

**PATRICIA L. YOKUM,**  
**Grievant,**

**v.**

**DOCKET NO. 96-DOE-081**

**WEST VIRGINIA SCHOOLS FOR THE DEAF AND THE BLIND,**  
**Respondent,**

**and**

**NANCY WILLIAMS,**  
**Intervenor.**

### **DECISION**

Patricia L. Yokum, Grievant, filed a grievance against the West Virginia Schools for the Deaf and Blind (Respondent) alleging "I made application for parent advisor position, but a less qualified person was given the position. Therefore, I was not selected." As relief, Grievant states "I want to be instated into the parent advisor position and be awarded back pay and benefits that may have accrued to me."

Grievant was denied relief at the lower levels of the grievance procedure. On June 27, 1996, a Level IV evidentiary hearing was held at the Grievance Board's office in Elkins, West Virginia. Respondent was represented by the West Virginia

Department of Education's in-house counsel. The case became mature for decision on July 30, 1996, with receipt of the parties' post-hearing submissions.

Respondent's counsel asserted that the same laws which pertain to teachers employed by a county board of education are also applicable to teachers employed by it. Grievant's representative agreed with Respondent's counsel in that Respondent has chosen to apply Chapters 18 and 18A of the West Virginia Code to its personnel at the Romney school, and thus, is bound by their decision. Both agreed that in operating the school at Romney, West Virginia, Respondent was serving as the local board of education. Therefore, when necessary, Chapters 18 and 18A of the Code will be applied as if this case involved a county board of education. See Clark v. W. Va. Dept. of Educ., Docket No. 96-DOE-192 (Sept. 20, 1996).

The following findings of fact are derived from the record.

#### **FINDINGS OF FACT**

1. Respondent posted a notice of vacancy for a Parent Advisor position.

2. The posting set forth the requirements as follows:

All necessary training will be provided by the West Virginia Schools for the Deaf and the Blind. Applicants must have a college degree in education or a related field and must live within a 25 mile radius of Mineral County.

LII Gr. Ex. 3.

3. Mrs. Athey, INSITE and VIISA Coordinator, distributed a

copy of the job description for the Parent Advisor position to the applicants before the interview. The general qualifications in the job description are as follows:

A Bachelor's Degree is required, preferably in education of the visually impaired, counseling, early childhood, special education, or elementary education, or a related field. A strong early intervention background is favored. Must successfully complete comprehensive training sessions in the INSITE/VIISA Curriculum to be held in two, three day workshops during the first year of employment. Experience working with preschool visually impaired children and their families is desired.

LII Gr. Ex. 4.

4. INSITE is a curriculum designed to serve visually impaired and visually impaired, multi-handicapped children.

5. SKI\*HI is a curriculum designed for hearing impaired children.

6. Grievant applied for this position. She is a teacher employed by Respondent for the last seven years.

7. Grievant earned a Bachelor of Arts Degree in Elementary/Early Childhood Education from Shepherd College. She is certified in Elementary Education K-6, and Visual Impairment.

8. Intervenor, Nancy Williams, also applied for the Parent Advisor position, and was the successful applicant. Her formal education consists of:

B.A. University of North Carolina at Chapel Hill  
M.Ed. North Carolina Central University at Durham  
M.Ed. Special Ed. Hampton University at Hampton, Virginia  
M.Ed. candidate (pending revision of Comprehensive Examination) Peabody College of Vanderbilt University, Nashville, Tennessee[.]

LII School Ex. 2.

9. Mrs. Williams received training in the INSITE curriculum. She has also worked with the INSITE curriculum in 1989-90 while providing "direct services" to two students, and while teaching Kindergarten for two years, 1991-92 and 1992-93.

10. Mrs. Athey, in making her recommendation, considered the following areas: the appropriate certification and/or licensure; amount of experience relevant to the position or, the amount of teaching experience in the subject area; the amount of course work and/or degree level in the relevant field and degree level generally; academic achievement; and relevant specialized training.

11. Mrs. Athey ranked at least the first three applicants for the position as follows: Mrs. Williams, Carol Lewis,<sup>1</sup> and Grievant.

