BARBARA HAUGER,

Grievant,

v. **Docket No. 00-39-388**

PRESTON COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Barbara Hauger ("Grievant"), employed as an aide by the Preston County Board of Education ("PCBOE"), initiated this proceeding on October 23, 2000, challenging her transfer from Central Preston Middle School to West Preston Middle School. The grievance was denied at level one, a level two hearing was held on November 14, 2000, and the grievance was denied at that level on December 5, 2000. Level three consideration was bypassed, and Grievant appealed to level four on March 27, 2001. A hearing was held in the Grievance Board's office in Morgantown, West Virginia, on February 26, 2001. Grievant was represented by counsel, John E. Roush of the School Service Personnel Association, and Respondent was represented by counsel, Gregory W. Bailey. This matter became mature for consideration upon receipt of the parties' fact/law proposals on March 27, 2001.

The following findings of fact are made from a preponderance of the evidence of record.

Findings of Fact

1. Grievant is employed by PCBOE as a classroom aide. For the 1999-2000 school year, Grievant was assigned to Central Preston Middle School ("Central Preston"). She was not assigned to work with any particular student at that time.

2. Grievant did not receive a notice of transfer during the spring of 2000, and her name was not listed among those who were on the proposed transfer list for the following school year.

3. Grievant returned to Central Preston at the beginning of the 2000-2001 school year, and she was assigned to work with a particular handicapped student.

4. During the fall of 2000, the student Grievant had been assisting was transferred to West

Preston Middle School ("West Preston"). (See footnote 1)

5. When Grievant expressed her reluctance to transfer to West Preston, she was allowed to remain at Central Preston and serve in the position of an aide who was on a leave of absence. That aide returned on December 12, 2000, at which time Grievant was transferred to West Preston to assist the student who had previously been transferred.

6. Grievant did not voluntarily transfer to West Preston; she was threatened with disciplinary action if she did not take the assignment.

7. When Grievant was assigned to Central Preston, she drove five miles each way and caught a bus, which took her to the school. Since she has been assigned to West Preston, Grievant has been driving seventeen miles each way, then she rides a bus. On several occasions, Grievant has driven the entire distance to West Preston, because the bus did not stop.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her claims by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2000); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code § 18-29-6. Grievant contends that her transfer to West Preston in the middle of the school year violated W. Va. Code § 18A-2-7, which provides, in pertinent part: "An employee shall be notified in writing by the superintendent on or before the first Monday in April if he is being considered for transfer or to be transferred." The statute also provides employees the opportunity to have a hearing before the board concerning any proposed transfer, and any action on transfers must be completed by the first Monday in May.

Respondent does not dispute that Grievant was not notified of any potential transfer in the spring of 2000. However, it contends that W. Va. Code § 18A-2-7 should be construed to permit the movement of a special education aide from one school to another to maintain continuity of services to a particular student, and that such an action should fall outside the meaning of "transfer" as contemplated by the statute. Respondent contends that such an interpretation has already been adopted by this Grievance Board with regard to transportation aides in Sipple v. Mingo County Board of Education, Docket No. 95-29- 487 (March 27, 1996), where it was held that "aides who assist

special education students commuting to and from school on school-provided transportation, are assigned duties of an itinerant nature," allowing county boards of education the freedom to make reasonable changes in their schedules to accommodate the students to whom they are assigned. Respondent's reliance upon Sipple, supra, is somewhat misplaced. The aide involved in that grievance was reassigned from one bus run to another, slightly altering her daily work schedule. The issue of transfer was never addressed in that case, and the administrative law judge only ruled that, in accordance with previous Grievance Board decisions, a county board may make reasonable daily schedule changes within the parameters of the employee's contract. The basis of the ruling was that the changes that occurred in that case did not violate the provisions of W. Va. Code § 18A-4-8a, restricting changes in an employee's daily work schedule during the school year without his/her written consent. The transfer provisions of W. Va. Code § 18A-2-7 were not at issue in that case, so Respondent's argument is not persuasive.

