

**SUSAN RUNYON**

**v.**

**DOCKET NO. 95-29-375**

**MINGO COUNTY BOARD OF EDUCATION**

**DECISION**

Grievant Susan Runyon filed two grievances against the Mingo County Board of Education ("MBOE") on or about July 7 and 11, 1995, respectively. She alleges in one a violation of W. Va. Code § 18A- 4-7a, stating three Chapter I Math positions (at Gilbert Middle School, Kermit Middle School and Burch Middle School) for which she applied "were awarded to less senior and less qualified applicants." She seeks as relief that she be awarded one of these positions. She alleges in the other grievance:

I recently discovered that there were at least 7 teachers that only have 1-6 certification that were transfer[r]ed to teach in Middle School. I am certified K-8 and was not considered for one of these positions. I ask to be given a job with the Mingo County Board of Education.

These grievances were consolidated at Level IV by agreement of the parties, and this matter became mature for decision on December 13, 1995, with receipt of Grievant's proposed findings of fact and conclusions of law. ([See footnote 1](#)) The following Findings of Fact are properly made from the Level II and Level IV records.

**Findings of Fact**

1. Grievant was employed by MBOE as a classroom teacher during the 1994-95 school year, and assigned to teach Reading and English at Kermit Junior High. She was placed on the reduction in force (RIF) list in the spring of 1995, and on the preferred recall list. During the 1995-96 school year she was employed as a substitute teacher.
2. MBOE posted three middle school Chapter I ([See footnote 2](#)) Math positions sometime during 1995. ([See footnote 3](#)) The postings stated these were ECIA Math or Chapter I Math positions.
3. The Chapter I Director, Charles Cline, asks that persons placed in these positions hold certification in Math.

4. The successful applicants for these three positions held less seniority than Grievant. All three were certified in Math, either 5-8 or 5-12.
5. Grievant is certified multi-subject K-8, and reading 7-8.
6. If a middle school Chapter I position is not filled with a certified teacher and one applied for the position, MBOE may be cited by the State Department of Education. Bailey v. Mingo County Bd. of Educ., Docket No. 95-29-346 (Feb. 21, 1996); Spaulding v. Mingo County Bd. of Educ., Docket No. 95-29-357 (Jan. 31, 1996).
7. Middle schools in Mingo County serve grades 6 through 8.
8. Riley Browning has more seniority than Grievant, is certified 1-6 and K-12 reading, and was placed in a teaching position at a MBOE middle school in his certification area.
9. Kim Mitchell was placed on the transfer list in the Spring of 1995. She has more seniority than Grievant, is 1-6 certified and was placed in a sixth grade science teaching position at Gilbert Middle School.
10. Luann Lovell has more seniority than Grievant, is certified 1-6 and K-8 reading, was placed on the transfer list in the Spring of 1995, and was placed in a teaching position in her area of certification at Matewan Middle School.
11. Lisa Altizer has more seniority than Grievant, is 1-6 certified, was placed on the transfer list in the Spring of 1995, and was placed in a teaching position in her area of certification at Lenore Middle School.
12. Robert Binion has more seniority than Grievant, is 1-6 certified, was placed on the transfer list in the Spring of 1995, and was placed in a teaching position in his area of certification at Burch Middle School.
13. Arella Cline has more seniority than Grievant, is certified 1-6 and K-12 remedial reading, and was placed in a teaching position in her area of certification at Gilbert Middle School.
14. Barry Baisden has more seniority than Grievant, is 1-6 certified, was placed on the transfer list in the Spring of 1995, and was placed in either a sixth or seventh grade teaching position at a MBOE middle school.

### **Discussion**

With regard to the Chapter I Math positions, the issue in this case has been recently decided by

this Grievance Board in Bailey and Spaulding, supra. Under nearly identical fact patterns, those cases held that MBOE could require that ECIA Chapter I Math positions be filled by Math certified teachers. See also, Cowen v. Harrison County Bd. of Educ., 465 S.E.2d 648, 652 (W. Va. 1995); Dillon v. Bd. of Educ. of County of Wyoming, 351 S.E.2d 58 (W. Va. 1986); Woodson v. Monroe County Bd. of Educ., Docket No. 92-31-282 (Feb. 10, 1993). Under the analysis set forth in Bailey, because Grievant does not possess the Math certification required for the ECIA position, she cannot be awarded the position.

