

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**NORTHWOOD EDUCATION ASSOCIATION**

and

**NORTHWOOD SCHOOL DISTRICT**

Case 31  
No. 60948  
MA-11761

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Appearances:

**Mr. Barry Delaney**, Executive Director, Northern Tier UniServ-West, on behalf of the Northwood Education Association.

Weld, Riley, Prenz & Ricci, S.C., Attorneys at Law, by **Mr. Christopher R. Bloom**, on behalf of the Northwood School District.

**ARBITRATION AWARD**

The Northwood Education Association, hereinafter the Association, requested that the Wisconsin Employment Relations Commission appoint a staff arbitrator to hear and decide the instant dispute between the Association and the Northwood School District, hereinafter the District, in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. The District subsequently concurred in the request and the undersigned, David E. Shaw, of the Commission's staff, was designated to arbitrate in the dispute. A hearing was held before the undersigned on May 29, 2002 in Minong, Wisconsin. There was no stenographic transcript made of the hearing. The parties submitted post-hearing briefs in the matter by July 15, 2002. Based upon the evidence and the arguments of the parties, the undersigned makes and issues the following Award.

**To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.**

### **ISSUES**

The parties stipulated there are no procedural issues, but were unable to agree on a statement of the substantive issues and stipulated the Arbitrator will frame those issues.

The Association offers the following statement of the issues:

Did the District violate Article VIII, Section G, 3, a, of the collective bargaining agreement on December 20, 2001 by assigning Mr. Hagen to an IEP meeting during his regularly-scheduled preparation period? If so, what is the appropriate remedy?

The District would state the issues as follows:

Did the District violate the parties' collective bargaining agreement when it refused to compensate the Grievant an additional 1/8 per day salary for attending an Individualized Educational Plan meeting during his preparation period? If so, what is the appropriate remedy?

The Arbitrator frames the issues to be decided as follows:

Did the District violate Article VIII, Section G, 3, a, of the parties' collective bargaining agreement by requiring the Grievant to attend an IEP meeting on December 20, 2001 during his regularly-scheduled preparation period and thereafter refusing to pay him an additional 1/8 of his daily salary? If so, what is the appropriate remedy?

### **CONTRACT PROVISIONS**

The following provisions of the parties' 2001-2003 Agreement are cited:

### **ARTICLE II – MANAGEMENT RIGHTS**

. . .

#### **Section B**

. . .

Without limiting the generality of the foregoing, it is expressly recognized that the Board's operational and managerial responsibility includes:

. . .

12. The right to establish and revise the school calendar, establish hours of employment, to schedule classes and assign work loads, and to select textbooks, teaching aids and materials.

. . .

## **ARTICLE VIII – WORKING CONDITIONS**

. . .

### **Section G – School Day**

. . .

3. Preparation Period:
  - a. Secondary teachers shall be scheduled for a minimum of one preparation period per day or the equivalent thereof for one semester and a minimum of two preparation periods per day or the equivalent thereof in the other semester.

Preparation periods shall be those periods during which the teacher is not assigned to regular programmed responsibilities.

A teacher may elect to teach a semester class in place of a study hall. No teacher will be fully or partially laid off in future years if a study hall monitor is hired to replace teachers presently serving as study hall monitors.

. . .

### **Section N – Overload Pay**

Full time teachers who accept an overload will be compensated an extra 1/8 of their regular salaries.

. . .

### **BACKGROUND**

The District and the Association have been parties to a collective bargaining agreement covering the District's professional employees for a number of years and are currently parties to a 2001-2003 agreement. The Grievant has been employed by the District as a classroom teacher for the past 23 years. In the 2001-2002 school year, the Grievant taught classes in history, geography and current events. The normal teaching load is six classes, a study hall and one preparation period one semester and six classes and two preparation periods the other semester. There are eight class periods of 45 minutes each per day. For the first semester of the 2001-2002 school year, the Grievant elected to teach a seventh class in lieu of a study hall and had one preparation period per day.

