KAREN TALBERT,

Grievant,

v. **Docket No. 98-52-499**

WETZEL COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Grievant, Karen Talbert, grieves her non-selection by the Wetzel County Board of Education (WCBOE) for an assistant principal position at Short Line School. The grievance was denied at level one on October 30, 1998. A level two hearing was held on November 24, 1998, and the grievance was denied in a written decision dated December 8, 1998. Level three consideration was bypassed, and Grievant appealed to level four on December 11, 1998. A level four hearing was held in the Grievance Board's office in Wheeling, West Virginia, on February 5, 1999. Grievant was represented by Owens Brown of the West Virginia Education Association, and Respondent was represented by counsel, Larry Blalock. This matter became mature for consideration upon receipt of the parties' proposed findings and conclusions on February 22, 1999.

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

Findings of Fact

1. Grievant is employed as a learning disabilities teacher at New Martinsville School. She has been employed by WCBOE for approximately nine years, and was previously employed as a teacher in Roane County. 2. Grievant is certified to teach Elementary Education 1-8, Mental Retardation K-12, and Learning Disabilities K-12. She also has administrative certification in the areas of Principal Elementary K-8 and Middle/Jr/Sr High 5-12, Superintendent K-12, Supervisor General Instruction K-12, and Vocational Administration 5-Adult.

3. On September 11, 1998, WCBOE posted a vacancy for an assistant principal position at

Short Line School. The qualifications listed in the posting were:

- General qualifications of a teacher in West Virginia
- At least three (3) years of successful teaching experience
- At least a Master's Degree from an accredited institution, with a Major in School Administration
- Previous successful administrative experience desirable
- Successful completion of the Wetzel County interview process
- Must be able to successfully demonstrate the skill areas relevant to an Assistant Principalship

4. After applications were received, WCBOE determined that only Grievant and one other applicant, George Reynolds, possessed the first three qualifications listed in the posting.

5. An interview committee comprised of the principal of Short Line School, three teachers at Short Line School, and two central office employees, interviewed Grievant and Mr. Reynolds.

6. The interview process consisted of a written portion and oral questioning. The applicants were asked a written question regarding their general qualifications for the position and were given a written exercise regarding hypothetical scheduling issues. The applicants were then interviewed by being asked a list of 12 questions, which had been specifically formulated by the interview committee for the assistant principal position. 7. The members of the interview team were instructed to rate the applicants' responses to the interview questions, using the following scale:

3 _ Fully answered with background information supplied

2 _ Partially answered with some supporting information supplied

1 _ A simple answer with no further explanation

0 _ No answer at all

8. After the interviews, the committee discussed each applicant's answers to the questions, arriving at a consensus regarding how well each question had been answered.

9. The committee concluded that neither applicant had successfully completed the interview and had not demonstrated the required skills needed in the position. Accordingly, they recommended to the superintendent that no one be hired to fill the position.

10. A substitute teacher is presently serving in the assistant principal position at Short Line School.

Discussion

Grievant contends that she was the most qualified candidate, so WCBOE was obligated to place her in the position. She also argues that the interview process was fatally flawed, and that the committee did not take all of her qualifications into consideration. Respondent contends that successful completion of the interview was a required qualification, as set forth in the posting, and that it did not have to place either candidate in the position after they had been deemed unqualified by unanimous committee vote.

County boards of education have substantial discretion in matters relating to thehiring, assignment, transfer, and promotion of school personnel. Nevertheless, this discretion must be exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious. State ex rel. Melchiori v. Bd. of Educ., 188 W. Va. 575, 425 S.E.2d 251 (1992); See Hyre v. Upshur County Bd. of Educ., 186 W. Va. 267, 412 S.E.2d 265 (1991). The hiring of administrative personnel is governed by the “first set of factors” set forth in Code §18A-4-7a, which provides:

> Further, the county board shall make decisions affecting the hiring of professional personnel other than classroom teachers on the basis of the applicant with the highest qualifications. . . . In judging qualifications, consideration shall be given to each of the following: Appropriate certification and/or licensure; amount of experience relevant to the position . . . ; the amount of course work and/or degree level in the relevant field and degree level generally; academic achievement; relevant specialized training; past performance evaluations conducted pursuant to section twelve, article two of this

chapter; and other measures or indicators upon which the relative qualifications of the applicant may fairly be judged.