#### **DISCUSSION**

County boards of education have substantial discretion in matters relating to the hiring of school personnel. The exercise of that discretion must be within the best interests of the schools, and in a manner which is neither arbitrary nor capricious. See, Hyre v. Upshur County Bd. of Educ., 412 S.E.2d 265 (W.Va. 1991). The arbitrary and capricious standard of review of county board of education decisions requires a searching and careful inquiry into the facts; however, the scope of review is narrow, and the Undersigned may not substitute his judgment for that of a board of education. See generally, Harrison v. Ginsberg, 286 S.E.2d 276 (W.Va. 1982). The Grievance Board cannot perform the role of a

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<sup>1</sup>The record does not contain any further facts concerning Carol Lewis.

"super-interviewer" in matters relating to the selection of candidates for vacant positions. Stover v. Kanawha County Bd. of Educ., Docket No. 89-20-75 (June 26, 1989); Harper v. Mingo County Bd. of Educ., Docket No. 93-29-064 (Sept. 27, 1993). Generally, a board of education's action is arbitrary and capricious if it did not rely on factors that were intended to be considered, entirely ignored important aspects of the same problem, explained its decision in a manner contrary to the evidence before it, or reached a decision in a manner contrary to the evidence before it, or reached a decision that is so implausible that it cannot be ascribed to a difference of view. Bedford County Memorial Hosp. v. Health and Human Serv., 769 F.2d 1017 (4th Cir. 1985).

W. Va. Code §18A-4-7a, entitled "[e]mployment, promotion and transfer of professional personnel; seniority," sets forth the procedures for hiring professional employees. It provides, in pertinent part:

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. Further, the county board shall make decisions affecting the hiring of new classroom teachers on the basis of the applicant with the highest qualifications. In judging qualifications, consideration shall be given to each of the following: Appropriate certification and/or licensure; amount of experience relevant to the position or, in the case of a classroom teaching position, the amount of teaching experience in the subject area; the amount of course work and/or degree level in the relevant field and degree level generally; academic achievement; relevant specialized training; past performance evaluations conducted pursuant to section twelve [§18A-2-12], article two of this chapter; and other measures or indicators upon which the relative qualifications of the applicant may fairly be judged. If one or more permanently employed instructional personnel

apply for a classroom teaching position and meet the

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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 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 previous two years; and seniority. Consideration shall be given to each criterion with each criterion being given equal weight. If the applicant with the most seniority is not selected for the position, upon the request of the applicant a written statement of reasons shall be given to the applicant with suggestions for improving the applicant's qualifications.

Emphasis added.

Grievant failed to elicit evidence which is helpful in determining how W. Va. Code §18A-4-7a applies to the facts of this case, and in determining who was the "best qualified" applicant for the Parent Advisor position. While it is probable that Grievant and Intervenor are permanent employees, given their years of employment with Respondent, no evidence was produced on this issue. Nor did Grievant prove that the parent advisor position is a classroom teaching position.<sup>2</sup> Therefore, only the first sentence of W. Va. Code §18A-4-7a applies in this case.

Grievant asserted that the selection process was flawed because Mr. Dan Oates, Educational Outreach Specialist, did not concentrate his efforts on the interview process, but yet conferred with Mrs. Athey as to her recommendation. The following colloquy

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<sup>2</sup>W. Va. Code §18A-1-1(c)(1) defines "Classroom teacher" as "[t]he professional educator who has direct instructional or counseling relationship with pupils, spending the majority of his time in this capacity."

occurred during the Level II hearing:

Mr. Oates: My name is Dan Oates, and I'm an Educational Outreach Specialist in the Outreach Office at The West Virginia Schools for the Deaf and the Blind.

School's Representative: O.K. As a part of that job. Mr. Oates, did you sit in and observe the interviews that took place in the job for this outreach teacher that's in question here?

Mr. Oates: I was --. I did not observe directly. I was in the room at the same time that the interview was taking place, and I tuned in and tuned out, depending upon what I was into and what questions were being asked in the interview.

School's Representative: O.K. At the end of all --. After all the interviews, did you go over the job descriptions, resumes and the information submitted by the applicants with Mrs. Athey?

Mr. Oates: Yes sir, I did.

School's Representative: And you conferred with her in detail on education, training, experience of each applicant?

Mr. Oates: Yes sir.