On December 20, 2001, the Grievant was required to attend an "IEP" (Individualized Educational Plan) meeting for a special education student in one of the history classes the Grievant was teaching. The IEP meeting was held during the Grievant's preparation period and was attended by the Grievant, as a regular education teacher, the School Psychologist, the Special Education teacher, the student and the student's parent. The purpose of an IEP meeting is to discuss the student's progress under the IEP and to review the IEP and discuss whether the plan needs to be modified. At the December 20<sup>th</sup> IEP meeting, the Grievant was asked if he thought the student could succeed in his class and he responded that he did not think she could and that she should probably be placed in a special education situation rather than be mainstreamed. The Grievant had to leave the IEP meeting before it was over as he had a class to teach and there was no substitute to replace him. He was later informed that the student would remain in his class.

The Grievant subsequently requested that he be paid "overload pay" of 1/8 of his daily salary for being assigned to attend the IEP during his only preparation period on December 20<sup>th</sup>. The Grievant's request was denied by the school's Principal, Lon Bagley. By the following letter of January 2, 2002, a grievance was then initiated on the Grievant's behalf:

Dear Mr. Bagley:

Please consider this letter as the initiation of step 2 of the grievance procedure.

On 12/20/01 Tom Hagen was required to attend an IEP meeting during his only prep time of the day.

It is our opinion that the District has violated Article 8 section G(3a) of the contract.

For relief we are requesting that Tom Hagen be paid for the period that he participated in the IEP which is equal to 1/8 of his daily salary.

Sincerely,

Brian Olson  
Chairperson  
NEA Grievance Committee

Bagley responded to the grievance by a letter of January 7, 2002, which, in relevant part, stated:

Dear Mr. Olson:

I am writing in response to your letter dated January 2, 2002, as per Article IV, Section C, Step 2 of the Master Agreement between the Northwood School District and the Northwood Education Association. After careful consideration of your request I find no justification to alter my actions in this matter.

I do not believe I have violated Article VIII(G, 3, a) of the contract based on the following points:

- Mr. Hagen has been scheduled appropriate preparation periods as per the contract.
- The contract does not dictate that any compensation is warranted for attending an IEP meeting during preparation times.
- In the eighteen months that I have worked here, a number of IEP meetings have been scheduled during a regular education teacher's preparation period to prevent the teacher from losing valuable instruction time with their class(es).
- To date, this is the second request for compensation, and I have denied both requests.
- Attending an IEP meeting to discuss a student's educational program is appropriate use of a preparation period.

Please contact me if you need any clarification concerning this correspondence.

Sincerely,

Lon Bagley /s/  
Lon Bagley  
Principal

The grievance was processed through the steps of the procedure, including a hearing before the District's Board of Education. By the following letter of February 19, 2002, the Board denied the grievance:

DATE: February 19, 2002

TO: Brian Olson, NEA Grievance Committee; Tom Hagen – Grievant  
Bill Stapp, Superintendent; Lon Bagley, Principal – Northwood School

FROM: Jan Jensen, President – Northwood School Board

SUBJECT: Grievance Hearing Determination – Tom Hagen request for Extra Pay for attending an IEP meeting during regularly scheduled Prep Period

On February 14, 2002 the Northwood School Board heard evidence presented by Northwood School District administration members, Bill Stapp and Lon Bagley, and the complainant, Tom Hagen, and NEA Grievance Committee Chairman, Brian Olson regarding a grievance filed by Mr. Hagen pertaining to the denial of extra pay at the rate of 1/8 of his daily salary for being required to use his prep period for an IEP meeting on December 20, 2001. During and following testimony, questions were submitted and answered by both sides. School board members also submitted questions to all parties involved. Following testimony, both sides gave closing statements and were then excused while the board deliberated.

Conclusions drawn by the Northwood School Board in deliberation after the hearing are as follows:

- Teacher attendance at IEP meetings is a State requirement and, as such, becomes part of the teacher's regular duties. Mr. Hagen stated that he prefers not to have his class periods interrupted and, therefore, by default, IEP meetings should be scheduled during prep time.
- IEP meetings are held to 'prepare' an educational plan for a student and fall into the scope of the intended use of a teacher's prep period. Mr. Hagen stated that, although it is difficult to find time to make numerous parent contacts regarding students, he considers his prep period the appropriate time for such activity.
- Teaching staff, including Mr. Hagen, have previously attended IEP meetings during their prep periods and have not requested additional compensation. The few cases that were cited as having been paid previous were, in the board's judgment, erroneously paid through a clerical oversight as part of reimbursed 'comp time' schedules, and were paid at a classroom supervision rate rather than at 1/8 of the teachers' daily salary.