These provisions afford county boards of education considerable latitude in determining the weight to be given to each of the criteria in assessing candidates' qualifications, so long as this substantial discretion is not abused. Saunders v. Cabell County Bd. of Educ., Docket No. 97-06-149 (Dec. 29, 1997); Blair v. Lincoln County Bd. of Educ., Docket No. 92-22-009 (July 31, 1991). Although the “arbitrary and capricious” standard requires a searching and careful inquiry into the facts, the undersigned may not substitute her judgment for that of a board of education. See generally, Harrison v. Ginsberg, 169 W. Va. 162, 286 S.E.2d 276 (1982). Moreover, the Grievance Board cannot perform the role of a “super-interviewer” in matters relating to the selection of candidates for vacant positions. Hopkins v. Fayette County Bd. of Educ., Docket No. 95-10-486 (March 15, 1996); Harper v. Mingo County Bd. of Educ., Docket No. 93-29-064 (Sept. 27,1993); Stover v. Kanawha County Bd. of Educ., Docket No. 89-20-75 (June 26, 1989).

Respondent maintains that, although all of the candidates' qualifications were considered, the information provided and the candidates' ability to present it during the interview were the most important considerations in selecting someone to fill this position. This Grievance Board has previously held that, so long as all of the factors set forth in W. Va. Code § 18A-4-7a are considered, a board of education is allowed to place the greatest importance upon an applicant's performance during an interview, and still comply with the statute, when filling an administrative position. Meikle v. Monongalia County Bd. of Educ., Docket No. 98-30-093 (June 30, 1998).

Grievant contends that not all of her qualifications were considered. However, the question in these cases is not whether particular qualifications of an individual candidate were considered, but whether the criteria set forth in W. Va. Code § 18A-4-7a were evaluated and considered. Nevertheless, Grievant has not proven that WCBOE failed to consider the statutory criteria.

Jane Beckett, Principal of Short Line School, testified both at levels two and four that the interview committee reviewed each applicant's credentials and assessed them under the W. Va. Code § 18A-4-7a criteria. Grievant has provided no evidence to the contrary. The interview was considered to be a crucial factor in the process, and, accordingly, the committee gave it greater weight than the other factors, which is permissible. As discussed above, the statute allows school boards to consider, along with the other criteria, “other measures or indicators upon which the relative qualifications of

the applicant[s] may be fairly judged." Villers v. Kanawha County Bd. of Educ., Docket No. 97- 20-294 (Jan. 30, 1998). Most importantly, the statute does not prioritize the first set ofcriteria or mandate that any particular area be given specific significance. "A county board may objectively and/or subjectively assign different weight to the various aspects of the applicants' credentials." Jenkinson v. Greenbrier County Bd. of Educ., Docket No. 95-13- 503 (March 31, 1996); See Marsh v. Wyoming County Bd. of Educ., Docket No. 94-55-022 (Sept. 1, 1994).

Also in this regard, Grievant has asserted that a large portfolio, which outlined her extensive experience and qualifications, was not considered by the committee. Not only is this contention directly contrary to Ms. Beckett's sworn testimony that the portfolio was considered, but whether or not it was reviewed has no bearing on the outcome of this grievance. As in Fittro v. Cabell County Bd. of Educ., Docket No. 97-06-556 (May 22, 1998), there is no evidence that portfolios were either solicited or accepted from the other candidate, nor does the evidence establish that any pertinent information was not considered, which would have changed WCBOE's hiring decision. Along with the portfolio, Grievant was allowed to present a videotape to the committee, which reviewed, explained and emphasized various areas of expertise she believed she had obtained during her years of teaching. There is more than ample evidence in the record that Grievant was provided every possible opportunity to provide the interview committee with plenty of information regarding her experience and qualifications.

Grievant also argues that the interview process itself was flawed. As set forth above, prior to the interviews, Ms. Beckett explained to the committee members the scoring system for responses to the interview questions. After the interviews were concluded, each question's response was discussed individually, and each committee member explained how well he or she believed the question had been answered. Thecommittee members' observations were then used to arrive at a committee consensus. Grievant argues that, because the committee members testified that their individual scores on question responses were not tabulated or added up, that the process was flawed. However, as Ms. Beckett's explanation demonstrates, each committee member was allowed to give an opinion regarding each individual response, and the final conclusions were reached by consensus of the group.

