

JANE LONG, .

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Grievant, .

•

v. . Docket No. 95-23-506

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LOGAN COUNTY BOARD OF EDUCATION, .

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Respondent. .

DECISION

This is a grievance by Jane Long (Grievant), currently employed by the Logan County Board of Education (LCBE) as a classroom teacher, challenging the assignment of an allegedly less- qualified teacher to teach an elective course in creative writing at Chapmanville Middle School (CMS) for the 1995-96 school year. This grievance was initiated on September 5, 1995. Following an adverse decision at Level II, Grievant waived Level III in accordance with W. Va. Code § 18-29-4(c) and appealed to Level IV on November 17, 1995. An evidentiary hearing was conducted in this Board's office in Charleston, West Virginia, on March 18, 1996. The parties waived written post-hearing submissions, relying on oral arguments presented at the conclusion of the Level IV hearing. Accordingly, this matter became mature for decision upon receipt of the Level II hearing transcript on March 20, 1996.

The pertinent facts in this grievance are not in controversy. Consequently, the following Findings of Fact are derived from the record developed at Levels II and IV:

FINDINGS OF FACT

1. Grievant is employed by the Logan County Board of Education (LCBE) as a classroom teacher at Chapmanville Middle School (CMS).

2. At the conclusion of the 1994-95 school year, the Language Arts faculty at CMS recommended switching to "block scheduling" whereby English and reading would be combined into a two-hour

class in language arts. This proposal was adopted by CMS Principal Cletis Napier for the 1995-96 school year.

3. The Language Arts faculty further recommended establishing an elective course in creative writing. Grievant and another classroom teacher, Martina Mills, asked to teach the creative writing course.

5. Grievant is certified in Language Arts, 7-12, General and Physical Science, and Counseling. Ms. Mills is certified in Language Arts, the certification required to teach creative writing, as well as in Administration.

6. Grievant's undergraduate education at Marshall College (now Marshall University) between 1955 and 1959, as well as her post-graduate education at Marshall University and the West Virginia College of Graduate Studies, involved courses related to creative writing. Grievant obtained a Bachelor of Arts degree in 1959 with a major in English. Prior to August 1995, Grievant obtained additional training related to creative writing at her own expense. This training included attendance at a workshop conducted by Lewellyn McKernan at West Virginia Wesleyan College in May 1995, the Marshall University Writing Institute held between July and December of 1994, and other seminars and conferences held between 1989 and 1994. See G Exs A & B.

7. CMS Principal Cletis Napier approved the faculty recommendation to offer an elective course in creative writing to ninth grade students and selected Ms. Mills to teach that course for the 1995-96 school year.

8. Prior to the 1995-96 school year, Grievant served as the Chairman of the CMS Language Arts Department. Grievant resigned that position and Martina Mills was selected by Mr. Napier as the new Chairman for the 1995-96 school year.

9. Ms. Mills previously taught creative writing and honors math at Man Junior High School (MJHS) where she served as Chairman of the MJHS Language Arts Department. She has also taught English courses at Southern West Virginia Community and Technical College for seven years.

10. CMS teachers ordinarily teach six hours of class and have a one-hour planning period each day. Due to block scheduling, a teacher with three Language Arts classes and a one-hour planning period would have a full schedule. Creative writing is a one-hour class. Thus, the person assigned to teach creative writing could also teach two classes of Language Arts, have a one-hour planning period, and still require another one-hour assignment to complete her schedule.

11. In selecting Ms. Mills to teach creative writing, Mr. Napier considered that Ms. Mills volunteered to take over the yearbook position, if required, and to assist as an administrator with the lunch program, thereby completing her schedule.

DISCUSSION

In order to prevail on a grievance of this nature, Grievant must prove the allegations in her complaint by a preponderance of the evidence. Williams v. Lincoln County Bd. of Educ., Docket No. 93-22-386 (Mar. 7, 1994); Steele v. Wayne County Bd. of Educ., Docket No. 89-50-260 (Oct. 19, 1989). Grievant alleges that Principal Napier's decision to assign Ms. Mills to teach creative writing for the 1995-96 school year constituted an abuse of his authorized discretion under W. Va. Code § 18A-2-9.