The Board very much appreciates the time and dedication that Mr. Hagen puts into his classes and in particular the Advanced Placement course he cited in his arguments. However, the Board felt that the circumstances cited were not those experienced in the course of normal classroom routines and, therefore, should not be used to set precedent for future pay practices. As such, the Northwood School Board determines that the administration did not violate Article 8, Section G of the Master Agreement in its decision to refuse the additional pay requested by Mr. Hagen.

Respectfully,

Jan Jensen /s/  
Jan Jensen  
President  
Northwood School Board

Both the Association and the District presented evidence as to past practice. The Association presented four teachers, including the Grievant, who testified that in the past they had received compensatory time or extra pay for attending an IEP during their preparation period. The District presented the testimony of Bagley and Financial Administrative Assistant

Audrey Visger that no teacher had received compensatory time or extra pay the past two school years for attending IEP's during their preparation periods, and that, of the 21 teachers who had attended IEP's during their preparation periods in the 1999-2000 school year, three teachers had mistakenly been given compensatory time on that basis, some of which was paid out at the end of the school year at the "supervision" rate in the Agreement.

Being unable to resolve their dispute, the parties proceeded to arbitration before the undersigned.

### **POSITIONS OF THE PARTIES**

#### **Association**

The Association asserts that the language of Article VIII, G, 3, a, of the Agreement is clear and unambiguous and that therefore past practice as to how it has been applied is not relevant. That provision has three paragraphs that apply to secondary teachers, such as the Grievant. The first paragraph reads "Secondary teachers shall be scheduled for a minimum of one preparation period per day or the equivalent thereof for one semester and a minimum of two preparation periods per day or the equivalent thereof in the other semester." That language treats the two semesters as completely separate time frames with a minimum preparation time for each semester. Thus, the District cannot use the average of the total preparation periods over the two semesters in order to be considered in compliance with the preparation period contract language. During the first semester of the 2001-2002 school year, the Grievant was scheduled for one preparation period per day, the bare minimum required. By directing the Grievant to attend an IEP meeting on December 20th, during his one daily preparation period, the District violated the minimum amount of preparation time, or its equivalent, provided for in Article VIII, G, 3, a.

The second paragraph of Article VIII, G, 3, a, of the Agreement reads, "Preparation periods shall be those periods during which the teacher is not assigned to regular programmed responsibilities." While the District argues that IEP meetings are not "regular programmed responsibilities", Bagley testified that IEP meetings are for the purpose of developing or modifying the individual educational plan for a special education student and that at least one IEP meeting per student is scheduled yearly. The Grievant testified that he had 18 special education students in his classes during the 2001-2002 school year. Special education is certainly a District program and IEP meetings are part of the special education program. 80 IEP meetings per year is certainly regular, and having 18 special education students in your class, where all 18 will have IEP's, is certainly part of a program and a regular situation. Thus, by directing the Grievant to give up his preparation time for an IEP meeting the District was assigning him to "regular programmed responsibilities" during his preparation period and depriving him of his preparation period in violation of Article VIII, G, 3, a of the Agreement.



In response to the District's argument that the Grievant had the equivalent of one preparation period per day for the first semester due to extra preparation time provided as a result of outside class activities, the Association asserts that the Grievant's uncontradicted testimony was that all such activities listed in Joint Exhibit 6 did not apply to him for the first semester of 2001-2002. The Grievant testified that for each activity, either the activity did not cover the grade level of students he was teaching at the time or in some of the activities only some of his students were involved, but others were not. He testified, and Bagley agreed, that he never received any additional preparation time due to those outside activities.

The Association also disputes the District's assertion that attending IEP meetings by directive is an appropriate use of preparation periods. In that regard, the President of the Board of Education stated, and the Superintendent and Principal also agreed, that teacher attendance at IEP meetings is part of the teacher's "regular duties". The second paragraph of Article VIII, G, 3, a, states that during preparation periods, teachers will not be assigned "regular programmed responsibilities". If IEP meetings are part of a teacher's regular duties, then according to that provision, such time spent at IEP meetings cannot be considered as preparation time if they are directed to attend. Further, being directed by the administration to do something during a preparation period is decidedly different than the teacher determining his/her own priorities and what needs to be done during a given preparation period. Article VIII, G, 3, a, allows the teacher to determine what preparation is needed during the preparation period, but does not allow the District to assign regular responsibilities during a time which will be counted as part of the minimum amount of preparation time provided to the teacher.

