CHARLES HUSS,

Grievant,

v v.

Docket No. 02-RS-017A

WEST VIRGINIA DIVISION OF

REHABILITATION SERVICES,

Respondent.

D E C I S I O N

Grievant, Charles Huss, is employed by the West Virginia Division of Rehabilitation Services ("DRS") as a teacher. He filed this grievance on November 14, 2001. His Statement of Grievance reads:

> Being requested by immediate supervisor to obtain training and skills which fall outside of my professional area of expertise, and then providing such instruction to my assigned students (area in question is basic Keyboarding & computer access technology (CAT) skills for the blind & visually impaired.
>
> Relief Sought: Remove Keyboarding & CAT duties/responsibilities from my 2001 - 2002 functional job description.

This grievance was denied at all lower levels. The Level III Decision was issued by the Hearing Examiner, Kathryn Dooley, and then adopted by the Interim Executive Director, Janice Holland, on December 14, 2001. Grievant appealed to Level IV on January 24, 2002, and a Level IV hearing was held on February 25, 2001. This case became mature for decision at that time as the parties elected not to submit proposed findings of fact and conclusions of law. (See footnote 1)

After a detailed review of the record in its entirety, the undersigned Administrative Law Judge makes the following Findings of Fact.

Findings of Fact

1. When Grievant began employment with DRS, many years ago, he was hired as an

Orientation and Mobility Specialist. After several years he became a supervisor. Later, he was reclassified as a teacher and received a pay increase.

2. Grievant is currently employed as a teacher at DRS in the Life Skills Training Unit. He was grandfathered into this teaching classification, and he was given a certification in Adult Basic Education.

3. W. Va. Code § 18-10A-2a discusses the grandfathering into a teaching classification process, defines rehabilitation teachers, and states the following:

> (a) "Rehabilitation teacher" means any person employed by the division and who meets the certification requirements of section two-a [§§ 18A-3-2a], article three, chapter eighteen-a of this code, or who has been certified to teach by a state or nationally recognized organization, as approved by the office of the secretary of education and the arts. Such teachers shall maintain current certification in their teaching areas in order to remain employed. Such persons also shall teach only in the areas in which they are certified: Provided, That teachers who were employed on or before the first day of April, one thousand nine hundred ninety-five, shall be exempt from the following requirements: (1) Certification pursuant to section two-a, article three, chapter eighteen-a of this code; (2) maintenance of current certification in their teaching areas in order to remain employed; and (3) teaching only in the areas in which they are certified.

4. Grievant's area of specialization is working with blind and visually impaired students to improve their orientation and mobility.

5. There is a backlog of requests at DRS for training in the area of computer access technology ("CAT"). The one teacher who performs these services, Glen Wilson, cannot meet the current referrals and student needs. 6. Mr. Wilson, who is certified by the State of West Virginia to teach visually impaired students, K-12, is self-taught in the area of CAT. (See footnote 2) Additionally, he took a three- hour graduate course in computers for teachers.

7. When one of the teachers at DRS retired, the original plan was to replace him with a teacher knowledgeable in the area of CAT.

8. This position was never filled and is no longer available to be filled due to funding cuts. (See footnote 3)

9. There are unfilled time slots in Grievant's schedule because students who need his services do not want to come to the Center until they can receive all the needed services at the same time. These students, who would benefit from Grievant's services, also want CAT training.

10. In October 2001, Grievant's supervisor, Lynn Harris, informed Grievant. In writing, that he

would be required to teach basic CAT skills to blind and visually impaired DRS clients. This work expectation would be part of Grievant's performance standards and expectations for the next rating period.

11. Grievant refused to sign the performance standards and expectations referred to in Finding of Fact 10, because of the inclusion of CAT responsibilities.

12. The other teachers who work with students in the area of orientation and mobility were also asked to teach in this area, and they have agreed to do so. 13. On November 13, 2001, Ms. Harris told Grievant he would be provided additional training to prepare him to teach in this new area.

14. Some time ago, Grievant had a State in-service course on accessing and using e-mail, the Internet, and Windows for his own professional needs, and he is comfortable in doing so. (See footnote 4)

15. Within the State system there is no particular teaching certification required for instructing in the area of Computer Literacy. The teacher must have a teaching certificate, and the ability to perform the duties of the position. Angus v. Cabell County Bd. of Educ., Docket No. 00-06-273 (Dec. 8, 2000); Whitt v. Lincoln County Bd. of Educ., Docket No. 97-22-342 (Feb. 3, 1998).

16. Ms. Harris clarified the new duties would include only teaching computer orientation and instruction in the areas of e-mail, Internet, and Windows applications. Keyboarding would not be included in Grievant's duties. Higher level technology would be taught by staff with that particular expertise.

