WEST VIRGINIA PUBLIC EMPLOYEES

GRIEVANCE BOARD

STEPHEN STOFFEL, JR.,

Grievant,

v. **Docket No. 07-20-057**

KANAWHA COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Stephen Stoffel, Jr., ("Grievant") initiated this grievance on November 7, 2006, challenging Respondent's decision not to allow him to serve in any coaching positions at Herbert Hoover High School, where his father is athletic director and head football coach. He seeks placement in the positions of assistant football coach and assistant baseball coach at that school. After denials at the lower levels, Grievant appealed to level four on February 15, 2007. The parties elected to submit this matter for a decision based upon the lower level record, accompanied by fact/law proposals, submitted on March 26, 2007. On August 16, 2007, this matter was assigned to the undersigned administrative law judge for a final decision.

Synopsis

Respondent's anti-nepotism policy prohibits an employee from being supervised by an immediate family member, meaning that they have the authority to "the authority to direct, recommend scheduling or formally evaluate [the employee's] daily work activities." In this case, Grievant's father

was athletic director and head football coach at HerbertHoover High School, so Grievant was prohibited from serving as assistant football coach or assistant baseball coach. Respondent was correct to prohibit Grievant from serving as assistant football coach under his father's direct supervision, but it should not have prohibited him from being placed in the assistant baseball coach position, for which he was recommended by the principal. In this position, Grievant's daily activities would be determined and supervised by the head baseball coach, and his evaluations could be performed by the principal, with the head coach's input, per Respondent's policy. Grievance was granted, in part.

Findings of Fact

1. Grievant has been employed as a classroom teacher at Herbert Hoover High School ("HHHS") since 2002.

2. Grievant's father, Stephen Stoffel, Sr., is also employed at HHHS as a teacher, and he serves at athletic director and head football coach.

3. In the fall of 2006, Grievant applied for the positions of assistant football coach and assistant baseball coach, both at HHHS.

4. Roy Jones, Principal of HHHS, recommended Grievant for the assistant baseball coach position, but did not recommend him for the assistant football coach position, due to the county's nepotism policy.

5. Grievant was not placed in the assistant baseball coach position, either, due to the nepotism policy.

6. Respondent's Policy G60, entitled "Nepotism", states that "No person . . . shall be placed in any position in which he or she is supervised by or supervises an immediate family member. 7. Policy G60 defines "supervision" as "the authority to direct, recommend scheduling or formally evaluate daily work activities."

8. Respondent's policies provide that observations and evaluations of assistant coaches are to be performed by the "principal, assistant principal or athletic director with input from the head coach."

9. As of the date of the level two hearing, on January 29, 2007, Mr. Jones was performing the evaluations of all coaches employed at HHHS. However, he testified that he "intended" to begin having Mr. Stoffel, Sr., perform that duty as athletic director.

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 § 4.21 (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). "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).

"'[T]he appropriate standard of review for decisions concerning selection of professional personnel to fill [extracurricular] assignments is abuse of discretion.' *McCoy v. Kanawha County Bd. of Educ.*, Docket No. 94-20-141 (Oct. 13, 1994), *citing Pockl v. Ohio County Bd. of Educ.*, 185 W. Va. 256, 406 S.E.2d 687 (1991); *Foley*, *supra*; *See Dillon v. Bd. of Educ.*, 177 W. Va. 145, 351 S.E.2d 58 (1986); *Jackson v. Grant CountyBd. of Educ.*, Docket No. 97-12-224 (Oct.16, 1997)." *Lusher*, *supra*; *Baker v. Lincoln County Bd. of Educ*., Docket No. 01-22-518 (Mar. 1, 2002). "County boards of education have substantial discretion in matters relating to hiring, assignment, transfer, and promotion of school personnel, as well as matters involving curricular programs and qualification and placement of personnel implementing those programs. However, that discretion must be tempered in a manner that is reasonably exercised, in the best interest of the schools, and in a manner which is not arbitrary and capricious. *Cowen, et al. v. Harrison County Bd. of Educ.*, 195 W. Va. 377, 456 S.E.2d 648 (1995)." *Duncan v. McDowell County Bd. of Educ.*, Docket No. 96-33-231 (Sept. 2, 1997).

The arbitrary and capricious standard of review of county board of education decisions requires a searching and careful inquiry into the facts; however, the scope of review is narrow, and the undersigned may not substitute her judgment for that of the board of education. *See generally*, *Harrison v. Ginsberg*, 169 W. Va. 162, 286 S.E.2d 276 (1982). The undersigned cannot perform the role of a "super-interviewer" in matters relating to the selection of candidates for vacant positions. *Stover v. Kanawha County Bd. of Educ.*, Docket No. 89-20-75 (June 26, 1989). Generally, a board of education's action is arbitrary and capricious if it did not rely on factors that were intended to be considered, entirely ignored important aspects of the problem, explained its 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 view. *Bedford County Memorial Hosp. v. Health and Human Serv.*, 769 F.2d 1017 (4th Cir. 1985). Arbitrary and capricious actions have been found to be closely related to ones that are unreasonable. *State ex rel. Eads v. Duncil*, 198 W. Va.604, 474 S.E.2d 534 (1996). An action is recognized as arbitrary and capricious when "it is unreasonable, without consideration, and in disregard of facts and circumstances of the case." *Eads, supra* (citing *Arlington Hosp. v. Schweiker*, 547 F. Supp. 670 (E.D. Va. 1982)).