The District also argues that the phrase "regular programmed" found in the second paragraph applies only to regular programs of the teacher and does not include regular programs of the District. However, the contract language does not restrict the phrase to just teachers. If the parties had intended such a restriction, they would have put it in the language. Even if they had, there would still have been a violation in the Grievant's case, as having 18 special education students in a class, with all having IEP's to be followed, and being required to attend IEP meetings, are all part of his responsibilities in the special education program.

Further, what takes place at an IEP meeting does not have anything to do with preparation. All four teachers who testified stated that the IEP meetings do not help in any way prepare them for how to work with the student in question, that the regular education teacher and the parent do not share information about what accommodations the student needs in class, and that the regular education teacher does not have any impact on what will be placed in the student's IEP. This testimony clearly shows that attendance of a regular education teacher at IEP meetings has nothing to do with preparing lessons for the student, or making a decision on what learning strategies are appropriate for the student, and do not help the regular education teacher prepare as to how they should educate the student. The teachers

also testified that they receive a copy of the IEP for each special education student they have, which tells them what accommodation they are required to follow in the classroom. They do not have to attend IEP meetings to obtain that information. The Grievant testified that he would not have known less about the student if he had not attended the December 20th IEP meeting, that when he received the IEP for the student, the accommodations from the previous year had not changed, and that he has very little knowledge of what is supposed to take place at IEP meetings. According to the Association, the testimony clearly shows that the purpose of having a regular education teacher attend the IEP meeting in this District is only to follow the federal law, and has nothing to do with preparing how to educate the student by the regular education teachers.

The Association also disputes the District's claim that teachers have not been paid in the past for attending IEP meetings during their preparation period except through clerical or administrative error. In the Superintendent's response to the grievance, he stated that over the past 18 months the practice had been that no additional salary is paid for attending IEP meetings during a teacher's preparation period. Bagley testified that during his two years with the District, no teacher has received compensatory time for attending IEP meetings. Bagley conceded that District Exhibit 2, which the District relies on to support the alleged practice, is not a complete list of all the IEP meetings held during the 1999-2000, 2000-2001 and 2001-2002 school years. Further, while Bagley testified that during the 2000-2001 school year the administration directed special education teachers to schedule teachers for IEP meetings during their preparation periods so that the District would not have to obtain substitutes for their classes, District Exhibit 2 shows that in fact the percentage of teachers scheduled for IEP's during their class periods, rather than their preparation periods, has increased in the past two years. Teachers taken out of their class teaching duties for IEP meetings do not have to give up their preparation periods and do not suffer the harm as do the teachers not receiving their preparation period.

District Exhibit 2 also does not show which teachers, if any, attended IEP meetings during their preparation time and did not receive an equivalent amount of minimum required preparation time. Bagley testified he has no idea which of the teachers who attended IEP meetings during the last three years did not receive the equivalent of the minimum scheduled preparation time required by Article VIII, G, 3, a. Without that information, the District's argument that over the last two years no teachers have been paid for giving up their preparation period is invalid with regard to the issue in this case. Here, the Grievant did not receive one preparation period per day or its equivalent during the first semester of 2001-2002 due to his required attendance at the December 20<sup>th</sup> IEP meeting. There is no evidence in the record that any other teacher was affected in this way, and thus there is no past practice demonstrated of not paying teachers who do not receive their contracted preparation time due to attending IEP meetings.

Moreover, the District's Administrative Assistant, Audrey Visger, testified that the District does not keep records of who gets compensatory time, nor for what reason they received it. Rather, the District has an informal system where the teachers keep track of what compensatory time they are owed, and the only records the District has is if the teacher does not use the accumulated compensatory time by the end of the year, and turns it in so that they can be paid for that time at the end of the school year. If the teacher takes the compensatory time off during the year, the District has no record of who earned it. Three of the four teachers who testified stated that they had used up during the school year the compensatory time off that they received for attending IEP meetings held during their preparation periods. Thus, their compensatory time never showed up in the District's records.

