

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

JACQUELINE KELLY DANIELS,
Grievant,

v.

Docket No. 2019-0107-CabED

CABELL COUNTY BOARD OF EDUCATION,
Respondent, and

DANIEL M. GLEASON,
Intervenor.

DECISION

Grievant, Jacqueline Daniels, is employed by Respondent, Cabell County Board of Education ("Board"), as an Associate Principal at Cabell Midland High School. Ms. Daniels filed a level one grievance form dated July 23, 2018, alleging that she was the most qualified candidate for the position of Principal of Huntington High School and the Board had violated W. VA. CODE § 18A-4-7a and State Board of Education Policy 5000, by failing to select her for the position. As relief Grievant seeks reinstatement into the position with back pay, interest and experience credit, as well as legal fees. A level one conference was held on August 5, 2018, and a written decision denying the grievance was issued dated August 28, 2018. Grievant appealed to level two and a mediation was conducted on October 23, 2018.

Grievant filed a level three appeal dated November 2, 2018, and an order was entered allowing the successful applicant, Daniel Gleason to intervene as a party. A level three hearing was held in the Charleston office of the West Virginia Public Employees Grievance Board on March 6, 2019. Grievant personally appeared and was represented

by Abraham J. Saad, Saad Dixon Law Offices, PLLC. Respondent Board appeared through Assistant Superintendent, Tim Hardesty, and was represented by Howard E. Seufer, Jr., Bowles Rice LLP. Intervenor Gleason personally appeared *pro se*.¹ This matter became mature on May 6, 2019, upon receipt of the last of the parties' Proposed Findings of Fact and Conclusions of Law.

Synopsis

Grievant applied for the posted position of Principal at Huntington High School. Grievant has extensive experience, training and education and opines that she was the most qualified applicant for the job. She was not selected. In addition to arguing that she was the most qualified candidate, she alleges that the hiring process was rendered arbitrary and capricious by her supervisor, who was on the selection committee, advised her to highlight her experience in Cabell County rather than the experience and training she accumulated in Florida. Respondent asserts that the decision to hire a different candidate was based upon the appropriate statutory criteria and was not arbitrary or capricious. Grievant did not prove by a preponderance of the evidence that she was the most qualified candidate or that the process was tainted by the pre-interview advice given to her by her supervisor.

The following facts are found to be proven by a preponderance of the evidence based upon an examination of the entire record developed in this matter.

¹ "*Pro se*" is translated from Latin as "for oneself" and in this context means one who represents oneself in a hearing without a lawyer or other representative. *Black's Law Dictionary*, 8th Edition, 2004 Thompson/West, page 1258.

Findings of Fact

1. Grievant, Jacqueline Daniels, is employed by Respondent, Cabell County Board of Education ("Board") as an Associate Principal at Cabell Midland High School. During the time of the events giving rise to this grievance, she was Respondent's Federal Programs Director. Grievant has been employed by the Board since July 21, 2009.

2. For the period of June 6 through 12, 2018, the Board posted notice of vacancy in the position of Huntington High School Principal.

3. The job description for the position was attached to the posting which noted the Principal's significant duties include constantly reminding the community and others of the vision the school has for the students and community it serves. The Principal also acts as liaison between the school and the community, encourages community participation in school life, provides curriculum and instructional leadership and support to implement programs of study for all learners, plans and directs an ongoing school improvement process, establishes and maintains positive public and employee relations, and assumes responsibility for the safety and administration of the school. (Respondent Exhibit 1).

4. Eleven candidates applied for the position. Five were selected to be interviewed including Grievant Daniels and Intervenor Gleason. These five were selected based upon their ratings indicated by a matrix of specific criteria set out in W. VA. CODE § 18A-4-7a. That statute requires that when filling professional education positions consideration must be given to each of the following qualifications:

1. Appropriate certification;
2. Amount of relevant experience;
3. Relevant course work and degree level;
4. Academic achievement;

5. National Board for Professional Teaching Standards Certification;
6. Specialized training relevant to performing the duties of the job;
7. Past performance evaluations;
8. Seniority; and,
9. Other measures or indicators upon which the relative qualifications of the applicant may fairly be judged.