The predicament presented when a special education aide is assigned to a particular student, who may be moved to another school during the school year, was addressed in Conrad v. Nicholas County Board of Education, Docket No. 97-34-388 (Jan. 12, 1998). In that case, the grievant protested when she was notified that she was to be "transferred" from assignment to a particular school to "itinerant" status for the following school year. The administrative law judge found that Nicholas County's decision to make all their special education aides itinerant was a logical solution to the problem which occurs when the student transfers, leaving the aide behind at a particular school with no specific assignment, and requiring that a new aide be hired at the other school. It was noted in Conrad that, aside from transferring the employee to itinerant status, the board "could not otherwise require Grievant to move with the child."

Moving Grievant involuntarily to another school in the middle of the school year clearly constitutes a transfer within the meaning of W. Va. Code § 18A-2-7. Additionally,the undersigned finds that this transfer violated the provisions of that statute requiring notice of the transfer prior to the first Monday in April of the preceding school year, an opportunity for hearing, and board action on the transfer by May. Accordingly, Grievant's transfer was improper, and she is entitled to reinstatement to her position at Central Preston.

In addition to being returned to her previous position, Grievant has requested reimbursement for the extra miles she has been required to travel while assigned to West Preston. Ordinarily, the relief

provided to a grieving employee under the education grievance procedure involves a "make-whole" remedy, intended to restore the employee to his or her rightful place as an employee of the county board. Gillispie v. Kanawha County Bd. of Educ., Docket No. 98-20-216 (Aug. 26, 1998). See W.Va. Code § 18-29-5(b); Graf v. W. Va. Univ., 189 W. Va. 214, 429 S.E.2d 496 (1992); Sanders v. Putnam County Bd. of Educ., Docket No. 97-40-459 (Dec. 3, 1997). This Grievance Board has previously awarded mileage reimbursement to grievants who demonstrated that "but for" their employer's improper actions, they would not have incurred certain travel or commuting expenses. See, e.g., Ali v. W. Va. Dep't of Health & Human Resources, Docket No. 97-HHR-474 (June 30, 1998); Manns v. Lincoln County Bd. of Educ., Docket No. 97-22-257 (Oct. 20, 1997). Therefore, Respondent must reimburse Grievant for all extra mileage she has traveled since being transferred to West Preston, to be paid at PCBOE's standard mileage rate for employees. See Barker v. Lincoln County Bd. of Educ., Docket No. 98-22-496 (March 30, 1999).

Consistent with the foregoing, the following conclusions of law are made.

Conclusions of Law

___1. In a non-disciplinary matter, Grievant has the burden of proving her claims by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2000); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code § 18-29-6.

___2. Employees of county boards of education must be notified in writing by the first Monday in April of any proposed transfer for the ensuing school year, are entitled to a hearing before the board, and action on all proposed transfers must be taken by the first Monday in May. W. Va. Code § 18A-2-7.

3. Grievant's transfer to West Preston Middle School in the middle of the 2000- 2001 school year violated the provisions of W. Va. Code § 18A-2-7.

4. Mileage reimbursement may be awarded to a grievant who has demonstrated that "but for" their employer's improper actions, they would not have incurred certain travel or commuting expenses. See, e.g., Barker v. Lincoln County Bd. of Educ., Docket No. 98- 22-496 (March 30, 1999); Ali v. W. Va. Dep't of Health & Human Resources, Docket No. 97-HHR-474 (June 30, 1998); Manns v. Lincoln County Bd. of Educ., Docket No. 97-22-257 (Oct. 20, 1997).

5. Grievant established by a preponderance of the evidence that she incurred additional travel expenses when Respondent improperly transferred her to West Preston Middle School.

Accordingly, this grievance is **GRANTED**. Respondent is hereby **ORDERED** to reinstate Grievant to her previous position at Central Preston Middle School and toreimburse her for additional travel expenses while assigned there, as previously discussed in this decision.

Any party may appeal this Decision to the Circuit Court of Kanawha County or the Circuit Court of Preston 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. However, the appealing party is required by W. Va. Code § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

Date: April 5, 2001 _____

DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

This student was transferred after his parents initiated a "due process" hearing, due to their strong desire that he attend a different school.