With regard to remedy, the Association notes that the Grievant volunteered to take seven teaching periods with one preparation period out of an eight-period day, rather than having six teaching periods and one study hall. Teaching an extra class requires more preparation time and by giving up the assigned study hall, he in fact lost some preparation time while his work load required more preparation time. Article VIII, Section N, states: "Full-time teachers who accept an overload will be compensated an extra one-eighth of their regular salary." The Association requests that it be determined that the Grievant had an overload on December 20th, and that the District should pay him 1/8 of his normal daily salary for that overload.

### **District**

The District first asserts that its interpretation of the Agreement is correct. Article II, Section B, 12, of the Management Rights provision provides that the District has the right to ". . . schedule classes and assign workloads. . . ." Section C of that provision provides that management rights are not limited except as ". . . specifically nullified by this Agreement." Article VIII, Sec. G, 3, a, of the Agreement provides a limitation upon the District's right to schedule employees, in that it provides that "Secondary teachers shall be scheduled for a minimum of one preparation period per day or the equivalent thereof for one semester. . . ." and that "Preparation periods shall be those periods during which the teacher is not assigned regular programmed responsibilities."

The Grievant was scheduled to have one preparation period per day for the first semester of the 2001-2002 school year. In order for the Association to prove that the contract was violated, it must establish that the Grievant was deprived of one preparation period or its equivalent. The contract defines a preparation period to be those periods in which a teacher is not assigned to his "regular programmed responsibilities". Thus, the Association must first prove that an IEP meeting is part of a teacher's "regular programmed responsibilities". The District asserts that it is not. In that regard, it is a principle of contract interpretation that for technical terms arbitrators shall give preference to technical or trade usage. See St. Antoine,

Theodore J., *The Common Law of the Workplace*, Section 2.5, at p. 69. In the trade of an educator, “regular programmed responsibilities” includes supervising and instructing students. A preparation period is not part of their regular programmed responsibility because those activities involve the preparation for the education of students by creating lesson plans, grading homework or tests, and evaluating a student’s progress. Similarly, an IEP meeting is for the purpose of preparing an educational plan for an individual student, and not for the regular program responsibilities of educating the special education student. Thus, “regular programmed responsibilities” was not intended to include an IEP meeting, as the term is used in the trade.

An IEP meeting was held on December 20, 2001 involving the Grievant, the School Psychologist, the Special Education teacher as well as the student and the student’s parent, at which the parties present discussed the student’s progress in the Grievant’s class. Clearly, the subject of the meeting was to discuss the student’s progress and any potential revisions to the student’s education, and was not to educate the student in course material. This meeting is required by federal statute for the purpose of assuring that the student is receiving a proper education. In this sense, an IEP meeting is no different than a meeting with a regular education student and his/her parent. The Grievant testified he often confers with regular education students during his preparation period. Under the Agreement, both instances are proper uses of a preparation period.

Another principle of contract interpretation is that industry practice (in this case other school districts in similar situations) can be a guide to the intended meaning of a contract provision. Elkouri and Elkouri, *How Arbitration Works*, at p. 507. Here, the District surveyed the athletic conference regarding whether any school provided compensation for IEP meetings, and the results indicated that none of the other districts did so. Thus demonstrating that the other districts view an IEP as a proper use of a teacher’s preparation period.

Next, the District asserts that as the parties’ Agreement does not explicitly define “regular programmed responsibilities” in Section G, 3, a, the language can be considered ambiguous, and therefore past practice may be used to clarify the language.

Principal Bagley testified that the District’s past practice has been to schedule IEP meetings during a regular classroom teacher’s preparation period when possible, and that the District treats IEP meetings as a normal part of a teacher’s preparation period activity, and not part of their “regular programmed responsibilities”. Thus, teachers are not compensated, nor given compensatory time, for attending such meetings during their preparation period. In the last three school years, the District has held at least 179 IEP meetings, at least 67 of which have been scheduled during the regular teacher’s preparation period. None of those teachers received compensatory time or compensation for attending any of those 67 meetings.

