THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

DAVID BAISDEN,

Grievant,

v. **Docket No. 06-06-077**

CABELL COUNTY BOARD OF EDUCATION,

Respondent,

and

LISA ALEXANDER, et al.,

Intervenors.

D E C I S I O N

Grievant, employed by the Cabell County Board of Education ("CCBE") as an Assistant Principal, filed a series of grievances beginning on October 5, 2005, through August 9, 2006, challenging his nonselection for five principalships. The five grievances were consolidated into two grievances at level two. Following evidentiary hearings, the grievances were denied. Appeals were made to level four on March 1, 2006, and October 26, 2006. For relief, Grievant requests instatement into one of the positions, with back pay, interest, and benefits. At level four, Lisa Alexander, Viki Caldwell, Brenda Horne, Robin Harmon, and Dan Gleason were joined as Intervenors, and the two grievances were consolidated. By agreement of the parties, an evidentiary hearing to supplement the level three record was conducted by Administrative Law Judge Wendy Campbell at the CCBE offices in Huntington, West Virginia on November 28, 2006, December 19, 2006, and February 14, 2007. (See footnote 1) The grievance became mature for decision upon receipt of proposedfindings of fact and conclusions of law filed by the parties on April 23, 2007. Subsequent to Judge Campbell's resignation, the grievance was reassigned to the undersigned on August 14, 2007.

Synopsis

Grievant challenged his non-selection for five elementary and middle school principal positions, asserting that he was better qualified than the successful applicants. CCBE argues that Grievant was not rated as highly as the successful applicants in the factors of relevant specialized training and other factors and indicators, which were the most heavily weighted. Because Grievant's specialized training was more relevant to the high school level, and his knowledge and understanding of elementary programs was not demonstrated to be as well developed as Intervenors', he has failed to prove that CCBE abused its discretion when it failed to select him for any of the positions.

The following facts have been derived from a preponderance of the evidence made part of the level four record, including the lower-level proceedings.

Findings of Fact

1. Grievant has been employed by CCBE for approximately sixteen years, and has held the position of Assistant Principal at Huntington High School at all times pertinent to this position. Grievant holds certifications for Elementary/Middle/Junior High Principal (K - 8); Middle/Junior/Senior High Principal (5 - 12); Health Education (K -12); Physical Education (K - 12); Learning Disabilities, Behavioral Disabilities (excluding Autism), and Mental Impairment/Mild-Moderate (all K - 12). Grievant has one year of experience as Assistant Principal at Spring Hill Elementary School (2001-2002), and two years of experience at Enslow Middle School (2002-2004), in addition to one year as AssistantPrincipal at Cabell Midland High School (2004-2005). Grievant was assigned as Assistant Principal at Huntington High School during the 2005-2006 school year.

2. On August 17, 2005, CCBE posted a notice of vacancy for the position of principal at Highlawn Elementary School. Qualifications listed on the job description for “Elementary Principal” include: administrative certification, elementary; successful elementary teaching experience in multi-subjects preferred; and working knowledge of the duties and responsibilities of the position. Elementary administrative experience was preferred, as was a demonstrated knowledge of elementary curriculum and instruction, leadership, and knowledge of county 4-Blocks Literacy Program.

3. A selection committee appointed to review the credentials of the thirteen applicants determined that successful elementary teaching experience in multi-subjects, along with demonstrated knowledge of elementary curriculum, and instructional leadership in those areas would be essential. Each of the applicants was reviewed pursuant to the seven factors in the first set of

criteria in *W. Va. Code* § 18A-4-7a, but the committee determined that more weight would be placed on the “relevant specialized training” and “other measures or indicator” factors, which included written/oral communication skills.

4. Grievant's certification and teaching experience is in special education, not multi-subjects. Further, during the interview, he was unable to provide any detail on county initiatives or plans for community involvement. Most of his staff development hours were targeted to the secondary level, which was understandable given his present position, but not as relevant for an elementary assignment.

