

**DIANE BLUME, .**

.

**Grievant, .**

.

**v. . Docket No. 95-10-560**

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**FAYETTE COUNTY BOARD OF EDUCATION, .**

.

**Respondent. .**

## **DECISION**

Diane Blume (Grievant) alleges that W. Va. Code § 18A-4-7a was violated when Respondent Fayette County Board of Education (FCBE) failed to select her for the half-time position of Teen Parent Coordinator assigned to FCBE's Fayette Plateau Vocational-Technical Center (FPVTC). This grievance was initiated at Level I on September 14, 1995. Following a Level II hearing on October 24, 1995, this grievance was denied by K. R. Carson, Associate Superintendent, on December 6, 1995. Grievant waived Level III in accordance with W. Va. Code § 18-29-4(c), appealing to Level IV on December 11, 1995. An evidentiary hearing was conducted in the Central Office of the Fayette County Board of Education in Fayetteville, West Virginia, on February 29, 1996. The parties elected to submit post-hearing briefs and this matter became mature for decision on March 18, 1996.

The following Findings of Fact pertinent to resolution of this matter have been derived from the record, including the transcript of the Level II hearing, the testimony of the witnesses who appeared at Level IV, and documentary evidence admitted at both levels.

## **FINDINGS OF FACT**

1. Grievant is employed by the Fayette County Board of Education (FCBE) as a half-time teacher at Ansted Middle School (AMS).
2. In July 1995, Jerry Sizemore, Director of FCBE's Fayette Plateau Vocational-Technical Center

(FPVTC), requested the vacant position of Teen Parent Coordinator be posted, noting therein:

"Hours will be initially 10:00 a.m. to 2:00 p.m., subject to change." R Ex 1 at L II.

3. On July 18, 1995, the vacancy was posted as "HALF-TIME DAILY (A.M.)." G Ex 1 at L II.

4. The Job Description for the position at issue indicates that it is a "support services position."

See G Ex 2 at L II.

5. The Teen Parent Coordinator position is part of a program developed "to provide teenage parents who are dropouts or potential dropouts an opportunity to complete diploma or GED requirements," and provide other skills and training to assist these individuals to overcome various obstacles resulting from their situations. See G Ex A, B & C.

6. Grievant applied for the half-time Teen Parent Coordinator vacancy at FPVTC. 7. Grievant and Mary Flint, the successful applicant, met the minimum qualifications for the position and were the only candidates interviewed by Mr. Sizemore. See G Ex 2 at L II.

8. During their interviews, Mr. Sizemore advised the applicants that the expected hours of the position would be from 10:00 a.m. to 2:00 p.m.

9. At the time of her interview, Grievant had been selected for a one-half time (afternoon) teaching position at AMS, working from 12:00 noon to 3:30 p.m. at that location. Grievant expressed an interest in working her hours at FPVTC around her position at AMS, and did not volunteer to give up the AMS position. AMS is approximately twenty minutes' travel time from FPVTC.

10. As Ms. Flint's immediate supervisor, Mr. Sizemore was aware that her schedule as the half-time Adult Basic Education Coordinator at FPVTC included teaching during evening hours, and was sufficiently flexible to provide Teen Parent services to students during both the morning and afternoon hours. Tr at 16-21. See R Ex 5 at L II.

### **DISCUSSION**

W. Va. Code § 18A-4-7a provides:

A county board of education shall make decisions affecting the hiring of professional personnel other than classroom teachers on the basis of the applicant with the highest qualifications. . . . If one or more permanently employed instructional personnel apply for a classroom teaching position and meet the standards set forth in the job posting, the county board of education shall make decisions affecting the filling of such positions on the basis of the following criteria: Appropriate certification and/or licensure; total amount of teaching experience; the existence of teaching experience in the required certification area; degree level in the required certification area; specialized training directly related to the performance of the job as stated in the job description; receiving an overall rating of satisfactory in evaluations over the past two years; and seniority. Consideration shall be given to each criterion with each criterion

being given equal weight.

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The foregoing statute establishes separate standards to be applied when filling administrative positions and teaching positions. Ordinarily, this distinction becomes important in resolving grievances involving selection determinations, because this Grievance Board has recognized that the statute gives county boards of education more discretion when filling administrative positions than in selecting employees to fill classroom teaching vacancies. See e.g., 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). See also Pockl v. Ohio County Bd. of Educ., 406 S.E.2d 687 (W. Va. 1991).

In this matter, Grievant contends that the Teen Parent Coordinator is a classroom teaching position while FCBE contends that it is an administrative position. However, it is not necessary to resolve this issue in order to decide this grievance, because Grievant was not the "best qualified" applicant under either standard. This conclusion is based upon a determination that W. Va. Code § 18A-4-7a must be read to imply that an applicant for employment must be available to assume the duties of a position at the times designated by the Board. Barber v. McDowell County Bd. of Educ., Docket No. 94-33-405 (Apr. 21, 1995). See Walls v. Wyoming County Bd. of Educ., Docket No. 95-55-157 (Aug. 29, 1995). In this regard, FCBE established by a preponderance of the evidence that the Teen Parent Coordinator's duties were to be performed, subject to change, between 10:00 a.m. and 2:00 p.m., and the posting which listed the position as a half-time morning (a.m.) position was in error. Moreover, FPVTC Director Sizemore wanted the Teen Parent Coordinator to be readily accessible to students during their morning and afternoon school hours. Grievant failed to demonstrate that FCBE's determination that the Teen Parent Coordinator position could best be filled by someone whose work schedule was sufficiently flexible to meet with students during school hours in both the morning and afternoon was either arbitrary and capricious, or a pretext to select Ms. Flint for the position rather than Grievant. Instead, a preponderance of the evidence indicates that it is in the best interests of the students being served by this particular program to have access to the Coordinator during these hours.

While the essential duties of the Teen Parent Coordinator can be scheduled at hours other than

10:00 a.m. to 2:00 p.m., Grievant has not shown that FCBE was obligated to modify the hours of the position to accommodate Grievant's work schedule in another half- time position. Thus, although both Grievant and Ms. Flint were otherwise "qualified" for this position, Ms. Flint's schedule as half-time Adult Basic Education Coordinator was more flexible than Grievant's half-time teaching position at AMS, and FCBE properly selected Ms. Flint because she was more readily available to work during the desired hours. Consistent with the foregoing discussion, the following Conclusions of Law are made in this matter.

### **CONCLUSIONS OF LAW**

1. Grievant is required to prove the allegations of her complaint by a preponderance of the evidence. Black v. Cabell County Bd. of Educ., Docket No. 06-88-238 (Jan. 31, 1989); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988).

2. It is implicit in W. Va. Code § 18A-4-7a that an applicant for employment must be available to assume the duties of a position at the times designated by the Board. Barber v. McDowell County Bd. of Educ., Docket No. 94-33-405 (Apr. 21, 1995). See Walls v. Wyoming County Bd. of Educ., Docket No. 95-55-157 (Aug. 29, 1995).

3. Grievant has failed to establish that she was more qualified than the successful applicant for the position in issue, or otherwise demonstrate that Respondent either abused its discretion or failed to comply with the requirements of W. Va. Code § 18A-4-7a.

Accordingly, this Grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Fayette County or the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code § 18-29-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

**LEWIS G. BREWER**  
**ADMINISTRATIVE LAW JUDGE**

**Dated: April 29, 1996**