The Association argues that the practice is not consistent because a few teachers were given compensatory time for attending IEP meetings during their preparation periods in the 1999-2000 school year. Association witnesses Martell, Denninger and Jockisch testified that they had received compensatory time for attending IEP meetings. However, both Martell and Jockisch admitted on cross-examination that they received compensatory time for only three meetings attended during the 1999-2000 school year. District Finance Administrative Assistant Audrey Visger explained that those instances were simply oversights where they had been improperly recorded by the teachers on their compensatory time sheet at the end of the year. More importantly, Martell had three IEP meetings during his preparation period in 2000-2001 school year, and two IEP meetings in the 2001-2002 school year, and was never given, nor did he request, compensatory time in those instances. Last, the District's records show that in the last three school years, Denninger only attended an IEP meeting once, on November 14, 2001, and it was not during his preparation period.

While the District awards compensatory time to teachers who supervise classes for another teacher when the regular teacher is absent, it does not award compensatory time for attending an IEP meeting during a teacher's preparation period. Had Visger noticed that the teachers had recorded attendance at an IEP meeting as compensatory time, she would have brought this to the Principal's attention and they would not have received compensatory time. However, three instances of oversight in three years does not rise above the level of *de minimis* when compared to the more than 67 instances of the District's practice. Further, no teacher who attended an IEP meeting during his/her preparation period in the past three years received, or even requested, compensatory time. Thus, the Association has accepted the District's practice.

Last, the District asserts that even if an IEP meeting is a "regular programmed responsibility", no contract violation occurred, as Section G, 3, a, of the Agreement provides that a teacher shall be scheduled for one preparation period ". . . or the equivalent thereof." Even if the Grievant was deprived of his preparation period on December 20, 2001, there were other periods where he was not assigned his "regular programmed responsibilities" that compensate for the lost preparation period. The preparation period lasts 45 minutes, and as Principal Bagley testified, teachers have periods where they are not assigned their "regular programmed" activities in addition to their daily preparation periods, e.g., field trips where they are relieved of their supervision and teaching duties and periods where students are out of the class for various testing that occurs throughout the year. Thus, it cannot be concluded that the Grievant was deprived of 45 minutes when he was not assigned his "regular programmed responsibilities" during the 2001-2002 school year.

### DISCUSSION

As it must, the analysis of the issue in this case begins with a review of the applicable contract language. Article VIII, Section G, 3, a, of the parties' Agreement contains sufficiently clear language in the first paragraph requiring that secondary teachers are to be scheduled for "a minimum of one preparation period per day, of the equivalent thereof for one semester. . ." 1/ There really is no dispute in this regard; rather, the dispute in this case centers on the second paragraph of Article VIII, Sec. G, 3, a, which provides that:

Preparation periods shall be those periods during which the teacher is not assigned to regular programmed responsibilities.

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*1/ Contrary to the District's claim, the wording "or the equivalent thereof" does not come into play in this case. The Grievant testified without contradiction that those situations cited by the District did not result in free time for him that could be used as equivalent preparation time, and Principal Bagley conceded on cross-examination that he did not doubt the Grievant's testimony in that regard.*

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The District asserts that assigning the Grievant to an IEP meeting was an appropriate use of his preparation period and did not constitute assigning him to "regular programmed responsibilities." Conversely, the Association asserts that assigning the Grievant to attend the IEP meeting during his preparation period did constitute assigning him to "regular programmed responsibilities" and deprived him of his preparation period that day.

The District makes a credible argument that attending an IEP meeting with the student and his/her parent to discuss and provide input regarding the student's progress and whether the special education student's educational plan should be revised 2/ is more akin to developing

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*2/ Albeit the Association's witnesses testified that they did not feel they had any real input at these meetings.*

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lesson plans and evaluating a student's progress (activities that the District asserts teachers traditionally perform during their preparation periods), and is not part of a teacher's regular responsibilities of instructing and supervising students. The Association also makes a valid point in asserting that requiring a teacher to attend an IEP during the teacher's preparation period deprives that teacher of the ability to decide for his/herself the activities they will perform during that time (preparing lessons for their classes, correcting tests, etc.) However, while attending an IEP meeting involving a special education student in the regular education teacher's class is a part of that teacher's responsibilities as the student's educator, it is not clear that attending IEP meetings are part of a teacher's "regular duties", as the Association asserts.

While the Board's President made that statement in his response to this grievance, it was in the following context:

- Teacher attendance at IEP meetings is a State requirement and, as such, becomes part of the teacher's regular duties.