5. The successful applicant, Robin Harmon, had previously served as a math facilitator, which was considered administrative in nature but does not requireadministrative certification, and had taught multi-subjects in elementary school for sixteen years. The interview committee found that her knowledge of specific job topics exceeded expectations and illustrated her understanding of the position.

6. CCBE next posted a notice of vacancy for the position of principal at Milton Middle School. In this instance, the committee placed great weight on administrative experience and computer technology skills to implement changes in learning-focused strategies to increase student achievement.

7. The application materials and interview responses of Dan Gleason impressed the committee with his exemplary, detailed and in-depth knowledge and understanding of the needs of the school, as well as his ability to implement the needed changes. Additionally, Mr. Gleason had served as principal of a middle school the previous year, and was able to demonstrate how this experience prepared him for the position at Milton.

8. As compared to Mr. Gleason, the committee members found Grievant's application and interview responses vague and general. Mr. Gleason also had more administrative experience than Grievant overall, as well as at the middle school level. Mr. Gleason had a higher grade point average, and more content specific training in language arts.

9. CCBE next posted the vacancy for the position of principal at Salt Rock Elementary School. One of seven applicants, the committee evaluated Grievant using a previous job application and interview notes because he was out of town at the time the selection was made.

10. Based on a decline in reading scores at the school, the committee decided that it was

necessary to select a candidate with a background in elementary reading andcurriculum who could continue programs already in operation. Accordingly, emphasis was placed on “relevant tpecialized training” and “other measures or indicators .”

11. The Salt Rock position was awarded to Lisa Alexander based on findings by the committee that she had ten years of teaching experience and served two years as an assistant principal in an elementary Title I school, as well as having served as a Title I [reading] teacher. Her work at Spring Hill Elementary School implementing the reading program was also considered crucial to the program at Salt Rock. Ms. Alexander additionally had extensive training in the comprehensive balanced literacy and math programs, and had completed the Cabell County Apprenticeship Program.

12. By contrast, the committee determined that Grievant's experience and staff development at the elementary level was limited, and his application materials were vague and general.

13. On April 24, 2006, CCBE posted a vacancy announcement for the position of principal at Davis Creek Elementary School. The qualifications for the position included five years of successful elementary teaching experience in multi-subjects, including language arts, demonstrated knowledge of elementary curriculum, and the preference for one year of administrative experience.

14. Before reviewing the applicants, the committee members determined the particular needs for the position at Davis Creek were implementation of the Board's initiatives in balanced literacy, math, and response to intervention programs, as well as strong curriculum/instructional leadership skills. To meet these needs, the committee decided the factors to be most heavily weighted were “relevant specialized training” and“other measures or indicators.” Further, only elementary administrative experience was considered relevant to the position.

15. Grievant was awarded credit in the categories of certification, administrative experience, degree level, and performance evaluations. Grievant did not possess the required multi-subject teaching experience, and does not hold that certification. He had also not received training on recent initiatives at the elementary level, and was unable to articulate in-depth knowledge regarding the math and balanced literacy initiatives.

16. The successful applicant, Viki Caldwell, has twenty-three years of teaching experience in multi-subject areas at various grade levels. She was granted credit in the categories of certification, degree level, performance evaluation, academic achievement in post graduate work, and other

measures or indicators. The interview committee judged her oral and written communication skills to be excellent.

17. On June 12, 2006, CCBE posted a vacancy for the position of principal at Hite-Saunders Elementary School. Qualifications listed for the position included a minimum of five years successful multi-subject elementary teaching experience, including language arts, and the preference of one year of administrative experience.