Grievant's other grievance is that MBOE is being inconsistent by requiring a Math certification for some middle school positions, and in other instances placing persons 1-6 certified in middle school positions. Grievant seemed also to argue that a teacher certified only in grades 1-6 could not teach in a middle school. [\(See footnote 4\)](#) MBOE argued it had not abused its substantial discretion, and it is correct that this is the applicable standard. Cowen supra; Dillon supra.

The evidence presented by Grievant was limited to a recitation of the certifications and seniority of various teachers. This evidence does nothing to demonstrate why MBOE should not allow teachers certified 1-6 to teach sixth grade in a middle school, and is therefore insufficient to establish that MBOE abused its substantial discretion in choosing not to require certification in grades 6-8 for sixth grade teaching positions at middle schools.

The evidence presented further fails to establish any inconsistency. The Chapter I positions are distinctly different from other middle school positions, and it is not unreasonable for MBOE to follow a different procedure for filling these particular positions. If MBOE were requiring the same type of certification for all middle school positions as it does Chapter I positions, it would require subject matter certification for all middle school positions, and Grievant would then be minimally qualified to teach only reading 7-8 at the middle school level.

Finally, Grievant presented no evidence from which a conclusion can be reached that she would be entitled to Mr. Baisden's position. First, Grievant did not prove Mr. Baisden was in fact teaching seventh grade. Second, if he were teaching seventh grade, the evidence does not indicate whether Mr. Baisden received this position as a result of the RIF and transfer or as a result of a posting. This information is key to a ruling on the issue presented by Grievant.

This Discussion will be supplemented by the following Conclusions of Law.

### **Conclusions of Law**

1. The burden of proof is upon Grievant to establish her allegations by a preponderance of the evidence. Canterbury v. Putnam County Bd. of Educ., Docket No. 40-86-325-1 (Jan. 28, 1987).

2. "[C]ounty boards of education have substantial discretion in matters relating to hiring, assignment, transfer, and promotion of school personnel. However, that discretion must be tempered in a manner that is reasonably exercised, in the best interest of the schools, and in a manner which is not arbitrary and capricious." Cowen v. Harrison County Bd. of Educ., 465 S.E.2d 648, 652 (W. Va. 1995), citing Syl. Pt. 3, Dillon v. Bd. of Educ. of County of Wyoming, 351 S.E.2d 58 (W. Va. 1986).

3. The Dillon standard cited in Conclusion of Law Number 3 extends to "matters involving curricular programs and the qualification and placement of personnel implementing those programs." Id.

4. Grievant failed to prove MBOE abused its substantial discretion.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Mingo 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.

**BRENDA L. GOULD**

**Administrative Law Judge**

**Dated: May 24, 1996**

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[Footnote: 1](#)

*The grievances were denied at Level I, and at Level II on August 17, 1995, following a hearing held on August 10, 1995. Level III was waived by Grievant to Level IV on August 23, 1995. The parties supplemented the Level II record at a Level IV hearing held November 20, 1995. Respondent declined to submit post-hearing written argument.*

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[Footnote: 2](#)

*This refers to the federally-funded program to improve students' basic skills.*

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[Footnote: 3](#)

*The parties did not specify the date of the posting, but apparently it was after Grievant was placed on the preferred recall list.*

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[Footnote: 4](#)

*Although one or more of the middle school positions filled by persons certified 1-6 were positions which were posted, Grievant did not argue she was more qualified under the W. Va. Code § 18A-4- 7a factors for selection of a classroom teacher than any of these persons, nor did she present evidence from which such a conclusion could be drawn. Apparently, those positions not posted were filled as the result of a transfer or transfers. All the persons noted by Grievant had more seniority than she, and so long as they were certified for the positions, they were properly placed in the positions rather than Grievant. W. Va. Code § 18A-4-7a.*