While all the criteria must be considered. They do not have to be given equal weight. A county board may emphasize one or more criteria which it believes will be most important to meeting the responsibilities of a position. *Id.*

5. A Committee consisting of Cabell County administrators was appointed to assess and interview the candidates and make a recommendation to the Superintendent for selection. All the committee members have significant administrative duties involving Huntington High School, and all members were familiar with the work of Grievant and Intervenor. The committee members were:

- Kelly Watts: Assistant Superintendent of Instruction and Leadership;
- Karen Veazy; Director of Special Education;
- Debbie Smith: Manager of Professional Personnel; and,
- Frank Barnett: Principal of the Career Technical Center.²

6. Prior to the interviews for the Huntington High School Principal position, Assistant Superintendent Watts met with Grievant to inform her that she had not been recommended for two other administrative positions for which Grievant had applied. She told Grievant that a lot of teachers did not like her and that she was too emotional. Ms.

² All four members had previously participated on interview committees for administrative vacancies and were familiar with the Intervenor and Grievant, having worked with them in various capacities.

Watts suggested that Grievant apply for the Huntington High position and advised Grievant to focus on her experience in Cabell County rather than her prior work in Florida.³

7. Huntington High School (“HHS”) has special challenges not as prevalent in the other county high school. Huntington High draws its students from diverse racial, religious and socioeconomic communities. Its students are heavily impacted by opioid trauma. HHS has a larger contingent of special needs students. Additionally, the school needs to improve its graduation rate and the performance of its students in English Language Arts and Math.

8. To address these challenges, the Interview Committee was looking for the candidate who could most effectively meet the job description goals of; constantly reminding the community and others of the vision the school has for the students and community it serves, serving as liaison between the school and the community, building relationships with the community, and encouraging community participation in school life. They hoped to find a candidate who could relate to, and be a leader in, the community served by Huntington High.

9. The committee decided to focus on the criteria of (6) “specialized training relevant to the performance of the duties of the job” because the Committee thought it important that the successful candidate be a person who had the training to be a successful high school principal, and (9) “other measures or indicators upon which the

³ Grievant also presented her performance evaluations for the school years ending in 2016, 2017, and 2018. For the first two years Grievant received an overall rating of “Exemplary.” For the year ending in 2018, Grievant’s supervisor was Kelly Watts and her overall rating was “Exceeds Standards.” (Grievant Exhibit 2). While the last evaluation is one indicator lower, they are all excellent performance evaluations. Without additional evidence no inference may be drawn from the slight difference in the performance ratings.

relative qualifications of the applicants may fairly be judged,” enabling the committee to ascribe significant weight to the interviews.

10. Each of the applicants submitted a detailed resume, as well as a document prepared by Respondent titled *Executive Summary for Administrative Positions*.⁴ The first and second pages of the Executive Summary listed the nine statutory criteria in a column on the right and a space on the left where each candidate may list their credentials related to each criterion. Grievant and Intervenor listed an abundance of specialized training they had received which each felt was relevant to the HHS position in the space to the left of criterion (6). Grievant listed four training sessions she had completed for instruction and program implementation for diverse populations which she attended in Florida. (Grievant Exhibit 3, and Respondent Exhibit 3).

11. The second part of the Executive Summary posed the following questions for the applicants to address.

Huntington High School is one of the two premier high schools in Cabell County. Currently, HHS is a wall-to-wall Academy that offers rich courses to meet the needs of the diverse population.

1. Please explain in the section below how you will lead the staff at HHS in improving the graduation rate, preparing students for the 11th grade SAT and minimize discipline issues.
2. Please explain the essential skills needed for successful leadership that incorporates a respected culture, instructional leadership and the ability to grow and develop leaders within the school. Give specific example for each where you have demonstrated such skill or quality.

⁴ The Executive Summary forms were available online so a candidate could put as much information on the form for each criterion that the person felt was appropriate.

Both applicants provided detailed responses citing specific research for their approaches and strategies for meeting the issues specified in the questions. *Id.*

12. Both Grievant and Intervenor submitted additional data demonstrating areas which they felt needed to be addressed at HHS. Grievant brought data demonstrating that Cabell-Midland High School, where she had worked, had increased the graduation rate and it was significantly higher than HHS. She discussed ways she believed she could increase those rates at HHS. Intervenor brought specific data related to HHS and its population. Around this data he discussed how he could address some of the major issues at the school including fights, urban resurgence and religious diversity.