This Grievance Board has previously noted that a teacher with tenured status under W. Va. Code § 18A-2-2 is generally not entitled to be assigned a specific set of duties. Mahon v. Mingo County Bd. of Educ., Docket No. 94-29-305 (Mar. 17, 1995). See Taylor v. Monongalia County Bd. of Educ., Docket No. 92-30-314 (Nov. 30, 1992). Further, under W. Va. Code § 18A-2-9 "the principal shall assume administrative and instructional supervisory responsibility for the planning, management, operation and evaluation of the total educational program of the school or schools to which he is assigned." This Grievance Board has further determined that § 18A-2-9 provides authority for a principal to schedule teachers to teach classes within their areas of certification. Piccirillo v. Brooke County Bd. of Educ., Docket No. 94-05-626 (Dec. 30, 1994). These decisions, including the decision at issue here, are reviewed under an abuse of discretion standard. See Pockl v. Ohio County Bd. of Educ., 406 S.E.2d 687 (W. Va. 1991); Dillon v. Bd. of Educ., 351 S.E.2d 58 (W. Va. 1986); Crawford v. Mercer County Bd. of Educ., Docket No. 94-27-958 (Apr. 13, 1995).

In this case, although Grievant is obviously well-qualified to teach Creative Writing, Grievant's evidence falls well short of showing that Mr. Napier acted arbitrarily or unreasonably in assigning Ms. Mills to teach that particular offering. Not only did Ms. Mills have the requisite certification to teach creative writing, she had experience teaching this course at another school. This was a qualification which Grievant, despite her obvious interest in the subject, and her commendable efforts at self-improvement, lacked. Moreover, Mr. Napier's consideration of additional factors, such as the ability to complete Ms. Mills' schedule with an additional one-hour assignment, was a proper exercise of his authority to manage the school.

Thus, while Grievant is well-qualified to teach a course in creative writing, in selecting a teacher to assign to that class, the principal was not limited solely to comparing their respective credentials. Moreover, even if only their credentials were considered, the fact that Ms. Mills had prior experience inteaching the course at issue, or a similar offering, provides a sufficient basis to survive scrutiny under the arbitrary and capricious standard of review. See Bedford County Memorial Hosp. v. Health & Human Serv., 769 F.2d 1017 (4th Cir. 1985).

In addition to the foregoing discussion, the following Conclu sions of Law are appropriate in this matter:

CONCLUSIONS OF LAW

1. Grievant has the burden of proving each element of a grievance of this nature by a preponderance of the evidence. Williams v. Lincoln County Bd. of Educ., Docket No. 93-22-386 (Mar. 7, 1994); Steele v. Wayne County Bd. of Educ., Docket No. 89-50-260 (Oct. 19, 1989).

2. "Under W. Va. Code § 18A-2-9, a school principal's responsibilities include the assignment of teaching duties." Crawford v. Mercer County Bd. of Educ., Docket No. 94-27-958 (Apr. 13, 1995).

3. A school principal has authority to schedule teachers to teach within their area of certification. See Piccirillo v. Brooke County Bd. of Educ., Docket No. 94-05-626 (Dec. 30, 1994).

4. 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. State ex. rel. Melchiori v. Bd. of Educ., 425 S.E.2d 251 (W. Va. 1992); Dillon v. Bd. of Educ., 351 S.E.2d 58 (W. Va. 1986).

5. Grievant failed to establish that CMS Principal Cletis Napier abused his discretion under W. Va. Code § 18A-2-9 when he assigned another properly certified teacher to teach a ninth grade creative writing course at CMS, rather than Grievant. See Bedford County Memorial Hosp. v. Health & Human Serv., 769 F.2d 1017 (4th Cir. 1985).

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Logan 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