

WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**MARY HENDERSON,
Grievant,**

v.

Docket No. 2018-1108-WayED

**WAYNE COUNTY BOARD OF EDUCATION,
Respondent.**

DECISION

Mary Henderson, Grievant, filed this grievance against her employer Wayne County Board of Education ("WCBE"), Respondent, protesting her transfer for the 2018-2019 school year. The original grievance was filed on April 19, 2018, and the grievance statement provides:

Grievant, a classroom teacher at Crum PK-8, was approved for transfer for the 2018-2019 school year even though she was not the least senior elementary school classroom teacher at the school. Grievant alleges a violation of W. Va. Code 18A-4-7a."

Relief Sought:

Grievant seeks reinstatement to Crum PK-8 School for the 2018-2019 school year with compensation for additional expenses incurred as a result of placement at an alternate site including, but not limited to, compensation for mileage expenses incurred.

On or about May 4, 2018, the parties agreed to waive the grievance to level three of the grievance process.¹ A level three hearing was held before the undersigned Administrative Law Judge on October 29, 2018, at the Grievance Board's Charleston office. Grievant appeared in person and by representative John E. Roush, Legal Services,

¹ W. VA. CODE § 6C-2-4(a)(4), provides that an employee may proceed to level three of the grievance process upon agreement of the parties, or when the grievant has been discharged, suspended without pay, demoted or reclassified resulting in a loss of compensation or benefits.

American-Federation of Teachers-WV, AFL-CIO. Respondent appeared by HR Director Chanda Perry and was represented by counsel, Leslie K. Tyree, Esquire.

This matter became mature for decision upon receipt of the parties' written "Proposed Findings of Fact and Conclusions of Law" after the undersigned extended the time for filing such from November 28, 2018 to December 20, 2018 at the request of the parties. Both parties submitted findings of fact and conclusions of law proposals.

Synopsis

Grievant is employed by Respondent as a classroom teacher. Grievant filed this grievance regarding her transfer from Crum PK-8 school to Fort Gay PreK-8 School. Grievant argues Respondent has misconstrued West Virginia school law in the circumstance of this matter. Grievant purports Respondent's actions are in violation of applicable intent and reasonable prudent action. Respondent maintains the decision to transfer Grievant was not improper or an abuse of discretion in that the Grievant was the least senior of the second-grade teachers, she was not certified to bump the least senior teacher in the building and she was transferred to a lateral position with no reduction in salary or benefits.

The issue(s) in dispute of the instant matter, are simple yet simultaneously convoluted. Respondent's actions were in keeping with its interpretation of what is professed to be the relevant school code [WEST VIRGINIA CODE § 18A-4-7a]. The parties interpreted the application of WEST VIRGINIA CODE § 18A-4-7a in this situation differently. Whether the instant situation as it pertains to this PreK-8 school verses that of a traditional

elementary school warrants alternative treatment was a concern of the parties. Regrettably, the parties did not resolve this via a mutually acceptable teaching assignment. Grievant maintains she should be allowed to bump a “less” senior classroom teacher at her school, while Respondent maintains Grievant was not certified to bump “the least” senior teacher in the building, thus, Grievant goes on the transfer list. Once on the county wide transfer list, Grievant is reassigned accordingly with no preference or further consideration to available classroom teaching position which Grievant is qualified to teach from the school Grievant is being up-rooted.

Grievant has the burden of proof in this matter. Grievant has persuasively contended that the macerations of Respondent’s actions were counter-efficient. Nevertheless, Grievant did not establish, by a preponderance of the evidence, that the decision to transfer her from a classroom teaching position at Crum PK-8 to an alternate teaching assignment at Fort Gay PK-8 was implausible, unreasonable or not subject to a difference of opinion. Grievant did not demonstrate the decision to transfer her was arbitrary or capricious. Grievant did not establish that Respondent’s action(s) were in violation of an applicable WEST VIRGINIA CODE; school law or regulation. Accordingly, this grievance is DENIED.

After a detailed review of the entire record, the undersigned Administrative Law Judge makes the following Findings of Fact.

Findings of Fact

1. Mary Henderson, Grievant, was employed by the Wayne County Board of Education, Respondent, as a classroom teacher at Crum PK-8 in the 2017-2018 school year.

2. In the Wayne County school system, elementary schools provide education to students from Pre-Kindergarten through fifth grade. Middle schools provide education for students from sixth grade through eighth grade.²

3. Crum PK-8 provides education for students from the elementary school age group and for those in the middle school age group.³ Crum Pre K-8 is one school with one principal, one faculty senate, and one distribution of title one funds. Crum is one of only three schools in Wayne County which consist of both elementary and middle school students. The majority of the schools are either elementary or middle schools not a hybrid.

