

WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**SHAWNA SMITH,
Grievant,**

v.

Docket No. 2019-0244-CabED

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

DECISION

Shawna Smith, Grievant, filed this grievance against her employer the Cabell County Board of Education ("CCBE"), Respondent. Grievant protests her non-selection for an Assistant Principal position. The original grievance was filed on August 6, 2018, and the grievance statement provides:

Respondent hired a less senior and less qualified applicant for the position of Assistant Principal at Huntington East Middle School in violation of W. Va. Code 18A-4-7a. Grievant also asserts that the action was arbitrary and capricious.

The relief sought states:

Grievant seeks reinstatement into the position of Assistant Principal at Huntington East Middle School, compensation for lost wages and benefits, pecuniary and nonpecuniary, with interest.

On August 15, 2018, Superintendent Ryan S. Saxe, the chief administrator, conducted a conference at level one. The grievance was denied at that level on August 28, 2018. Grievant appealed to level two on September 11, 2018, and a mediation session was held on November 1, 2018. Grievant appealed to level three on November 2, 2018. A level three hearing was held before the undersigned Administrative Law Judge on February 1, 2019, and March 22, 2019, at the Grievance Board's Charleston office. Grievant appeared in person and was represented by counsel John Roush, American Federation of Teachers-WV, AFL-CIO. Respondent appeared by its assistant

superintendent, Tim Hardesty; in-house counsel, Sherrone Hornbuckle and by counsel, Rebecca Tinder, Bowles Rice LLP. At the conclusion of the level three hearing, the parties were invited to submit written proposed fact/law proposals. Both parties submitted Proposed Findings of Fact and Conclusions of Law, and this matter became mature for decision upon receipt of the last of the parties' proposed findings of fact and conclusions of law on or about April 29, 2019, the assigned mailing date for the submission of the parties' fact/law proposals.

Synopsis

Grievant alleged that she should have been selected over the successful applicant for the position of Assistant Principal at Huntington East Middle School. West Virginia Code § 18A-4-7a sets out specific criteria the Board must use in determining which candidate is the most qualified for a professional position. While each of the factors listed in W. VA. CODE § 18A-4-7a 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.

Respondent placed a weighted value on identified factors. Respondent used a recognized selection process to identify the successful applicant. Grievant has failed to prove by a preponderance of the evidence that the decision-making process was fatally flawed, that Respondent acted in an arbitrary and capricious manner, or that Respondent otherwise overstepped its discretion as described in W. VA. CODE § 18A-4-7a. The decision reached was not so implausible that it could not be ascribed to a difference of opinion. In any event, Grievant failed to establish, by a preponderance of the evidence,

that her non-selection for the position was an abuse of Respondent's discretion, or otherwise contrary to any applicable law, rule or regulation. 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. Grievant is currently employed by Respondent as a classroom teacher at an Alternative School. Grievant has been employed by Respondent for approximately 10 years.

2. Grievant has a Master's Degree plus 45 hours. Grievant possess the appropriate administrative certification for the position of Assistant Principal. Grievant has no official seniority as an administrator with Respondent yet has assisted the Principal at her current assignment with various duties.

3. Respondent posted a position for an Assistant Principal at Huntington East Middle School from June 29, 2018 through July 9, 2018. G Ex 2 Grievant applied for the position.

4. The posting qualifications included, among others, holding an administrative certificate and having completed the state required evaluation training, a working knowledge of the duties and responsibilities of the position, the ability to work effectively and cooperatively with others as a member of an educational team, effective written and oral communication skills to maintain effective relationships with the school community. G Ex 2

5. Applications from 21 applicants were received for the position and each submitted one or more of the following documents: bid sheet, resume, and executive summary. G Ex 5

6. The interview committee for the position of Assistant Principal at Huntington East Middle School consisted of three central office administrators: Assistant Superintendent, Kelly Watts; Executive Director, Joedy Cunningham; Executive Director, Justin Boggs; the principal at Huntington East Middle School, De Perry and the assistant principal of the school, Lisa Riley.¹

7. The Assistant Superintendent and Executive Directors met to discuss what they thought to be the particular needs at Huntington East Middle School and tailored the interview questions to be utilized based upon those particular needs.