School's Representative: And, on the basis of that and what you heard as an observer during the interviews and reviewing their applications, resumes and other information submitted, what was your recommendation as to who was the best qualified person for this outreach job?

Mr. Oates: Nancy Williams.

LII at 45-46.

Grievant asserts that this testimony proves that it was part of Mr. Oates' job to interview the applicant with Mrs. Athey, and that since he failed to be present and pay attention during the interviews that the selection process was fatally flawed. However, not one witness testified that Mr. Oates was part of a selection

committee, or that he was supposed to take part in the interview process. The evidence only reveals that Mrs. Athey interviewed the applicants, and merely conferred with Mr. Oates. Mr. Tom Workman, Principal, also only looked at the applications, and resumes, before agreeing with Mrs. Athey's recommendation.

At the Level IV hearing, Grievant concentrated on primarily two issues: Whether Mrs. Williams had misrepresented her educational qualifications, and Mrs. Williams' training in the INSITE program.<sup>3</sup> Grievant asserted that Mrs. Williams claimed credit for a third Master's degree, and that this made her application "fraudulent." However, Mrs. Williams clearly indicated on her resume, in reference to her third graduate degree, that she was a candidate, and the degree was pending. Furthermore, Mrs. Williams brought this fact to Mrs. Athey's attention during the interview.

Grievant's second contention also lacks merit. Mrs. Williams has INSITE training. At the Level IV hearing, she credibly testified, and her resume reveals, the following:

I began working at the West Virginia Schools for the Deaf and the Blind in 1983 teaching speech to elementary age students with hearing impairment. I began working with the School for the Deaf Outreach Program in 1987 and continued as the Outreach Coordinator in 1988 to 1991. From fall of 1991 to Spring 1993, I taught Kindergarten at the School for the Blind. During that time and in the spring of 1994, I worked during "Preschool Week" to

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<sup>3</sup>The Undersigned did not consider any theories that were only asserted at Level II. Theories raised at Level II but not reasserted at Level IV, or in post-hearing submissions, were considered abandoned. See Louk v. Barbour County Bd. of Educ., Docket No. 95-01-386 (May 23, 1996).



evaluate students with visual disabilities and completed requirements for permanent certification as a teacher of students with visual disabilities.

I have worked with or supervised many preschoolers and their families through the SKI\*HI program from the original training session in 1984. I received INSITE training from National Trainer Jim Durst and participated as a trainer for the section dealing with hearing impaired in multiply handicapped children. At the School for the Deaf, I utilized the INSITE Curriculum to provide direct services for two children in 1989-1990.

Emphasis added. LII School Ex. 2.

In summary, Grievant simply failed to prove that the selection process was fatally flawed, or that she was the "best qualified" applicant. Grievant also maintained that the posting was flawed. However, this issue is beyond the scope of her grievance, and does not need to be addressed.

In addition to the foregoing narration, it is appropriate to make the following conclusions of law.

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#### **CONCLUSIONS OF LAW**

1. In a nondisciplinary action, Grievant has the burden of proving his case by a preponderance of the evidence. Gwilliam v. Preston County Bd. of Educ., Docket No. 95-39-255 (Dec. 22, 1995).

2. Pursuant to the provisions of W. Va. Code §18A-4-7a, decisions of a county board of education affecting teacher promotions, and the filling of vacant teaching positions must be based primarily upon the applicants' qualifications for the job. Dillon v. Bd. of Educ., 351 S.E.2d 58 (W. Va. 1986).

3. 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, in a manner which is not arbitrary and capricious. Webster County Bd. of Educ. v. Johns, 447 S.E.2d 599 (W.Va. 1994); Dillon v. Bd. of Educ. of County of Wyoming, 351 S.E.2d 58 (W.Va. 1986).

4. W. Va. Code §18A-4-7a, provides, in pertinent part:

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.

5. Grievant failed to prove by a preponderance of the evidence that the selection process was fatally flawed, or that she is entitled to the parent advisor position as a matter of law.

Accordingly, the grievance is **DENIED**.

Any party may appeal this DECISION to the Circuit of Kanawha County or to the Circuit Court of Hampshire 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.

DATED: 10/16/96

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JEFFREY N. WEATHERHOLT  
ADMINISTRATIVE LAW JUDGE