4. Respondent chose to eliminate one second grade teacher at Crum Pre K-8 due to a lack of need because of lower projected enrollment for the next school year.

5. Grievant was one of two teachers who taught second grade at Crum PK-8 during the 2017-2018 school year.

6. Grievant was the third most senior classroom teacher among the elementary school teachers at Crum PK-8. Nevertheless, the other second grade

² Wayne County Schools Human Resource Director Chanda Perry, level three testimony.

³ Crum PK-8 is listed as an elementary school on the portion of the Respondent's website wherein elementary schools are listed and also as a middle school on the portion where the county's middle schools are listed. There is no category on the website for E-L-E-M-I-D-D-L-E schools.

teacher, Mary Stacy, was more senior than Grievant.⁴ When Respondent decided that it would need only one second grade teacher at Crum PK-8 for the 2018-2019 school year, Grievant was designated not to continue as a second-grade teacher at Crum PK-8 for the 2018-2019 school year.

7. In addition to eliminating of one of the second-grade teacher positions, Respondent also abolished one first grade teacher position and one sixth grade teacher position for the 2018-2019 school year.⁵

8. As the third most senior classroom teacher among all elementary school teachers at Crum PK-8,⁶ Grievant had more seniority than the following elementary school teachers at Crum PK-8:

- Vicky Perry – fifth grade teacher (October 6, 2016)
- Chelsea Adkins – third grade teacher (August 4, 2015)
- Samantha Stephens – fourth grade (August 1, 2014)
- Jenta Cheung – sixth grade teacher (August 1, 2014)
- Amanda Fluty – fourth/fifth grade (May 28, 2013)
- Priscilla Bailey – third grade teacher (August 3, 2012)
- Jody Jude – kindergarten teacher (August 21, 2009)
- Bethany Marcum – first grade teacher (August 21, 2009)

9. Grievant is certified to fill each of the positions of the teachers listed in the preceding finding of fact.⁷

⁴ Grievant's seniority date is August 20, 1997. Mary Stacy's seniority date is August 22, 1995 G Ex 1

⁵ G Ex 3, p. 8 and G Ex 4, p. 1

⁶ In addition to Ms. Stacy, Grievant also had less seniority than sixth-grade teachers, Betty Marcum.

⁷ See G Ex 1

10. Alyssa White was the least senior classroom teacher overall, middle school or elementary school, at Crum PK-8, during the 2017-2018 school year.⁸ Ms. White taught music for grades 6 through 8.

11. Grievant is not certified to teach Music for grades 6 through 8.

12. Respondent notified Grievant of its intention to place her on the transfer list. Grievant requested a hearing before the board of education on the proposed transfer. This hearing was scheduled and held on April 16, 2018. Respondent approved the recommendation of the superintendent and placed Grievant on the transfer list on April 17, 2018.⁹

13. The following elementary school teachers at Crum PK-8 were reduced in force for the 2018-2019 school year:¹⁰

- Chelsea Adkins (third grade teacher)
- Samantha Stephens (fourth grade teacher)
- Vicky Perry (fifth grade teacher)

14. In addition to Grievant, the following elementary school teachers at Crum PK-8 were placed on the transfer list for the 2018-2019 school year:¹¹

- Bethany Marcum (first grade teacher)
- Jenta Chung (sixth grade teacher)

⁸ Ms. White's seniority date is August 21, 2018. G Ex 1

⁹ The Wayne County Board of Education conducted hearings for employees who requested such in response of reduction in force or transfer notice received for 2018-2019 school year. Grievant was one of those teachers. See G Ex 2 On April 18, 2018, Respondent at its regular meeting approved action with regard to Grievant; County-Wide Transfer (Professional) 2018-2019 school year – Mary Henderson, 2nd Grade teacher, Crum PreK-8, to Unassigned. See G Ex 3

¹⁰ G Ex 3, pp. 9 - 10

¹¹ G Ex 3, p. 10

15. Grievant was not the least senior elementary school classroom teacher at the school.

16. Grievant was not given the option of assuming the position of the least senior elementary school classroom teacher at Crum PK-8, Vicky Perry, even though this position was vacated by the reduction in force of Ms. Perry. Instead, Grievant was placed on a county-wide transfer list.