8. Information about each of the candidates was shared electronically with committee members.

9. To address the needs of Huntington East Middle School, the emphases for the position were determined to be a strong understanding of engaging instruction in instructional technology and skills in building strong Professional Learning Communities, working with at-risk students, and engaging stakeholders.² This determination is

¹ Assistant principals are not usually on the interview committee. Ms. Riley was added, before the interviews, at the request of Principal Perry. Principal Perry testified that she requested Assistant Principal Riley be added to the committee for moral support and to help get the right person for the job.

² Respondent avers that these skills fell under Factor 6, specialized training relevant to the performance of the duties of the job (Knowledge and understanding of engaging instruction and the use of instructional technology as demonstrated in the trainings), and Factor 9, other measures or indicators upon which the relative qualifications of the applicant may fairly be judged (Demonstration of the importance of working with at-risk students, PLCs and engaging stakeholders).

attributed to the interview committee, yet it is possible that much of this determination is attributable to central office administrators and acquiesced by the interview committee.

10. The interview committee determined to weight most heavily Factor 6 and Factor 9 of West Virginia Code § 18A-4-7a.

11. Of the 21 applicants who applied for the assistant principal position, Grievant and 5 other individuals were interviewed by the committee. Grievant was not originally on the list of six applicants to be interviewed. Grievant was interviewed when one of the original six applicants, Amy Kammer, withdrew her application. G Ex 4b & R Ex 1

12. Grievant received notice of the interview only a few hours prior to the scheduled time.³

13. Grievant was substituted, by agreement of the committee. Principal Perry suggested or urged that Grievant be interviewed and the committee ultimately acceded to her requests. R Exs 1, 2 and 4b

14. The committee applied the statutory criteria contained in West Virginia Code § 18A-4-7a when making comparisons among the applicants. More specifically the identified "Interview Questions for the Assistant Principal" position, G Ex 7, coupled with the "Executive Summary" sheet accompanying each interviewed candidate comprises material recognized as representative of statutory criteria consideration.

³ Grievant did not officially argue she was disadvantaged by the short time period between notice and the actual interview, but the underlying premise is palpable. Ultimately, Grievant was presented with an opportunity which was not initially an option. It is not established that given additional notice Grievant's interview would have been significantly improved.

15. There was an “Executive Summary for Administrative Position” sheet for each candidate interviewed. G Ex 6a-f

16. Based upon the statutory criteria contained in West Virginia Code §18A-4-7a, Grievant was listed as having appropriate certification; teaching experience in elementary, middle and high school, but no administrative experience; degree level, MA; academic achievement of +45; no National Board for Professional Teaching Standards certification; relevant training in engaging instruction but limited in instructional technology; satisfactory performance evaluations; 10 years county teaching seniority; and a demonstrated importance of working with at-risk students and PLCs.

17. The successful applicant, Don Pennington, was listed as having appropriate certification; teaching experience in elementary⁴ and high school, but no administrative experience; degree level, MA; academic achievement of +15; no National Board Certification for Professional Teaching Standards; relevant training in engaging instruction and instructional technology; satisfactory performance evaluations; 7 years county teaching seniority; and a demonstrated importance of working with at-risk students, PLCs and stakeholders.

18. The records of the remaining candidates that were interviewed, Crystal Davis, Mike DeRose, Gabriel McKee and Kimberly Sallada, indicated each held the appropriate certification; degree level, MA; and satisfactory performance evaluations; and

⁴ The matrix erroneously listed 1 year as middle school teaching experience but was corrected on the Executive Summary.

none had National Board Certification for Professional Teaching Standards. Only Kim Sallada had any administrative experience.

19. The Superintendent requested that the committee review the credentials of the applicants and to identify and recommend to him the most highly qualified candidate to fill the vacancy.

20. After the completion of all the interviews, the members of the interview committee were individually asked to name their top two candidates. All five members of the committee named Don Pennington as one of their top two candidates. The only others named were Mike DeRose and Gabriel McKee. At that time, no one named Shawna Smith as one of their top two candidates, not even Principal Perry who had requested she be added to the interview list. As a result, the top three candidates were Don Pennington, Mike DeRose and Gabriel McKee.

