

3. Each Grievant provides one-on-one instruction to students, or instructs a small group of students, while the teacher instructs the rest of the class; or provides instruction to the class, while the teacher instructs a single student, or a small group of students. This instruction might be on the same, or a different, lesson than what the teacher is teaching. Furthermore, Grievants' facilitation of instruction, instruction of students, and direct or indirect supervision of students, is a significant portion of their daily work schedule.

4. Grievant Veach received paraprofessional certification on December 18, 1991. She has been employed by Respondent for over twenty years. She has "covered" for kindergarten teachers on an emergency basis, or when one of the kindergarten teachers needs to "leave for a short period of time." Because of inclusion, Grievant Veach has worked with students with autism and cerebral palsy. She also has breakfast and playground duties.

5. Grievant Mullenax received paraprofessional certification on January 8, 1992. She has been employed by Respondent for over twenty-two years. She instructs children and other staff members at Wiley Ford Primary School in computer applications. She "covers" for the teacher during "emergency" situations, and when the teacher is required to attend meetings. Grievant Mullenax also has breakfast, lunch, and bus duties.

6. Grievant Fike received paraprofessional certification on July 20, 1992. She has been employed by Respondent for over ten years, over five years as an Aide, and as a substitute Aide for five years. She has "covered" for teachers in emergency situations for kindergarten, first, and second grade when a substitute teacher was unavailable. She also coordinates and works as a liaison between the teacher and the parent/volunteers. Grievant Fike has breakfast, lunch, bus, and playground duties.

7. Grievant Canan received paraprofessional certification on December 12, 1991. However, she was not employed by Respondent until January 1993. She has also "covered" for the teacher when s/he is out of the room, called home, or leaves because of an illness. She also instructs students on "potty" training, and self help skills.

## **DISCUSSION**

Grievants do not allege they are professional teachers or that other aides do not perform similar tasks. Grievants assert they perform the duties of paraprofessionals and hold paraprofessional certification, but are not being compensated as paraprofessionals. Respondent opposes the grievance because the duties and responsibilities assigned to Grievants, as Aides IVs, "have not changed since they received their paraprofessional certificates and they perform the same duties as other Supervisory Aide IV's in Mineral County." As defined by W. Va. Code 18A-4-8, an Aide IV means:

personnel referred to in the "Aide I" classification who hold a high school diploma or a general educational development certificate and who have completed eighteen hours of state board-approved college credit at a regionally accredited institution of higher education, or who have completed fifteen hours of state board-approved college credit at a regionally accredited institution of higher education and successfully completed an in-service training program determined by the state board to be the equivalent of three hours of college credit.

W. Va. Code §18A-3-2a(3) provides:

A paraprofessional certificate may be issued to a person who has completed thirty-six semester hours of post-secondary education or its equivalent in subjects directly related to performance of the job, all approved by the state board, and can demonstrate the proficiencies to perform duties as required of a paraprofessional as defined in section eight [§18A-4-8], article four of this chapter.

W. Va. Code §18A-4-8 [1993] defines paraprofessional as:

a person certified . . . to perform duties in a support capacity including, but not limited to, facilitating in the instruction and direct or indirect supervision of pupils under the direction of a principal, a teacher, or another designated professional educator: Provided, That no person employed on the effective date of this section in the position of an aide may be reduced in force or transferred to create a vacancy for the employment of a paraprofessional. ([See footnote 1](#))

In Sites and Murphy v. Pendleton County Bd. of Educ., Docket No. 94-36-1112 (May 31, 1995), the Grievance Board stated that "[t]hese provisions establish that classification as [a] paraprofessional is gained with certification and duties." In the instant case, each Grievant proved by a preponderance of the evidence that they, on a daily basis, performs the duties of a paraprofessional as defined by W. Va. Code §18A-4-8.

Furthermore, while a board of education may determine to upgrade a position or to post a position as paraprofessional, rather than as an aide, it also has a statutory duty to review each service personnel employee's job classification annually and to reclassify employees as specified by W. Va. Code §18A-4-8. It provides, in pertinent part:

Upon the change in classification or upon meeting the requirements of an advanced classification of or by any employee, the employee's salary shall be made to comply with the requirements of this article, and to any county salary schedule in excess of the minimum requirements of this article, based upon the employee's advanced classification and allowable years of employment.

