**JONATHAN BRADLEY,**

**Grievant,**

**v. Docket No. 99-06-128**

**CABELL COUNTY BOARD OF EDUCATION,**

**Respondent.**

# D E C I S I O N

**Grievant, Jonathan Bradley, employed by Cabell County Board of Education ("CCBOE" or "Board") as an Assistant Principal at Huntington High School, appealed this grievance to Level IV on March 24, 1999. This grievance concerns the posting requirements for the Assistant Principal/Substitute Teacher position in the Evening Alternative Educational Program. His requested relief is for the position to be reposted with no requirements set for any specific teaching certifications. This grievance was denied at Levels I and II and waived at Level III. The parties agreed the case could be submitted on the record, and this grievance became mature for decision on May 10, 1999, after receipt of Respondent's proposed findings of fact and conclusions of law.** (See footnote 1)

## Issues and Arguments

**Grievant argues the posting for the Assistant Principal/Substitute Teacher position at the Evening Alternative Educational Program inappropriately limited the number of applicants that could apply by requiring certification in administration, as well as certification in one of the following teaching areas: Math, Science, Health, English, orSocial Studies. Grievant supports this argument by alleging CCBOE regularly hires out-of- field long and short term substitutes to fill positions.** (See footnote 2) **Grievant also notes there is no Board policy or statute which requires short-term substitute positions to be filled by a certified teacher.** (See footnote 3)

**Respondent asserts this limitation was reasonable and appropriate, as only core subjects will be taught in the Evening Alternative Educational Program, and the assistant principal of the program is expected to substitute for any absent teachers. Respondent maintains the identified qualifications and certifications in this posting are within the discretion of the Board, as well as in the best interest of the students.** (See footnote 4)

**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. On February 3, 1999, the position of Administrator/Substitute Teacher** (See footnote 5) **was reposted.** (See footnote 6) **This posting required both an administrative certificate and certification in one of the following teaching areas: Math, Science, Health, English, or Social Studies. 2. At the time the position in question was posted, Grievant was employed as the Assistant Principal at Huntington High School. He has an Administrator's certification and is certified to teach Music, K - 12.**

**3. The Evening Alternative Educational Program is to be utilized by students who need instruction at a different time during the day or need a different method of instruction. These students are expected to be a challenging group, and although they will not be ones who have been expelled or suspended, they may need special attention as they are expected to be "at-risk".**

**4. The Evening Alternative Educational Program will operate after regular school hours, and only core courses in the areas identified in Finding of Fact No. 1 and required for graduation will be taught. No music classes will be taught.**

**5. The Evening Alternative Educational Program is funded through a Federal grant, and there are no grant funds for substitute teachers. For this reason, the Assistant Principal "must teach in any day to day absence for core staff." Resp. Ex. No. 2. 6. CCBOE requires schools to use the following process when calling out substitute teachers. This calling process is now done through a computer system. Each school is to have a call-out list of in-field substitutes, and the teachers on this list with the needed certification are called first. If no in-field teacher from this list is available, then the computer calls in-field, certified teachers**

**from a county-wide list. Only if no in-field teacher is available, is it acceptable for a substitute to be utilized that is not certified in the particular field. (See footnote 7) Only short-term substitutes, ones for less than thirty days, may be employed out-of- field.**

**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 § 4.19 (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.**

**Grievant did not allege a violation of any statute, rule, regulation, or policy. The focus of his argument is that since any certified teacher may substitute in any area, and this routinely occurs within the school system, CCBOE's decision to limit the position to administrators with certain teaching certificates was unnecessary and incorrect, and CCBOE must repost the position without any teaching certificate requirements. Grievant is correct that CCBOE could have posted the position only requiring teaching andadministrative certifications, but his insistence that CCBOE is required to do so is without merit.**

**It is well-settled that "[c]ounty boards of education have substantial discretion in matters relating to hiring, assignments, transferring and promotion of school personnel," as long as they exercise this discretion "reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious." Dillon v. Bd. of Educ. of County of Wyoming, 177 W. Va. 145, 351 S.E.2d 58 (1986). See Hyre v. Upshur County Bd. of Educ., 186 W. Va. 267, 412 S.E.2d 265 (1991). The West Virginia Supreme Court of Appeals has expanded this discretion "to matters involving curricular programs and the qualification and placement of personnel implementing those programs." Cowen v. Harrison County Bd. of Educ., 195 W. Va. 377, 381, 465 S.E.2d 648, 652 (1995). See Suan v. Lewis County Bd. of Educ., Docket No. 96-21-269 (Sept. 30, 1997); Mounts v. Mingo County Bd. of Educ., Docket No. 96-29-476 (June 27, 1997); Crum v. Mingo County Bd. of Educ., Docket No. 96-29-452 (May 31, 1997); Bailey v. Mingo County Bd. of Educ., Docket No. 95-29-346 (Feb. 21, 1996); Crum v. Mingo County Bd. of Educ., Docket No. 95-29-224 (Feb. 9, 1996); Spaulding v. Mingo County Bd. of Educ., Docket**