21. When the pool was narrowed to the top two, Don Pennington and Mike DeRose, Principal Perry was asked which of the two that she felt was the most qualified, she named Don Pennington.

22. After reviewing the qualifications of the applicants, the interview committee recommended Don Pennington as being the most highly qualified candidate from the application pool, to the Superintendent. R Ex 2

23. After meeting with the recommended candidate, the Superintendent recommended the candidate to the School Board, and the Board voted to approve that recommendation and hired Don Pennington for the Huntington East Middle School Assistant Principal position.

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." *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, a party has not met its burden of proof. *Id.*

This is a non-selection case. Of particular importance to this case is the longstanding principle that, 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. *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).

Grievant alleges that the statutory criteria were never adequately addressed, or the process was arbitrary and capricious. An action is recognized as arbitrary and capricious when "it is unreasonable, without consideration, and in disregard of facts and circumstances of the case." *State ex rel. Eads v. Duncil*, 196 W. Va. 604, 474 S.E.2d 534 (1996) (citing *Arlington Hosp. v. Schweiker*, 547 F. Supp. 670 (E.D. Va. 1982)). "Generally, an action is considered arbitrary and capricious if the agency did not rely on criteria intended to be considered, explained or reached the decision in a manner contrary to the evidence before it, or reached a decision that was so implausible that it cannot be ascribed to a difference of opinion. See *Bedford County Memorial Hosp. v. Health and Human Serv.*, 769 F.2d 1017 (4th Cir. 1985); *Yokum v. W. Va. Schools for the Deaf and the Blind*, Docket No. 96-DOE-081 (Oct. 16, 1996)." *Trimboli v. Dep't of Health and Human Res.*, Docket No. 93-HHR-322 (June 27, 1997), *aff'd* Mercer Cnty. Cir. Ct. Docket No. 97-CV-374-K (Oct. 16, 1998).

In a non-selection grievance, Grievant bears the burden of proving, by a preponderance of the evidence, that she should have been selected for a particular position rather than another applicant, by establishing that she 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. *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). "The grievance procedure . . . allows for an analysis of legal

sufficiency of the selection process at the time it occurred." *Stover v. Kanawha County Bd. of Educ.*, Docket No. 89-20-75 (June 26, 1989).

West Virginia Code § 18A-4-7a governs the hiring of professional personnel and 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. . . .

(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;
- (10) In the case of a classroom teaching position, the recommendation of the principal of the school at which the applicant will be performing a majority of his or her duties; and

(11) In the case of a classroom teaching position, the recommendation, if any, resulting from the process established pursuant to the provisions of section five, article five-a, chapter eighteen of this code by the faculty senate of the school at which the employee will be performing a majority of his or her duties.

While each of the factors listed in WEST VIRGINIA CODE § 18A-4-7a must be considered, the statute permits county boards 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. *Switzer v. Kanawha County Bd. of Educ.*, Docket No. 03-20-013 (April 11, 2003). The interview questions for the Assistant Principal position in discussion, G Ex 7, coupled with the “Executive Summary” sheet accompanying each interviewed candidate specifically comprises material recognized as representative of statutory criteria. The committee applied the nine statutory criteria contained in West Virginia Code § 18A-4-7a when making comparisons among the applicants.

Grievant has made several allegations, which she contends individually or collectively caused Respondent to erroneously select a candidate other than her for the Assistant Principal position in discussion. Grievant avers that the administration seems to have given little thought to weighting of hiring criteria before, during or after the process of filling the position. This is a factually inaccurate allegation, e.g., see findings of facts, 7, 9, 14, 17, *supra*. Grievant highlights that the position in question, as constituted at the time of the posting and filling of the position, required a strong background in special education. Grievant maintains she is and was the strongest candidate on the basis of experience in special education.⁵

⁵ Grievant provided little to no comparative analysis to establish that she was more qualified than

The interview committee consisted of five administrative individuals. Each member was free to interact within the interview process. After the completion of all the interviews, the members of the interview committee discussed the candidates. Each interview committee member was individually asked to name their top two candidates. All five members of the committee named Don Pennington as one of their top two candidates. The only others named were Mike DeRose and Gabriel McKee. No one verbalized that Shawna Smith (Grievant) was one of their top two candidates, not even Principal Perry who had requested she be added to the interview list.