18. Brenda Horne, the successful applicant, holds the required certification and experience. The interview committee determined that in addition to lacking the required teaching experience, Grievant did not demonstrate adequate knowledge of the elementary curriculum.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his claims by a preponderance of the evidence. Procedural Rules of the W. Va.Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2004); *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. (See footnote 2) "Grievant bears the burden of proving, by a preponderance of the evidence, that he should have been selected for a particular position rather than another applicant, by establishing that he was the more qualified applicant, or that there was such a substantial flaw in the selection process that the outcome may have been different if the proper process had been used. 156 C.S.R § 4.21 (2004); *Black v. Cabell County Bd. of Educ.*, Docket No. 89-06-707 (Mar. 23, 1990); *Lilly v. Summers County Bd. of Educ*., Docket No. 90-45-040 (Oct. 17, 1990), *aff'd* Cir. Ct. of Kanawha County, No. 90-AA-181(Mar. 25, 1993). *See also, W. Va. Code* § 18-29-6." *Goodwin v. Monongalia County Bd. of Educ.*, Docket No. 01-30-495 (June 26, 2003).

County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel. *See Hyre v. Upshur County Bd. of Educ*., 186 W. Va. 267, 412 S.E.2d 265 (1991); Syl. Pt. 3, *Dillon v. Bd. of Educ. of County of Wyoming*, 177 W. Va 145, 351 S.E.2d 58 (1986). However, a county board of education must make decisions affecting the hiring of professional administrativepersonnel on the basis of the applicant with the highest qualifications. In judging qualifications for administrative positions, consideration must be given to each of the following seven factors:

(1) Appropriate certification, licensure or both;

(2) Amount of experience relevant to the position; or, in the case of a classroom teaching position, the amount of teaching experience in the subject area;

(3) The amount of course work, degree level or both in the relevant field and degree level generally;

(4) Academic achievement;

(5) Relevant specialized training;

(6) Past performance evaluations conducted pursuant to section twelve, article two of this chapter; and

(7) Other measures or indicators upon which the relative qualifications of the applicant may fairly be judged.

W. Va. Code § 18A-4-7a.

While each of the statutory factors must be considered, this *Code* section permits county boards of education to determine the weight to be applied to each factor when filling an administrative position, so long as this does not result in an abuse of discretion. *Elkins v. Boone County Bd. of Educ.*, Docket No. 95-03-415 (Dec. 28, 1995); *Hughes v. Lincoln County Bd. of Educ.*, Docket No. 94-22-543 (Jan. 27, 1995); *Blair v. Lincoln County Bd. of Educ.*, Docket No. 92-22-009 (July 31, 1992). Once a board reviews the criteria required by *W. Va. Code* § 18A-4-7a, it has "wide discretion in choosing administrators . . . ." *March v. Wyoming County Bd. of Educ*., Docket No. 94-55-022 (Sept. 1, 1994). Thus, a county board of education may determine that "other measures or indicators" is the mostimportant factor. *Baker v. Lincoln County Bd. of Educ*., Docket No. 97-22-482 (Mar. 5, 1998).

All that *Code* §18A-4-7a requires when a decision concerning the hiring [for an administrative position] is made is that the decision is the result of a review of the credentials of the candidates in relation to the seven factors set forth. Once that review is completed, the Board may hire any candidate based solely upon the credentials it feels are of most importance. An applicant could "win" four of the seven 'factors' and still not be entitled to the position based upon the Board's discretion to hire the candidate it feels has the highest qualifications. Again, a board is free to give whatever weight it deems proper to various credentials of the candidates and because one of the factors is

'other measures or indicators,' it is extremely difficult to prove that a decision is based upon improper credentials or consideration of such.

Owen v. Wood County Bd. of Educ., Docket No. 97-54-537 (May 18, 1998) (*citing Harper v. Mingo County Bd. of Educ*., Docket No. 93-29-064 (Sept. 27, 1993)).