"The statutory definition [of paraprofessional] is very generally worded and must be broadly applied." Sites, supra. Therefore, because Grievants perform duties in a support capacity, including, but not limited to, facilitating in the instruction and direct or indirect supervision of pupils under the direction of a principal, teacher, or other professional educator, they are entitled to the classification of paraprofessional. See Morgan v. Pizzino, 256 S.E.2d 592 (W.Va. 1979).

In two cases directly on point, Sites, supra, and Evans v. Hampshire County Bd. of Educ., Docket No. 93-14-440 (Sept. 28, 1994), the Grievance Board has invalidated the position maintained by Respondent in this case. As in Sites, supra, Respondent asserts that the classification of Grievants as paraprofessionals cannot be justified because their duties have not changed. Respondent also takes a position similar to that taken by the Hampshire County Board of Education in Evans, supra. Here, Respondent asserts that Grievants have not been assigned to a position as a paraprofessional, that the paraprofessional classification is a distinct job classification, and that the paraprofessional classification is not an "Aide V". However, these arguments are not any more persuasive today, than when Sites, supra, and Evans, supra, were decided.

The final issue to be determined is the appropriate remedy. Grievants seek back pay to the date of their respective paraprofessional certification. Respondent raised a timeliness defense, seeking to limit Grievants' relief to fifteen days prior to the filing of the grievance. The Supreme Court of Appeals of West Virginia has ruled that limiting relief in this manner is appropriate in Martin v. Randolph County Bd. of Educ., 465 S.E.2d 399 (W.Va. 1995). Therefore, relief will be limited to fifteen days prior to the filing of the grievance.

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

### **CONCLUSIONS OF LAW**

1. In a nondisciplinary action, Grievants have the burden of proving their case by a preponderance of the evidence. Gwilliam v. Preston County Bd. of Educ., Docket No. 95-39-255 (Dec. 22, 1995).

2. W. Va. Code §18A-4-8 [1993] defines paraprofessional as:

a person certified . . . to perform duties in a support capacity including, but not limited

to, facilitating in the instruction and direct or indirect supervision of pupils under the direction of a principal, a teacher, or another designated professional educator: Provided, That no person employed on the effective date of this section in the position of an aide may be reduced in force or transferred to create a vacancy for the employment of a paraprofessional.

3. W. Va. Code §18A-4-8 provides, in pertinent part:

Upon the change in classification or upon meeting the requirements of an advanced classification of or by any employee, the employee's salary shall be made to comply with the requirements of this article, and to any county salary schedule in excess of the minimum requirements of this article, based upon the employee's advanced classification and allowable years of employment.

4. Grievants proved by a preponderance of the evidence they are certified and perform duties in a support capacity, under the direction of a principal, teacher, or other professional educator, which include, but are not limited to, facilitating in the instruction and direct or indirect supervision of pupils, and are, therefore, entitled to the classification of paraprofessional as provided by W. Va. Code §18A-4-8. See Sites supra; Evans, supra.

Accordingly, the grievance is **GRANTED**, and Respondent is **ORDERED** to reclassify Grievants as paraprofessionals. Respondent is also **ORDERED** to compensate Grievants, and to provide them all other benefits, as if they had held paraprofessional classification from fifteen days prior to the filing of this grievance.

Any party may appeal this DECISION to the Circuit 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: September 30, 1996 \_\_\_\_\_

JEFFREY N. WEATHERHOLT  
ADMINISTRATIVE LAW JUDGE

[Footnote: 1](#)     *Effective July 1, 1996, the legislature added the following proviso to the end of W. Va. Code §18A-4-8:*

*Provided, however, That if any employee has held or holds an aide title and becomes employed as a paraprofessional, the employee shall hold a multiclassification status that includes aide and paraprofessional titles in accordance with section eight-b of this article: Provided further, That once an employee who holds an aide title becomes certified as a paraprofessional and is required to perform duties that may not be performed by an aide without paraprofessional certification, he or she shall receive the paraprofessional title pay grade.*