SHERRY KIRK,

Grievant,

v. **DOCKET NO. 04-33-246**

McDOWELL COUNTY BOARD

OF EDUCATION,

Respondent.

DECISION

On February 13, 2004, Grievant filed a grievance against Respondent, alleging violations of W. Va. Code §§ 18A-4-8B and 18-5-13. More specifically, she stated:

> There was a trip taken on Monday 2-2-2004. The Coach, Diana Pruitt took students - basketball players in her vehicle and her daughter a basketball player - Stephanie Hawkins took 4 basketball players in her red tracker to a game at Gilbert. I seen this myself and I thought law was a player or student aren't allowed to drive to any school activity, let alone carry other students in a vehicle. It was my turn in rotation for the basketball trip to Gilbert. By the student Stephanie Hawkins taking players in her vehicle I wasn't allowed to take my turn.

As relief, Grievant seeks, “I want paid for the 8 Hr. trip that was taken.”

Having been denied at levels one and two, level three was bypassed and a level four hearing was held in the Grievance Board's Beckley office on October 5, 2004. Grievant was represented by counsel, John E. Roush of the West Virginia School Service Personnel Association. Respondent was represented by counsel, Kathryn Reed Bayless. The matter became mature for decision on November 5, 2004, the deadline for submission of the parties' proposed findings of fact and conclusions of law.

Based on a preponderance of the evidence contained in the record and adduced at the level four hearing, I find the following material facts have been proven:

FINDINGS OF FACT

1. Grievant is regularly employed by Respondent as a Bus Operator. On February 2, 2004, she was next in the rotation for extra-duty assignments.

2. On that day, the Big Creek High School girls' basketball team had an after- school game at Gilbert High School.

3. The team was transported in two private vehicles, one of which was driven, at least part-way to the game by a student team-member, the daughter of the coach.

4. Respondent has established a policy, No. 12-002, entitled “Transportation for Athletics,” that provides in part, “Car owners providing private transportation for players and cheerleaders to games may be reimbursed by the school at the standard rate adopted by the McDowell County Board of Education. Car owners shall have a minimum $300,000 aggregate and $100,000 per individual liability insurance coverage.”

5. Respondent's transportation director was not asked to provide transportation for the team to the game.

DISCUSSION

This is a non-disciplinary grievance in which Grievant bears the burden of proof. Grievant's allegations must be proven by a preponderance of the evidence. *See*, W. Va. Code § 18-29-6, 156 W. Va. Code St. R. § 156-1-4.21. "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." *Leichliter v. W. Va. Dep't of Health & HumanRes.*, Docket No. 92-HHR-486 (May 17, 1993). Grievant argues that W. Va. Code § 18A- 4-8b provides that regular bus operators are to take extra-duty assignments for bus operators, and that the February 2, 2004 trip to a basketball game meets the definition of an extra-duty assignment, entitling Grievant to the opportunity to transport those students for extra-duty pay.

Grievant is correct that W. Va. Code § 18A-4-8b(f) defines "extra-duty assignments" as “irregular jobs that occur periodically or occasionally such as, but not limited to, field trips, athletic events, proms, banquets and band festival trips.” As such, a job transporting students to an athletic event, such as a basketball game, would be an extra-duty assignment.

Grievant also argues school buses must be used for trips such as the one at issue, by the terms of W. Va. Code § 18-5-13(f)(1), which states:

> [Each county board, subject to the provisions of this chapter and the rules of the state board, has the authority:] To provide at public expense adequate means of transportation, including transportation across county lines for students whose transfer from one district to another is agreed to by both county boards as reflected in the minutes of their respective meetings, for all children of school age who live more than two miles distance from school by the nearest available road; to provide at public expense, according to such rules as the board may establish, adequate means of transportation for school children participating in county board-approved curricular and extracurricular activities; to provide at public expense, by rules and within the available revenues, transportation for those within two miles distance; and to provide, at no cost to the county board and according to rules established by the board, transportation for participants in projects operated, financed, sponsored or approved by the commission on aging, all subject to the following:
>
> > (A) All costs and expenses incident in any way to transportation for projects connected with the commission on aging shall be borne by the commission or the local or county chapter of the commission;
> >
> > > (B) In all cases, the school buses owned by the county board shall be driven or operated only by drivers regularly employed by the county board;
> >
> > (C) The county board may provide, under rules established by the state board, for the certification of professional employees as drivers of county board-owned vehicles with a seating capacity of less than ten passengers used for the transportation of pupils for school-sponsored activities other than transporting students between school and home. The use of the vehicles shall be limited to one for each school-sponsored activity; and
> >
> > (D) Buses shall be used for extracurricular activities as provided in this section only when the insurance provided for by this section is in effect;

Grievant presented adequate evidence to establish that on February 2, 2004, at least two private vehicles were used to transport student members of the girls' basketball team from Big Creek High School to Gilbert High School and back for a game. One vehicle was driven by the team's coach, and the other was driven, at least part of the way, by a team member. She further demonstrated that, had a bus been used for the trip, she would have been offered the opportunity to drive it as an extra-duty assignment.

Grievant has provided no law, policy or rule that entitled her to the job, however, given that there was no job. The law she cites does not establish a requirement that students be transported to school

activities by bus, only the requirement that if they are, the job be offered to a regular bus operator as an extra-duty assignment. By contrast, Respondent has shown it has a policy, No. 12-002, that expressly allows for students to be transported by private vehicle to games. That same policy requires any trip using a school bus to take students to a game to be applied for, presumably by the coach, and pre- approved by Board. That was never done in this case.

The following Conclusions of Law support this decision:

CONCLUSIONS OF LAW

1. This is a non-disciplinary grievance in which Grievant bears the burden of proof. Grievant's allegations must be proven by a preponderance of the evidence. *See*, W. Va. Code § 18-29-6, 156 W. Va. Code St. R. § 156-1-4.21. "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." *Leichliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

2. West Virginia Code § 18A-4-8b(f) defines "extra-duty assignments" as “irregular jobs that occur periodically or occasionally such as, but not limited to, field trips, athletic events, proms, banquets and band festival trips.” As such, a job transporting students to an athletic event, such as a basketball game, would be an extra-duty assignment.

3. County Boards of Education are authorized by W. Va. Code § 18-5-13(f)(1) to provide buses for transporting students to basketball games, but they are not required to by that section.

4. Grievant did not meet her burden of proving an entitlement to transport students to a basketball game.

For the foregoing reasons, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or to the Circuit Court of McDowell County. Any 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 andState 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 Grievance Board with the civil action number so that the record can be prepared and transmitted to the circuit court.

Date: November 24, 2004 _____

M. Paul Marteney

Administrative Law Judge