13. Grievant Daniels had served one year as Assistant Principal, three years as Associate Principal, and two years as Principal, all at Cabell Midland High School. When Grievant applied for the HHS position, she was the Board's Federal Programs Director. She also had significant administrative experience in Palm Beach Florida where she served roughly ten years as a Magnet School Coordinator,⁵ two years as the Department of Choice Programs and School Choice Manager, and two years as Assistant Principal at Atlantic Community High School. While in Palm Beach, Grievant gained significant experience working with racially diverse populations, especially while working as an Assistant Principal.

14. Intervenor Gleason was the Coordinator of Transportation for Cabell County Schools when he applied for the HHS position. He had held that Central Office position for four years. Had served over thirteen years in several school administrator positions in

⁵ Eight of those years Grievant was also a Mathematics/Science Instructor and served two years full-time as the Magnet Coordinator.

Cabell County schools including: Assistant Principal at Beverly Hills Middle School (two months); Assistant Principal at West Middle School (two years); Assistant Principal at Huntington High School (one-and one half-years); Principal at Enslow Middle School (six months); and, Principal at Milton Middle School (9 years). These schools served the same population who attend HHS which allowed Grievant to become familiar with the communities, students and families, who are served at that high school.

15. The interview committee asked the same set of eleven questions to each candidate. Each member of the committee had a set of the questions with a space after each question to make notes concerning the response. The members compared their notes and reactions to each interview in making their decision of which applicant to recommend.

16. The interview committee reviewed the bid sheets, Executive Summaries, resumes, experience and any additional data provided by a candidate, for each applicant in determining who to recommend to the superintendent for filling the HHS position. The committee recommended Intervenor for the HHS principal for the following reasons:

Dan Gleason has been in administration with Cabell County Schools since 2001, giving him 17 years' experience and total of 25 years including his teaching experience. His most recent administration has been Coordinator of Transportation for the past four years. Additionally, he has been a principle of Milton Middle for nine years after serving as a principal at Enslow Middle for one year. Prior to his tenure as principal, Dan has served as Assistant Principal for Huntington High School and three feeder middle schools, (West Middle, Beverly Hills, and Enslow). Through his experience, Dan exhibited a strong understanding of the community, as well as the barriers that students endure with this type of student population. Additionally, Dan's experience as an administrator has given him the understanding and knowledge of being an instructional leader. He demonstrated evidence by understanding the use of data to drive instruction, student

engagement, being visible in the classroom and providing teachers with appropriate feedback. Dan provided evidence of his success in moving both Math and ELA scores in comparison to county and state. He has strong communication skills and provided the committee with his understanding of building relationships among students and staff, which allowed him to decrease the number of office referrals from 1300 to just over 600....

(Respondent Exhibit 2).

17. The Superintendent of Schools adopted this recommendation and presented Intervenor's name to the Board. The Board voted to hire him at a subsequent open Board meeting.

Discussion

This grievance does not challenge a disciplinary action, so Grievant bears the burden of proof. Grievant's allegations must be proven by a preponderance of the evidence. See, W. VA. CODE R §156-1-3. *Burden of Proof*. "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). Where the evidence equally supports both sides, the party bearing the burden has not met its burden. *Id.*

"County boards of education have substantial discretion in matters relating to the hiring, 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." Syl. pt. 3, *Dillon v. Wyoming County Bd. of Educ.*, 177 W. Va. 145, 351 S.E.2d 58 (1986).

Grievant does not point to a specific flaw in the interview process. Rather she alleges that Assistant Superintendent Watts advised her to not discuss her Florida

experience in the interview process which lead the committee to mistakenly conclude that she was not the most qualified candidate rendering the committee's recommendation arbitrary and capricious. Respondent counters that the committee had access to the information regarding Grievant's experience in Florida as reflected in her resume and Executive Summary which they considered for every candidate. They took all the experience, training, and qualifications of the interviewees into account and came to a reasoned conclusion that Intervenor Gleason was the most qualified for the HHS Principal position.

"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." *Trimboli v. Dep't of Health & Human Res.*, Docket No. 93-HHR-322 (June 27, 1997) (citations omitted). "Arbitrary and capricious actions have been found to be closely related to ones that are unreasonable." *State ex rel. Eads v. Duncil*, 196 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." *Id.* (citing *Arlington Hosp. v. Schweiker*, 547 F. Supp. 670 (E.D. Va. 1982)).