It is possible, in fact, likely, that not all members participated with an equal amount of vehemence. Principal Perry testified at the level three hearing.⁶ Principal Perry testified she acceded to the employment of Mr. Pennington rather than Grievant because she believed that Respondent's administration would not accept Grievant for the Assistant Principal position at Huntington East Middle School. Principal Perry did not communicate she was in anyway directed to vote for Don Pennington, as the most qualified candidate. There was no evidence or testimony that Principal Perry was indeed coerced to abstain from identifying Grievant as her selected top candidates; Ms Perry

the other two who made the top three by the committee, Mike DeRose and Gabriel McKee.

⁶ An Administrative Law Judge is charged with assessing the credibility of the witnesses. See *Lanehart v. Logan County Bd. of Educ.*, Docket No. 95-23-235 (Dec. 29, 1995); *Perdue v. Dep't of Health and Human Res./Huntington State Hosp.*, Docket No. 93-HHR-050 (Feb. 4, 1994). This Grievance Board has applied the following factors to assess a witness's testimony: 1) demeanor; 2) opportunity or capacity to perceive and communicate; 3) reputation for honesty; 4) attitude toward the action; and 5) admission of untruthfulness. Additionally, the administrative law judge should consider 1) the presence or absence of bias, interest, or motive; 2) the consistency of prior statements; 3) the existence or nonexistence of any fact testified to by the witness; and 4) the plausibility of the witness's information. See *Holmes v. Bd. of Directors/W. Va. State College*, Docket No. 99-BOD-216 (Dec. 28, 1999); *Perdue, supra*. The undersigned is of the belief that a formal credibility assessment was not required for the majority of the witnesses who testified in the instant matter. A notable exception was the applicability of Principal Perry's testimony as it relates to her opinions, deeds and communicated information regarding the issue(s) in discussion.

testified that “the room felt funny.” Principal Perry’s testimony shed light on her actions and thoughts at that time of the interview. Nevertheless, her testimony was at times confusing. Principal Perry attempted to provide accurate information but also repeatedly professed to limited knowledge regarding acknowledged and/or established facts.⁷

Ultimately, it must be decided whether the Respondent, in the instant circumstance(s), abused its considerable discretion in personnel matters, or if its decision was arbitrary and capricious. See *Dillon, supra*. Principal Perry’s testimony did not establish Respondent overstepped its broad discretion as described in W. VA. CODE § 18A-4-7a. In arriving at their recommendation, the committee considered information about the applicants regarding each of the 9 qualification categories identified in W. Va. Code § 18A-4-7a: appropriate certification, licensure or both; amount of experience relevant to the position; the amount of course work, degree level or both in the relevant field and degree level generally; academic achievement; National Board for Professional Teaching Standards Certification; relevant specialized training; past performance evaluations; seniority and other measures or indicators upon which the relative qualifications of the applicant may fairly be judged. The committee considered application materials submitted by each of the candidates, including any associated materials and information gleaned during the interviews concerning the applicants’ qualifications. The members of the interview committee have a diverse level of understanding regarding qualification categories

⁷ More than once, Principal Perry was confused during her testimony, to the point of not recognizing or admitting to her handwritten notes which were a part of Grievant’s Exhibits.

identified in W. Va. Code, but they all understood their duty in choosing the best candidate for the position of Assistant Principal at Huntington East Middle School.

The successful applicant, Don Pennington, enrolled in and completed the Cabell County Administrative Apprenticeship Program, which was available to aspiring administrators. He also completed the training for Evaluation of Professional Personnel. Grievant admitted that she did not enroll in, nor attend, the county's Administrative Apprenticeship Program. The Executive Summary for the successful candidate, Don Pennington, listed his other qualifications (Factor 9) as: owning and operating his own business. He described the many duties and responsibilities involved with owning and operating a business which aided in demonstrating his engagement of stakeholders and working with at-risk students. Don Pennington impressed the committee as being the most qualified applicant for the Assistant Principal position at Huntington East Middle School. The Interview committee did not reach a decision contrary to the evidence.