Ms. Beckett also explained the reasoning which led to the conclusion that Grievant had not successfully interviewed. Several of her answers were incomplete or the questions were not

answered at all. These questions involved matters about which, in the opinion of the committee, a qualified candidate should have been able to provide a complete answer, demonstrating familiarity with the subject matter. Also, the committee believed that many of Grievant's answers were not articulated well, and she did not demonstrate an ability to "think on her feet," which they believed was crucial to this administrative position. As stated above, the undersigned cannot "second guess" the judgment of the interview committee, absent a showing that their decision was arbitrary and capricious or otherwise without valid foundation. Grievant has not proven that the interview process was arbitrary or capricious, and the evidence establishes that each applicant was given very thorough consideration by the committee. Respondent has provided ample evidence to support its conclusions regarding Grievant's qualifications.

Finally, Grievant contends that Respondent was statutorily obligated to fill this position, because she was qualified for it, and that its decision not to fill the position at all was not permitted. She bases much of this contention on a recent decision of the West Virginia Supreme Court of Appeals, Mingo County Board of Education v. Jones, No. 24968(Dec. 15, 1998) (Slip Opinion). The Court held that, pursuant to provisions of W. Va. Code § 18A-4-7a, when a vacancy is posted, "and one or more qualified applicants apply for the position within the posting period, the school board must select a qualified applicant from those who applied . . . ." However, the crucial difference between the factual situation in Jones, supra, and the situation presented here is that, in Jones, supra, the selection committee agreed that Ms. Jones did meet the basic qualifications for the job. Accordingly, pursuant to the statute, the board of education was obligated to place her in the position.

The portion of the statute which was at issue in Jones, supra, states "[i]f one or more applicants meets the qualifications listed in the job posting, the successful applicant to fill the vacancy shall be selected by the board within thirty working days[.]" (Emphasis added.) In the instant case, it was determined that neither of the applicants met the qualifications listed in the posting, specifically successful completion of the interview process. Therefore, since there were no qualified applicants, WCBOE was under no obligation, statutory or otherwise, to fill the position with an unqualified person. (See footnote 1)

In accordance with the foregoing findings and discussion, the following conclusions of law are appropriate.

Conclusions of Law

1. In a non-disciplinary matter, a grievant must prove the allegations of her complaint by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. &State Employees Grievance Bd. 156 C.S.R. 1 § 4.19 (1996); 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. County boards must make decisions affecting the hiring of professional personnel other than classroom teachers on the basis of the applicant with the highest qualifications. In making its selection, a board must give consideration to appropriate certification and/or licensure, amount of experience relevant to the position, course work and/or degree level in the relevant field and degree level generally, academic achievement, relevant specialized training, past performance evaluations, and other measures or indicators upon which the relative qualifications of the applicant may fairly be judged. W. Va. Code § 18A-4-7a.

3. When hiring administrative personnel, county boards of education have considerable latitude in determining the weight to be given to each of the criteria listed in W. Va. Code § 18A-4-7a, so long as all the criteria are considered. Saunders v. Cabell County Bd. of Educ., Docket No. 97-06-149 (Dec. 29, 1997); Jenkinson v. Greenbrier County Bd. of Educ., Docket No. 95-13-503 (March 31, 1996); Blair v. Lincoln County Bd. of Educ., Docket No. 92-22-009 (July 31, 1991).

4. “If one or more applicants meets the qualifications listed in the job posting, the successful applicant to fill the vacancy shall be selected by the board within thirty working days[.]” W. Va. Code § 18A-4-7a; See Mingo County Board of Education v. Jones, No. 24968 (Dec. 15, 1998) (Slip Opinion).

5. WCBOE did not violate W. Va. Code § 18A-4-7a when it gave the greatest weight to the interview process for the position of assistant principal at Short Line School. See Meikle v. Monongalia County Bd. of Educ., Docket No. 98-30-093 (June 30, 1998).

6. Grievant did not prove by a preponderance of the evidence that the interview process was flawed, nor that WCBOE's determination that Grievant was unqualified for the position was arbitrary and capricious.

7. W. Va. Code § 18A-4-7a does not require a county board of education to fill an administrative position when none of the applicants meet the qualifications listed in the job posting.

See Jones, supra.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or the Circuit Court of Wetzel 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.

Date: February 26, 1999 _____

DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

Grievant also raised the argument that she met the minimal qualifications of an assistant principal set forth in the county's standard job description for that position. However, the qualifications listed in that job description include "such alternatives . . . as the Board may find appropriate and acceptable." Additionally, it is the qualifications listed in a job posting that are relevant to the analysis as to whether W. Va. Code § 18A-4-7a has been violated, and it was not in this case.