The record establishes that regular education teachers may attend IEP meetings anywhere from 0 to 2 or 3 times per school year. It is, however, unclear whether, in using the term "regular" in paragraph two of Article VIII, G, 3, a, the parties intended it to mean "normal", i.e. falling within a teacher's responsibilities as a teacher, or whether they intended it to mean something that occurs on a systematic basis, e.g., daily or weekly.

What the foregoing demonstrates is that the term "regular programmed responsibilities" is anything but clear and unambiguous. The best guide in this case as to what the parties intended is how they have applied Article VIII, G, 3, a, in the past in similar situations, i.e., past practice.

As noted previously, there is conflicting evidence as to whether or not teachers have been compensated in the past when they were assigned to attend an IEP meeting during their preparation period. The Association's witnesses testified either that they had received extra pay in those instances in the past, or compensatory time which they could either use during the school year or cash out at the end of the school year. However, none of those witnesses claimed that this had occurred in the past two school years. 3/

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3/ District Exhibit 2, discussed below, indicates that Association witness Martell attended IEP meetings during his preparation periods on four occasions in these two years.

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The District provided two witnesses, Bagley and Visgers, as well as documentary evidence. Bagley testified that he had not authorized any payment to teachers for attending an IEP meeting during their preparation period since he had come to the District in the 2000-2001 school year. Bagley also provided a document that he had created by reviewing the "invitations" to attend IEP meetings from the past three years that are sent out for each IEP meeting and which list those who will attend, and then cross-referencing those with the

teaching schedules of the regular education teachers listed on the “invitations”. (District Exhibit 2). 4/ District Exhibit 2 shows that there were 21 instances in the 1999-2000 school

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*4/ Contrary to the Association’s assertion that Bagley testified the exhibit did not include all of the IEP meetings held in the past three years, my notes of the hearing do not reflect such testimony, only that he could not say which of those teachers had received equivalent time to prepare due to having classes that were on field trips or were being tested, etc.*

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year where a teacher attended an IEP meeting during his/her preparation period, 26 such instances in the 2000-2001 school year, and 20 such instances in the 2001-2002 school year. Of those 67 instances in the past three years 5/ where teachers had to attend an IEP meeting during their preparation period, the evidence indicates that only three teachers were compensated (a total of six instances) for attending an IEP meeting during their preparation period in the 1999-2000 school year.

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*5/ Presumably, not all of the other teachers in those 67 instances received “equivalent” preparation time.*

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The District’s Financial Administrative Assistant, Visger, testified that the individual teachers kept track of what they did to earn compensatory time and their use of it throughout the school year and then turned this information in (in the form of handwritten sheets) at the end of the school year to receive payment at the “supervision” rate in the Agreement for the unused compensatory time. Visger testified that the payments to Jockisch, Martell and Hoffman (the three teachers who had been compensated) were due to her oversight in not reviewing the teachers’ sheets more closely herself and not having the Principal review them and sign off on them, but that she had not done so because she was too busy at the end of the school year. Visger also testified that at no time during the 26 years she has been with the District has it awarded teachers compensatory time specifically for attending IEP meetings during their preparation periods.

While the record shows the practice has not been wholly consistent, it appears that in a substantial majority of the cases in at least the past three years, teachers have not been compensated for attending an IEP meeting during their preparation period. This, coupled with Visger’s testimony and the lack of any evidence that other teachers had even requested compensation in those instances, 6/ is sufficient to establish that requiring attendance at an IEP

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*6/ Save the one teacher Bagley referenced in his January 7, 2002 response to this grievance (Joint Exhibit 3), who had requested payment and been denied.*

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meeting has generally been treated by the parties as an appropriate use of the teacher's preparation period, at least to the extent that the parties have not viewed it as depriving the teacher of his/her preparation period by assigning them "regular programmed responsibilities", contrary to Article VIII, G, 3, a, of their Agreement.

Based on the parties' practice, it is concluded that the District did not violate Article VIII, Sec. G, 3, a, of the Agreement by requiring the Grievant to attend an IEP meeting during his preparation period and thereafter refusing to compensate him 1/8 of his daily salary for doing so.

Based on the foregoing, the evidence, and the arguments of the parties, the Arbitrator makes and issues the following

**AWARD**

The grievance is denied.

Dated at Madison, Wisconsin, this 4th day of October, 2002.

David E. Shaw /s/

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David E. Shaw, Arbitrator