Because Grievant alleges she was more qualified for the position than Intervenor, an examination of the statute controlling the hiring of administrators by Boards of Education is necessary to decide this issue. WEST VIRGINIA CODE § 18A-4-7a provides, in pertinent part:

- (a) A county board of education shall make decisions affecting the filling of vacancies in professional positions of

employment on the basis of the applicant with the highest qualifications: *Provided*, That the county superintendent shall be hired under separate criteria pursuant to section two, article four, chapter eighteen of this code.

(b) In judging qualifications for the filling of vacancies of professional positions of employment, consideration shall be given to each of the following:

(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 required certification area;

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

(4) Academic achievement;

(5) In the case of a classroom teaching position or the position of principal, certification by the National Board for Professional Teaching Standards;

(6) Specialized training relevant to the performance of the duties of the job;

(7) Past performance evaluations conducted pursuant to section twelve, article two of this chapter and section two, article three-c of this chapter or, in the case of a classroom teacher, past evaluations of the applicant's performance in the teaching profession;

(8) Seniority;

(9) Other measures or indicators upon which the relative qualifications of the applicant may fairly be judged;⁶

⁶ The statute sets out two additional criteria which are exclusively related to the selection of classroom teacher and are not relevant to this case.

When selecting candidates for professional positions other than classroom teachers, a county board of education must consider each applicable criterion listed in the section, but the statute permits a board to determine the weight to be applied to each factor, so long as the weighting does not result in an abuse of discretion. WEST VIRGINIA CODE § 18A-4-7a(c); *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 (Apr. 10, 1992); *Komorowski v. Marshall County Bd. of Educ.*, Docket No. 08-25-007 (Mar. 23, 2009).⁷

In this case the committee considered all the criteria to determine the candidates who would be considered. The remaining five were very close on the criteria⁸ and the committee decided to focus on the criteria of (6) “specialized training relevant to the performance of the duties of the job” and (9) “other measures or indicators upon which the relative qualifications of the applicants may fairly be judged,” as the ones which would receive the most weight in determining which candidate was most qualified.

Both Grievant and Intervenor had a plethora of specialized training related to the principal position. Their training submissions indicated that each of them regularly updated their administrative skills.

⁷ These cases were decided prior to the amendment of W. VA. CODE § 18A-4-7a in 2013. However, the criteria for filling professional positions other than classroom teachers and principals remained essentially the same so these decisions are still applicable. See *Berry v. Boone County Bd. of Educ.*, Docket No. 2014-0450-BooED (Sept. 29, 2014), for a discussion of the effects of the 2013 amendment on filling these positions.

⁸ For example: Grievant and Intervenor were both properly certified; both had more than ten years of administrative experience and more than twenty-five years of overall professional experience; Both held master’s degrees with significant additional hours; both had excellent grade point averages (Grievant 3.95 and Intervenor 3.87); both had very good past performance evaluations; and, Intervenor had more seniority.

The majority of Grievant's training focused on instruction and curriculum while her more recent classes focused on leadership and evaluation techniques. Specifically, Developmental Creativity, Classroom Walk-through Training, Leverage Leadership, and Teach Like a Champion. Grievant also had training specifically related to providing a variety of instruction for diverse populations. (Grievant Exhibit 3).

Intervenor's training focused on personnel management and leadership. He attended trainings related to interviewing and hiring highly qualified staff; evaluation protocols and coaching personnel; managing crisis and maintaining morale in tough times; effective conflict resolution and handling difficult situations with both staff and students; as well as training related to student discipline and updates on relevant law related to school personnel and administrators. (Respondent Exhibit 30).

The committee considered the specialized training submissions provided by the applicants and any explanation which was provided about them by the candidates during the interview. While the training attended by Grievant and Intervenor differed somewhat in focus, the committee found that the specialized training by both of those candidates was significant and valuable. The committee could not find a significant difference between these candidates on criterion 6 and decided that they were tied, leaving criterion 9, (other indicators) to be the deciding factor.

The interview was the vehicle through which the candidates could highlight their specific strengths which made them particularly qualified for the HHS principal position. As noted in the job description, Respondent was sensitive to the fact that HHS draws its students from uniquely diverse racial, religious and socioeconomic communities. This created specific tensions which required leadership at the school who could keep all these

communities focused on the vision the school has for all students in the communities it serves. The principal was expected to serve as a liaison between the school and the community, building relationships with the community, and encouraging community participation in school life and to be a leader not only for the staff and students but in the community at large.