17. Respondent moved classroom teachers on the county-wide transfer list to vacant classroom teaching positions. The teachers on the list are assigned teaching assignments by the following method:

The most senior classroom teacher on the transfer list is assigned to the position held in the previous year by the least senior classroom teacher who was reduced-in-force and for which the classroom teacher on the transfer list is qualified. The second most senior classroom teacher on the transfer list is assigned to the position held in the previous year by the second least senior classroom teacher who was reduced-in-force and for which the classroom teacher on the transfer list is qualified. This process continues without regard to where the teacher on the transfer list was assigned the previous year and to where the position of the teacher on the reduction-in-force was assigned during the previous year.

Chanda Perry, HR Director, Wayne County School, L-3 testimony

18. Grievant was assigned to Fort Gay PK-8.

19. Grievant has received no reduction in salary or benefits due to her transfer to Fort Gay school.

20. WEST VIRGINIA CODE § 18A-4-7a provides in pertinent part, the following:

(p) Notwithstanding any other provision of the code to the contrary, where the total number of classroom teaching positions in an elementary school does not increase from one school year to the next, but there exists in that school a need to realign the number of teachers in one or more grade levels, kindergarten through six, teachers at the school may be reassigned to grade

levels for which they are certified without that position being posted: Provided, That the employee and the county board mutually agree to the reassignment.

(q) Reductions in classroom teaching positions in elementary schools shall be processed as follows

(1) When the total number of classroom teaching positions in an elementary school needs to be reduced, the reduction shall be made on the basis of seniority with the least senior classroom teacher being recommended for transfer; and

(2) When a specified grade level needs to be reduced and the least senior employee in the school is not in that grade level, the least senior classroom teacher in the grade level that needs to be reduced shall be reassigned to the position made vacant by the transfer of the least senior classroom teacher in the school without that position being posted: Provided, That the employee is certified, licensed or both and agrees to the reassignment. (Emphasis added)

21. Respondent emphasizes the provision of section (q) of WEST VIRGINIA CODE § 18A-4-7a while Grievant cites the constraints of (p) of the same statute as the rationale for her argument.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her case by a preponderance of the evidence. Procedural Rules of the Public Employees Grievance Board, 156 C.S.R. 1 § 3 (2018). "A preponderance of the evidence is evidence of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." *Petry v. Kanawha County Bd. of Educ.*, Docket No. 96-20-380 (Mar. 18, 1997). In other words, "[t]he preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." *Lechlitter v. W. Va. Dep't of Health & Human Res.*, Docket

No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, a party has not met its burden of proof. *Id.*

Both parties concur that WEST VIRGINIA CODE § 18A-4-7a is applicable, to the instant situation, differing only on how the statute applies. This is interesting but also puzzling. This is problematic in that WEST VIRGINIA CODE § 18A-4-7a (p) & (q) seems to be specifically designated for “elementary schools”. “Elementary school” appears not to be specifically defined in the West Virginia Code or the policies of Respondent or the West Virginia Department of Education.¹² It was discussed to some degree, but it is unclear as to what alternative solutions are or should be applicable for K-8 schools.¹³

Grievant argues she should be given the benefit of the statute in the transfer situation to the extent that she may voluntarily go to the least senior position in the school rather than be subject to transfer out of the school. Respondent proclaims little flexibility with this process. Maintaining this process is in accordance with WEST VIRGINIA CODE § 18A-4-7a (q) and coinciding with prior application(s). See *Rogers v. Mercer Bd of Ed*, Docket No 07-27-309 (Nov. 29, 2007), *rev’d, in part, and aff’d, in part*, Kanawha Cnty. Cir. Ct., Civil Action No. 08-AA-1 (Sept. 11, 2009); *Brown, et al v. Wetzel County Board of Education*, Docket No. 06-52-292 (October 23, 2006); *Sanders v. Brooke County Bd. of Educ.*, Docket No. 93-05-174 (Aug. 27, 1993). Respondent highlights that Grievant does not

¹² It could be argued that the language of West Virginia Code §18A-4-7a(p) defines elementary school as grades “kindergarten to six”.

¹³ The undersigned was led to believe, more and more WV School systems are implementing PK-8 schools, this may or may not be true. Currently there are only three such schools in Wayne County. The majority remain traditional elementary schools Pk-5 and middle schools provide education for students from sixth grade through eighth grade.

hold the proper certification to bump the least senior teacher in the building as the least senior teacher in the building was certified and taught music while the grievant was not certified to teach music. Grievant highlights the provision (p) of WEST VIRGINIA CODE § 18A-4-7a. Grievant maintains she was not the least senior elementary school classroom teacher at the school and should have been provided the option of one of the least senior classroom teacher positions who was reduced-in-force and for which Grievant is qualified to teach. As explained by Grievant, this seems a prudent use of resources and eliminates absurd teacher reshuffling. Grievant's proposal eliminates senior teachers literally having to leave their preferred prior schools and taking an offsetting position at alternative schools dependent upon the respective displacement of less senior teacher's placement on the county-wide transfer list.