Issues and Arguments

Grievant asserts he should not be required to teach or instruct students in areas outside his area of specialization, which is orientation and mobility. He is concerned he willnot acquire enough contact hours to maintain his certification in this area. (See footnote 5) Grievant also avers it would be unethical for him to teach in an area in which he is not adequately trained. (See footnote 6)

Respondent notes Grievant is classified as a Teacher, grandfathered into an Adult Basic Education certification, and is paid on the Kanawha County school teacher pay scale. Grievant is not classified as an Orientation and Mobility Specialist, and there is no such classification for a teacher within the State system. Respondent also notes there are insufficient teachers to provide the needed

computer services, and currently clients are having to wait for assessment and training. This backlog could be reduced by Grievant and other teachers assuming these basic duties. Respondent avers the duties Grievant is being asked to assume are basics, such as: orientation to the computer, Internet access, e-mail usage, and Windows. Grievant will need minimal training, which will be provided, to enable him to furnish these basic services.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his grievance 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); Howell v. W. Va. Dep't of Health & Human Resources, Docket No. 89-DHS-72 (Nov. 29, 1990). See W. Va. Code § 29-6A-6. See also 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).

Grievant has not met his burden of proof. While it is understandable Grievant would rather not receive training and be required to teach in a new area, this request from his employer is not illegal, nor does it violate W. Va. Code § 18-10A-2a which states Grievant "shall be exempt from . . . teaching only in the areas in which [he is] certified." Further, there was no indication that teaching CAT would be outside the purview of a Rehabilitation teacher or a teacher with the grandfathered certification in Adult Basic Education. Additionally, Grievant is expected to "complete other assigned duties and responsibilities as assigned which directly or indirectly enhance or impact services to blind and visually impair[e]d individuals." Grt. Ex. No. 10, at Level II. "[An agency] has the authority and obligation to utilize its personnel in a manner consistent with applicable law to achieve its goals as economically as possible." Catus v. W. Va. Dep't of Health and Human Resources, Docket No. 89-DHS-593 ((Dec. 12, 1989). See Smith v. W. Va. Dep't of Health and Human Resources, Docket No. 91-DHS-207 (Feb. 28, 1992).

Clearly, Grievant sees himself as an Orientation and Mobility Specialist, and he is very qualified in this field. Unfortunately, when he became classified as a teacher, he became governed by the rules that apply to that job classification. Grievant presented no evidence that being required to teach CAT skills would violate any Code Section or DRSPolicy. Accordingly, the basic CAT duties he is being requested to perform do not fall outside his current classification.

The above-discussion will be supplemented by the following Conclusions of Law.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his grievance 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); Howell v. W. Va. Dep't of Health & Human Resources, Docket No. 89-DHS-72 (Nov. 29, 1990). See W. Va. Code § 29-6A-6. See also 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).

2. "[An agency] has the authority and obligation to utilize its personnel in a manner consistent with applicable law to achieve its goals as economically as possible." Catus v. Dep't of Health and Human Resources, Docket No. 89-DHS-593 ((Dec. 12, 1989). See Smith v. W. Va. Dep't of Health and Human Resources, Docket No. 91-DHS-207 (Feb. 28, 1992).

3. Grievant has not met his burden of proof and demonstrated the request from DRS to teach basic CAT skills fall outside the duties of the teacher classification to which he is currently assigned.

Accordingly, this grievance is **DENIED**.

Any party, or the West Virginia Division of Personnel, may appeal this decision to the Circuit Court of Kanawha County, or to the "circuit court of the county in which the grievance occurred." Any such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code § 29-6A-7 (1998). 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.

JANIS I. REYNOLDS

ADMINISTRATIVE LAW JUDGE

Dated: April 9, 2002

Footnote: 1

Grievant represented himself, and Respondent was represented by Attorney Warren Morford.

Footnote: 2

Mr. Wilson is also certified in English and Behavioral Disorders.

Footnote: 3

Grievant wished to pursue the issue of failure to fill this position. Respondent objected, and the undersigned Administrative Law Judge found this issue was outside the Statement of Grievance.

Footnote: 4

This fact was made clear by the numerous exhibits Grievant presented that he had taken from the Internet and requested and received by e-mail.

Footnote: 5

Since this assertion was identified as a possible occurrence, it is not yet ripe for decision. Additionally, while this certification is understandably important to Grievant, it is not clear if an employer can be held responsible for this failure, if the need is not present. As was presented by the evidence, Grievant currently has time slots open and unfilled for work with clients because of the CAT problem.

Footnote: 6

Grievant cites the Code of Ethics for orientation and mobility specialists which states at 4.6: "The O&M specialist will not assume responsibilities which are better provided by other professionals who are available to the student." As noted in the body of this decision, all the parties agree there is not another professional present at DRS to provide all the needed CAT services. Grt. Ex. No. 5, at Level IV.