**No. 95-29-357 (Jan. 31, 1996). "A board of education's right to set standards is crucial, especially when it desires to hire the most qualified person for a specific position[,] and the potential field of applicants may include the most minimally certified or qualified persons." Gilkey v. Brooke County Bd. of Educ., Docket No. 91-05-489 (June 25, 1992). Additionally, "[a] board of education may identify required certification for a position, as long as this decision is not arbitrary and capricious or an abuse of discretion." Crawford v. Boone County Bd.of Educ., Docket No. 94-03-1131 (June 30, 1995). See Dillon, supra. Thus, unless Grievant can demonstrate CCBOE's decision to require certain certifications was arbitrary and capricious, this grievance must fail.**

**"Generally, an action is considered arbitrary and capricious if the agency did not rely on criteria intended to be considered, explained or reached the decision in a manner contrary to the evidence before it, or reached a decision that was so implausible that it cannot be ascribed to a difference of opinion. See Bedford County Memorial Hosp. v. Health and Human Serv., 769 F.2d 1017 (4th Cir. 1985); Yokum v. W. Va. Schools for the Deaf and the Blind, Docket No. 96-DOE-081 (Oct. 16, 1996). While a searching inquiry into the facts is required to determine if an action was arbitrary and capricious, the scope of review is narrow, and an administrative law judge may not simply substitute her judgment for that of a board of education. See generally, Harrison v. Ginsberg, [169 W. Va. 162], 286 S.E.2d 276, 283 (W. Va. 1982)." Trimboli v. Dep't of Health and Human Resources, Docket No. 93-HHR-322 (June 27, 1997).**

**After a review of all evidence of record, the undersigned Administrative Law Judge cannot find CCBOE's actions were arbitrary and capricious. While CCBOE could have posted the position without requiring any specific teaching certification, it was not required by any statute, rule, or regulation to do so. The decision to require the successful applicant to be certified in one of the core areas in which he would be substituting is reasonable and is in the best interest of the students who will be attending the Evening Alternative Educational Program.**

**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 § 4.19 (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 of education have substantial discretion in matters relating to hiring, assignment, transfer and promotion of school personnel" as long as they exercise this discretion "reasonably, in the best interest of the school, and in a manner which is not arbitrary and capricious." Dillon v. Bd. of Educ. of the County of Wyoming, 177 W. Va. 145, 351 S.E.2d 58 (1986).**

**3. County boards of education have substantial discretion in "matters involving curricular programs and the qualification and placement of personnel implementing those programs." Cowen v. Harrison County Bd. of Educ., 195 W. Va. 377, 381, 465 S.E.2d 648, 652 (1995).**

**4. An action is arbitrary and capricious if the agency making the decision did not rely on criteria intended to be considered, explained or reached the decision in a manner contrary to the evidence before it, or reached a decision that is so implausible that it cannot be ascribed to a difference of opinion. See Bedford County Memorial Hosp. v. Health and Human Serv., 769 F.2d 1017 (4th Cir. 1985); Yokum v. W. Va. Schools for the Deaf and the Blind, Docket No. 96-DOE-081 (Oct. 16, 1996). 5. While a searching inquiry into the facts is required to determine if an action was arbitrary and capricious, the scope of review is narrow, and an administrative law judge may not simply substitute her judgment for that of a board of education. See generally, Harrison v. Ginsberg, 169 W. Va. 162, 286 S.E.2d 276, 283 (1982); Trimboli v. W. Va. Dep't of Health and Human Resources, Docket No. 93-HHR-322 (June 26, 1997).**

**6. "A board of education may identify required certification for a position, as long as this decision is not arbitrary and capricious or an abuse of discretion." Crawford v. Boone County Bd. of Educ., Docket No. 94-03-1131 (June 30, 1995). See Dillon, supra.**

**7. Grievant, who was not certified in any of the teaching subjects listed in the posting, has failed to demonstrate CCBOE acted in an arbitrary and capricious manner when it**

**required applicants for the Assistant Principal/Substitute Teacher position to be certified in one of the core areas.**

**Accordingly, this grievance is DENIED. Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of the Cabell 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 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: June 10, 1999**

---

***Footnote: 1***

***Grievant appeared pro se, and Respondent was represented by attorney Howard Seufer.***

---

***Footnote: 2***

***The allegations or statements about long-term substitutes were not placed in evidence at the Level II hearing, but were submitted as fact in Grievant's Level II post- hearing submissions.***

---

***Footnote: 3***

***State Department of Education Policy 5202 requires that any substitute filling a position for longer than thirty days must be certified in the teaching area.***

---

***Footnote: 4***

***At Level II, Respondent argued Grievant did not have standing to pursue this grievance as he was not qualified or certified for the position. This issue was not discussed in the Level IV submissions and is deemed waived.***

---

***Footnote: 5***

***The position was titled Administrator/Substitute Instructor.***

---

***Footnote: 6***

***This was the second posting for this position. The position was reposted as the result of a prior grievance filed by Grievant indicating the need to clarify the duties of the position. CCBOE agreed with Grievant's assessment and reposted the position with the expected duties more clearly identified. See Respondent's Exhibit Number 1.***

---

***Footnote: 7***

***Grievant appeared to indicate in his post hearing submissions that this process is disregarded or at least not routinely followed, but no evidence was presented to that effect.***