It is well settled that county boards of education have substantial discretion in matters relating to the hiring of school personnel as long as their decisions are in the best interest of the school and are not arbitrary and capricious. 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). Nothing in the language of W. VA. CODE § 18A-4-7a restricts the area of measures or indicators, as long as they are factors 'upon which the relative qualifications of the applicant may fairly be judged. *Anderson v. Wyoming County Bd. of Educ.*, Docket No. 93-55-183 (Sept. 30, 1993); *English v. Logan County Bd. of Educ.*, Docket No. 03-23-307 (Feb. 27, 2004).

Grievant has not shown the selection process, as a whole, to be arbitrary and capricious. Respondent has a reasonable degree of discretion. The decision reached was not so implausible that it could not be ascribed to a difference of opinion. Grievant did not demonstrate the decision-making process to be fatally flawed. Grievant did not establish by a preponderance of the evidence that mandatory factors were not taken into consideration. Evidence of record indicates Respondent's interview committee determined to weight most heavily Factor 6 and Factor 9 of West Virginia Code § 18A-4-7a. This is lawful. The members of the interview committee have a diverse level of understanding regarding the area of measures or indicators, but it is not established that Respondent overstepped its broad discretion as described in W. VA. CODE § 18A-4-7a.

The following conclusions of law are appropriate in this matter:

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. *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, a party has not met its burden of proof. *Id.*

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. West Virginia Code § 18A-4-7a sets out specific criteria the Board must use in determining which candidate is the most qualified for a particular professional position. When selecting a candidate for a professional position other than a classroom teacher, 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. *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).

5. While each of the factors must be considered, the Code 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); *Harper v. Mingo County Bd. of Educ.*, Docket No. 93-29-064 (Sept. 27, 1993); *Blair v. Lincoln County Bd. of Educ.*, Docket No. 92-22-009 (July 31, 1992). Once a review is completed, the Board may hire any candidate based solely upon the credentials it feels are of most importance, unless this assessment is arbitrary and capricious. *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)).

6. Equal weight need not be assigned to the individual factors to be considered in the selection of candidates under the first set of criteria contained in *West Virginia Code* §18A-4-7a. A county board of education is free to determine the weight to apply to each of the factors when assessing an applicant's qualifications as long as this substantial discretion is not abused. *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); *Paolo v. Hancock County Bd. of Educ.*, Docket No. 2012-0311-HanED (Feb. 11, 2013)

7. The selection of candidates for educational positions is not simply a "mechanical or mathematical process." *Tenney v. Bd. of Educ.*, 183 W. Va. 632, 398 S.E.2d 114 (1990). Moreover, county boards of education have substantial discretion in matters relating to the hiring of school personnel so long as the decisions are made in the best interests of the schools, and are not arbitrary and capricious. *Dillon v. Bd. of Educ.*, 177 W. Va. 145, 351 S.E.2d 58 (1986); *Christian v. Logan County Bd. of Educ.*, Docket No. 94-23-173 (Mar. 31, 1995). Consistent with these standards of review, the grievance procedure is not intended as a "super interview," but merely an analysis of the legal sufficiency of the selection process at the time it occurred. *Stover v. Kanawha County Bd. of Educ.*, Docket No. 89-20-75 (June 26, 1989). See *Sparks v. Mingo County Bd. of Educ.*, Docket No. 96-29-447 (Feb. 18, 1997).

8. Grievant has failed to prove by a preponderance of the evidence that the decision-making process was fatally flawed, that Respondent acted in an arbitrary and capricious manner, or that it otherwise overstepped its broad discretion as described in W. VA. CODE § 18A-4-7a.

9. Grievant did not demonstrate that Respondent acted unlawfully in making the determination that the successful applicant was the best candidate for the Assistant Principal position in discussion.

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: May 14, 2019

Landon R. Brown
Deputy Chief Administrative Law Judge