Respondent maintains the decision to transfer Grievant was not arbitrary and capricious or an abuse of discretion in that the Grievant was the least senior of the second-grade teachers, she was not certified to bump the least senior teacher in the building and she was transferred to a lateral position with no reduction in salary or benefits. Pursuant to the testimony of Wayne County Schools Human Resource Director, Chanda Perry, Respondent moved classroom teachers on the county-wide transfer list to vacant classrooms by the following method:

The most senior classroom teacher on the transfer list is assigned to the position held in the previous year by the least senior classroom teacher who was reduced-in-force and for which the classroom teacher on the transfer list is qualified. The second most senior classroom teacher on the transfer list is assigned to the position held in the previous year by the second least senior classroom teacher who was reduced-in-force and for which the classroom teacher on the transfer list is qualified. This process

continues without regard to where the teacher on the transfer list was assigned the previous year and to where the position of the teacher on the reduction-in-force was assigned during the previous year.

In review of this matter, it is prudent to determine the applicable statute, rules and regulation governing this situation. Are the instant facts and current school law at a different degree of development (PK-6 Elementary School vs PK-8 Schools)? Should Grievant be given the benefit in this transfer situation to the extent that she may voluntarily go to the least senior position in the school rather than be subject to transfer out of the school? Transfer decisions “are based on the needs of the school, as decided in good faith by the superintendent and the board. *Hawkins v. Tyler County Bd. of Educ.*, 166 W.Va. 363, 275 S.E. 2d 592 (1979) and *Post v. Harrison County Bd. of Educ.*, Docket No. 89-17-355 (Feb. 20, 1990). See *Jochum v. Ohio County Bd. of Educ.*, Docket No. 91-35-396 (Jan. 31, 1992).” *Stewart, et al., v. Kanawha County Bd. of Educ.*, Docket No. 96-20-370 (Jan. 31, 1997).

Respondent was unable to explain, to this reviewer’s satisfaction, the list of optional job choices. Pursuant to Respondent’s clarification, the acceptance of the next job on the list is mandatory, if qualified. The most senior classroom teacher on the transfer list must accept the teaching position held in the previous year by the least senior classroom teacher who was reduced-in-force and for which the classroom teacher on the transfer list is qualified. Grievant was forced to accept the teaching position as presented on the list. She was not provided any options to choose a more desirable position of someone farther down on the list. As presented, Grievant “must” accept the position of the least senior classroom teacher who was reduced-in-force, with no option, the job on

the list is determined by the lack of seniority of the individual in the position. This process continues without regard to where the teacher on the transfer list was assigned the previous year and to where the position of the teacher on the reduction-in-force was assigned during the previous year. Location and or subject matter is not truly considered, if the teacher is qualified to teach the subject matter. Grievant's frustration is obvious, she was the third most senior classroom teacher among the elementary school teachers at Crum PK-8. Regrettably, the only other second grade teacher had more seniority.

County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel so long as that discretion is exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious. Syl. Pt. 3, *Dillon v. Bd. of Educ.*, 177 W. Va. 145, 351 S.E.2d 58 (1986). 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 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). 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." *Eads, supra* (citing *Arlington*

Hosp. v. Schweiker, 547 F. Supp. 670 (E.D. Va. 1982)) See generally *Harrison v. Ginsberg*, 169 W. Va. 162, 286 S.E.2d 276, 283 (1982)

Ultimately, it must be decided whether the Board, in the instant circumstance(s), abused its considerable discretion in personnel matters, or if its decision was arbitrary and capricious. See *Dillon, supra*. Grievant must prove, by a preponderance of the evidence, that the decision to transfer her was generally implausible, unreasonable or not subject to a difference of opinion. Both parties concur that WEST VIRGINIA CODE § 18A-4-7a is applicable, to the instant situation, differing only on how the statute applies. This is an example of combating judgement (opinion).

The undersigned Administrative Law Judge is persuaded, it is efficient to provide Grievant with the option of one of the least senior classroom teacher positions, at her school, who was reduced-in-force and for which Grievant is qualified to teach, yet the undersigned finds himself without adequate legal footing to overturn Respondent's decision.¹⁴ Under the circumstances presented, the undersigned cannot find Respondent's actions are arbitrary or capricious or an abuse of discretion. Respondent's actions are in accordance with its interpretation of what is professed to be the relevant school code, WEST VIRGINIA CODE § 18A-4-7a.