In this regard, Mr. Gleason stood out from the other candidates because of his unique administrative experience as an assistant principal at HHS, as well as, in three middle schools which feed students into Huntington High School. He also had nine years of experience as principal at Milton Middle School. The committee noted that through this experience and the interview, Intervenor Gleason exhibited a strong understanding of the community, as well as the barriers that students endure with this type of student population. He was already recognized in the community as an education leader and had developed strong relationships with the population and families which make up HHS. The Committee was also impressed with the data Intervenor provided related to demonstrating leadership resulting in a more than 50% drop in discipline referral while increasing Math and English scores.

Grievant argues that the committee selection was arbitrary because Grievant was discouraged from emphasizing her significant Florida experience with highly diverse population which showed that she too had experience in being integrally involved in the leadership role in such communities. However, it is apparent that the committee had knowledge of Grievant's Florida experience and training. It was set out in detail in her resume and her Executive Summary. The Committee specifically noted that training in giving Grievant equal weight in Specialized training. Additionally, all of the Committee

members were very familiar with Grievant's work and employment history through their daily interaction.

Grievant's credentials are impressive and she does have experience dealing with diverse communities. The committee felt that Intervenor's years of experience as an educational leader in the specific community which makes up the population of Huntington High School was more critical to success as the HHS Principal and decided Intervenor Gleason was the most qualified applicant based upon the materials submitted and the interviews.

Notwithstanding the conversation between Grievant Daniels and Assistant Superintendent Watts, there was no indication of bias or nefarious motives in the hiring process. The Committee's conclusion was qualifications-based and reasonable. Grievant did not prove that she was the most qualified candidate nor that the decision was arbitrary and capricious. Accordingly, the grievance is **DENIED**.

Conclusions of Law

1. This grievance does not challenge a disciplinary action, so Grievant bears the burden of proof. Grievant's allegations must be proven by a preponderance of the evidence. See, W. VA. CODE R §156-1-3 (2018), *Burden of Proof*.

2. "County boards of education have substantial discretion in matters relating to the hiring, 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." Syl. pt. 3, *Dillon v. Wyoming County Bd. of Educ.*, 177 W. Va. 145, 351 S.E.2d 58 (1986).

3. “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.” *Trimboli v. Dep’t of Health & Human Res.*, Docket No. 93-HHR-322 (June 27, 1997) (citations omitted). “Arbitrary and capricious actions have been found to be closely related to ones that are unreasonable.” *State ex rel. Eads v. Duncil*, 196 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.” *Id.* (citing *Arlington Hosp. v. Schweiker*, 547 F. Supp. 670 (E.D. Va. 1982)).

4. The statute controlling the hiring of administrators by Boards of Education is WEST VIRGINIA CODE § 18A-4-7a which provides, in pertinent part:

(a) A county board of education shall make decisions affecting the filling of vacancies in professional positions of employment on the basis of the applicant with the highest qualifications: *Provided*, That the county superintendent shall be hired under separate criteria pursuant to section two, article four, chapter eighteen of this code.

(b) In judging qualifications for the filling of vacancies of professional positions of employment, consideration shall be given to each of the following:

(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 required certification area;

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

(4) Academic achievement;

(5) In the case of a classroom teaching position or the position of principal, certification by the National Board for Professional Teaching Standards;

(6) Specialized training relevant to the performance of the duties of the job;

(7) Past performance evaluations conducted pursuant to section twelve, article two of this chapter and section two, article three-c of this chapter or, in the case of a classroom teacher, past evaluations of the applicant's performance in the teaching profession;

(8) Seniority;

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

5. When selecting candidates for professional positions other than classroom teachers, a county board of education must consider each applicable criterion listed in the section, but the statute permits a board to determine the weight to be applied to each factor, so long as the weighting does not result in an abuse of discretion. WEST VIRGINIA CODE § 18A-4-7a(c); *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 (Apr. 10, 1992); *Komorowski v. Marshall County Bd. of Educ.*, Docket No. 08-25-007 (Mar. 23, 2009).

6. Respondent's hiring decision was qualifications-based and applied the required criteria.

7. Grievant did not prove that she was the most qualified candidate nor that the decision was arbitrary and capricious.

Accordingly, the grievance is **DENIED**.

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. See W. VA. CODE § 6C-2-5. Neither the West Virginia Public 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 Civil Action number should be included so that the certified record can be properly filed with the circuit court. See *also* 156 C.S.R. 1 § 6.20 (2018).

DATE: June 17, 2019.

WILLIAM B. MCGINLEY
ADMINISTRATIVE LAW JUDGE