Grievant has failed to meet his burden of proof in this case. In each instance, the selection committee applied the required statutory criteria to the applicants' qualifications, and concluded that the Intervenors were better qualified than Grievant for the positions at issue. Certainly, Grievant's frustration is understandable. He holds the appropriate certification/licensure to be an elementary principal. His degree level, academic performance, and past evaluations are comparable to Intervenors'. He has one full year of administrative experience at the elementary level, and more overall administrative experience than most of the Intervenors. Grievant's numerous hours of training are primarily focused on the high school level. Further, Grievant demonstrated significantly less understanding than Intervenors regarding knowledge of elementary curriculum and other programs. In conclusion, there is no evidence that CCBE abused its wide discretion when filling these positions. In addition to the foregoing findings of fact and discussion, the following formal conclusions of law support this decision.

Conclusions of Law

1. Grievant has the burden of proving his claims by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2004); *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. A county board of education must make decisions affecting the hiring of professional administrative personnel on the basis of the applicant with the highest qualifications. In judging qualifications, consideration must be given to each of the following seven factors: appropriate certification, licensure or both; amount of experience relevant to the position; or, in the case of a classroom teaching position, the amount of teaching experience in the subject area; the amount of course work, degree level or both 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. *W. Va. Code* § 18A-4-7a.

3. Because the factors are not prioritized, and the statute does not mandate that any one area be afforded particular significance, a county board may objectively or subjectively assign different weights to the various aspects of the applicants' credentials. *Jenkinson v. Greenbrier County Bd. of Educ*., Docket No. 95-13-503 (Mar. 31, 1996);*Fisher v. Marion County Bd. of Educ*., Docket No. 93-24-042 (Mar. 11, 1993); *Marsh v. Wyoming County Bd. of Educ.*, Docket No. 94-55-022 (Sept. 1, 1994). Thus, a county board of education may determine that "other measures or indicators" is the most important factor. *Baker v. Lincoln County Bd. of Educ.*, Docket No. 97-22-482 (Mar. 5, 1998).

4. "Grievant bears the burden of proving, by a preponderance of the evidence, that he should have been selected for a particular position rather than another applicant, by establishing that he was the more qualified applicant, or that there was such a substantial flaw in the selection process that the outcome may have been different if the proper process had been used. 156 C.S.R § 4.21 (2004); *Black v. Cabell County Bd. of Educ.*, Docket No. 89-06-707 (Mar. 23, 1990); *Lilly v. Summers County Bd. of Educ*., Docket No. 90-45-040 (Oct. 17, 1990), *aff'd* Cir. Ct. of Kanawha County, No. 90-AA-181(Mar. 25, 1993). *See also, W. Va. Code* § 18-29-6." *Goodwin v. Monongalia County Bd. of Educ.*, Docket No. 01-30-495 (June 26, 2003).

5. Grievant has failed to prove by a preponderance of the evidence that CCBE's selection of Intervenors for the positions at issue was a violation of the applicable statute, or an abuse of its wide discretion in the selection of administrative personnel.

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 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)(repealed) (*but see Executive Order No. 2-07*, May 8, 2007). Neither the WestVirginia 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.

DATE: OCTOBER 22, 2007

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SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

.The appeal assigned Docket No. 06-06-397 was consolidated with this grievance.

Footnote: 2

[2]In 2007, the Legislature abolished the West Virginia Education and State Employees Grievance Board, replacing it with the Public Employees Grievance Board. W. Va. Code §§ 18-29-1 to 18-29-11 and W. Va. Code §§ 29-6A-1 to 29-6A-12 were repealed and replaced by W. Va. Code §§ 6C-2-1 to 6C-2-7 and W. Va. Code §§ 6C-3-1 to 6C-3-6 (2007). Grievances which were pending prior to July 1, 2007, are decided under the former statutes, W. Va. Code §§ 18-29-1 to 18-29-11, for education employees, and W. Va. Code §§ 29-6A-1 to 29-6A-12, for other state and higher education employees. See Executive Order No. 2-07, May 8, 2007. References in this decision are to the former statutes and rules, which continue to control the proceedings in this case.