Grievant's contention in this case is that Respondent has unfairly applied the nepotism policy, preventing him from being placed in coaching positions which deserves. Anti-nepotism policies, in general, are a reasonable exercise of a county board of education's discretion, and it has been held that "[a] board of education policy that prohibits one spouse from supervising the other spouse [or immediate family member] within a county school system is a reasonable exercise of the board's supervisory authority to prevent favoritism, conflicts of interest or the appearance of either." *Townshend v. Bd. of Educ.*, 183 W. Va. 418, 396 S.E.2d 185 (1990); *Albani v. Mineral County Bd. of Educ*., Docket No. 90-28-016 (Nov. 30, 1990).

However, as noted by the West Virginia Supreme Court of Appeals, "School personnel regulations and laws are to be strictly construed in favor of the employee." Syl. pt. 1, *Morgan v. Pizzino*, 163 W. Va. 454, 256 S.E.2d 592 (1979). *See also Syl. Pt. 1*, *Cruciotti v. McNeel*, 183 W. Va. 424, 396 S.E.2d 191 (1990); *State ex rel. Boner v. Kanawha County Bd. of Educ.*, 197 W. Va. 176; 475 S.E.2d 176, (1996). With regard to the assistant football coach position, Respondent's reasoning is certainly well-founded. If placed in the job, Grievant would be working under the constant, direct supervision of his father, which would clearly be contrary to the intentions of the nepotism policy. However, with regard to the assistant baseball position, the undersigned is not persuaded. As recently held in *Goodwin v. Kanawha County Board of Education*, Docket No. 06-20-265 (Mar. 29, 2007), sometimes strict enforcement of the nepotism policy results in favoring form over substance, preventing a qualified employee from receiving a position only because of the job title of a relative. As in that case, Grievant here would only be under the broad umbrella of the employees encompassed within his father's athletic director duties, but his daily assignments and supervision would be solely at the discretion of the head baseball coach. In addition, as of the date of the level two hearing, the principal was still performing all coach's evaluations, removing Grievant's father from having any involvement in this process. Although Mr. Jones testified to his “intention” to change this process,

there is no evidence of record that this occurred. Even if it had, it would seem a simple matter to have the principal or assistant principal perform Grievant's evaluation, with input from the head baseball coach, as provided for by Respondent's policy.

Accordingly, the undersigned finds that, as Grievant was a qualified applicant who was recommended for the assistant baseball coach position, and he would not be working under the direct supervision of his father, the nepotism policy should not have been so strictly applied under these circumstances. He is entitled to placement in the position, with all appropriate back pay and associated benefits.

The following conclusions of law support this decision.

Conclusions of Law

1. 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. 156C.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).

2. “County boards of education have substantial discretion in matters relating to hiring, assignment, transfer, and promotion of school personnel, as well as matters involving curricular programs and qualification and placement of personnel implementing those programs. However, that discretion must be tempered in a manner that is reasonably exercised, in the best interest of the schools, and in a manner which is not arbitrary and capricious. *Cowen, et al. v. Harrison County Bd. of Educ.*, 195 W. Va. 377, 456 S.E.2d 648 (1995).” *Duncan v. McDowell County Bd. of Educ.*, Docket No. 96-33-231 (Sept. 2, 1997).

3. "A board of education policy that prohibits [an immediately family member from supervising an employee] within a county school system is a reasonable exercise of the board's supervisory authority to prevent favoritism, conflicts of interest or the appearance of either." *Townshend v. Bd. of Educ.*, 183 W. Va. 418, 396 S.E.2d 185 (1990); *Albani v. Mineral County Bd. of Educ*., Docket No. 90-28-016 (Nov. 30, 1990).

4. Under the circumstances presented, strict application of the nepotism policy was arbitrary and capricious, because Grievant would not have been under the direct supervision of his father, nor would his father direct his daily assignments or activities as assistant baseball coach.

Accordingly, this grievance is **GRANTED** IN PART, and Respondent is ORDERED to place Grievant in the assistant baseball coach position, with all applicable back pay and benefits .

Any party may appeal this decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code § 18-29-7 (repealed) (*but see Executive Order No. 2-07*, May 8, 2007). 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.

Date: September 5, 2007

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DENISE M. SPATAFORE

Administrative Law Judge