¹⁴ The "clearly wrong" and the "arbitrary and capricious" standards of review are deferential ones which presume an agency's actions are valid as long as the decision is supported by substantial evidence or by a rational basis. *Adkins v. W. Va. Dep't of Educ.*, 210 W. Va. 105, 556 S.E.2d 72 (2001)(citing *In re Queen*, 196 W. Va. 442, 473 S.E.2d 483 (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 his judgment for that of [the employer]." *Trimboli v. Dep't of Health and Human Res.*, Docket No. 93-HHR-322 (June 27, 1997); *Blake v. Kanawha County Bd. of Educ.*, Docket No. 01-20-470 (Oct. 29, 2001).

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 his judgment for that of the authoritarian agency. *See generally Harrison v. Ginsberg*, 169 W. Va. 162, 286 S.E.2d 276, 283 (1982). Grievant makes a heartfelt argument that Respondent's actions stand on the precipice of an absurd result. Resulting in teachers literally having to leave their preferred prior schools and taking offsetting positions at alternative schools dependent upon the respective placement of less senior teacher's placement on the county wide transfer list. Nevertheless, Grievant did not establish, by a preponderance of the evidence, that the decision to transfer her from a classroom teaching position at Crum PK-8 to an alternate teaching assignment at Fort Gay PK-8 was implausible, unreasonable or not subject to a difference of opinion. Respondent's actions are not contrary to statute; thus, this grievance is DENIED.

The following conclusions of law are appropriate in this matter:

Conclusions of Law

1. Because the subject of this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the Public Employees Grievance Board, 156 C.S.R. 1 § 3 (2018). "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 employer has not met its burden. *Id.*

2. WEST VIRGINIA CODE § 18A-4-7a provides in pertinent part, the following:

(p) Notwithstanding any other provision of the code to the contrary, where the total number of classroom teaching positions in an elementary school does not increase from one school year to the next, but there exists in that school a need to realign the number of teachers in one or more grade levels, kindergarten through six, teachers at the school may be reassigned to grade levels for which they are certified without that position being posted: Provided, That the employee and the county board mutually agree to the reassignment.

(q) Reductions in classroom teaching positions in elementary schools shall be processed as follows

(1) When the total number of classroom teaching positions in an elementary school needs to be reduced, the reduction shall be made on the basis of seniority with the least senior classroom teacher being recommended for transfer; and

(2) When a specified grade level needs to be reduced and the least senior employee in the school is not in that grade level, the least senior classroom teacher in the grade level that needs to be reduced shall be reassigned to the position made vacant by the transfer of the least senior classroom teacher in the school without that position being posted: Provided, That the employee is certified, licensed or both and agrees to the reassignment.

3. County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel so long as that discretion is exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious. Syl. Pt. 3, *Dillon v. Bd. of Educ.*, 177 W. Va. 145, 351 S.E.2d 58 (1986).

4. 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 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). 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." *Eads, supra* (citing *Arlington Hosp. v. Schweiker*, 547 F. Supp. 670 (E.D. Va. 1982)) See generally *Harrison v. Ginsberg*, 169 W. Va. 162, 286 S.E.2d 276, 283 (1982).

5. W. VA. CODE §18A-2-7 gives the Superintendent the right to transfer employees, subject to the approval of the board. See *Watts v. Lincoln County Bd. Of Educ.*, Docket No. 98-22-348 (Nov. 30, 1998) *Post v. Harrison County Bd. of Educ.*, Docket No. 89-17-355 (Feb. 20, 1990).

6. The power to transfer employees must be exercised reasonably and in the best interests of school systems and may not be exercised arbitrarily or capriciously. *State ex rel. Hawkins v. Tyler County Bd. of Educ.*, 166 W. Va. 363, 275 S.E. 2d 908 (1980). See *Hyre v. Upshur County Bd. of Educ.*, 186 W. Va. 267, 412, S.E. 2d 265 (W. Va. 1991).

7. Employees have no right to be assigned to a particular position, and transfers are not based on seniority, but are based on the needs of the school system, as decided in good faith by the superintendent and the board. *Hawkins, supra*; *Post, supra*. See *Jochum v. Ohio County Bd. of Educ.*, Docket No. 91-35-396 (Jan. 31, 1992).

8. Grievant did not demonstrate the decision to transfer her was arbitrary or capricious.

9. Grievant did not demonstrate the decision to transfer her was in violation of an applicable WEST VIRGINIA CODE; school law or regulation.

10. 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 his judgment for that of the authoritarian agency. See *generally Harrison v. Ginsberg*, 169 W. Va. 162, 286 S.E.2d 276, 283 (1982).

Accordingly, this 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: February 7, 2019

Landon R. Brown
Deputy Chief Administrative Law Judge