BOB ALLEN,

Grievant,

v. **Docket No. 96-48-491**

TYLER COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Grievant, Bob Allen, is employed as a vocational agriculture teacher at Tyler Consolidated High School. He filed this grievance alleging that Respondent Tyler County Board of Education (Board) erred in its selection of a mentor teacher for the newly hired vocational agriculture teacher. Respondent contends that under Tyler County Policy GAM, titled Beginning Educator Internship Program, the selected applicant, a social studies teacher, was more qualified than Grievant. Adverse decisions at levels one and two were rendered (September 27, 1996, and November 6, 1996, respectively). Grievant appealed to level four on or about November 14, 1996. After some procedural matters, a level four hearing was held on February 20, 1997. The case became mature for decision with receipt of the parties' proposed findings of fact and conclusions of law on March 21, 1997.

Background

At the beginning of the 1996-97 school year, Respondent hired Leon Ammons, a substitute, to teach vocational agriculture at Tyler Consolidated High School. As a new teacher, he was eligible for a beginning teaching program authorized by Tyler County. Under this program, an experienced teacher is appointed to assist the beginning teacher. He is to observe, advise and ultimately evaluate the new instructor. The Tyler County program is similar to the state beginning teacher mentor program authorized under W.Va. Code § 18A-3-2b. (See footnote 1) The main difference is that the state program is directed toward, “every person to whom a professional teaching certificate is awarded after the first day of January, one thousand nine hundred ninety two.” (See footnote 2) In this case, the state program was not used because Mr. Ammons was a substitute teacher, and did not have the necessary teaching certificate to qualify under Paragraph (a) of the above cited statute and administrative rule. The mentor position pays $600.00. No state funds were used.

Grievant, a vocational agriculture teacher with 16 years experience, expressed interest in the position of mentor for Mr. Ammons. Chosen instead was Larry Ritchie, a social studies teacher, with four years teaching experience. Grievant takes exception to this decision because his area, vocational agriculture, is the same as Mr. Ammons. He feels that this makes him more qualified than Mr. Ritchie. He also alleges that the Tyler County Policy GAM was not followed in the process of selecting the mentor. Furthermore, Grievant argues that Policy GAM is inconsistent with W.Va. Code §18A-3-2b(a)(1) and is therefore flawed.

Testimony and exhibits at the Level II hearing of October 22, 1996, indicated that thedecision to select Mr. Ritchie was based upon the recommendation of the two Principals of the Tyler Consolidated High School. Their recommendation was submitted to Susan Boyles, the Director of Curriculum and Instruction for Tyler County Schools. She in turn approved the recommendation, passed it on to Superintendent Sandy Weese, who in turn presented it to the Board for a final decision.

Principal Jimmy Wyatt testified at Level II and Level IV hearings. He related that he and Principal Heinlein arrived at their decision regarding Mr. Ritchie independently. Mr. Wyatt said that he regarded Mr. Ritchie to be superior, particularly in the area of discipline. He was able to handle discipline in his classroom without resorting to assistance from the Principal's office. In contrast, at Level IV, Mr. Wyatt testified to a letter of reprimand directed to Grievant from Unit Principal Jeff T. Hoover and Dean of Academics Charles K. Heinlein of Tyler Consolidated High School. (Level IV, Respondent's Ex. No. 1). It concerned a physical altercation instituted by Grievant against a student who was apparently testing Grievant's patience. Grievant's conduct was considered unprofessional, showing a lack of control over his emotions. Otherwise, Grievant was described as a good teacher but that Mr. Ritchie was, in this instance, better.

At the Level IV hearing, Mr. Wyatt testified that Grievant's leadership, interpersonal skills, and community involvement were not as good as Mr. Ritchie's. His opinions were based on personal observations, not upon formal evaluations, and represent his professional judgement.

The major issue raised by Grievant is that Mr. Ritchie does not teach the same or similar subject and grade level. At the Level II hearing, Grievant placed into evidence a three page document dated April 1, 1996, and entitled the “Beginning Educator Internship Program”. (Level II, Grievant's Ex. No. 3). It is Tyler County's beginning internship program. The first page appears to be a statement of

policy or goals, as opposed to the second and third pages which are headed"Administrative Procedures". Paragraph two of page one, provides the makeup of the professional support team in the Beginning Internship Program. Within that paragraph, Item (3) states that one member shall be, "an experienced classroom teacher at the same school who teaches the same or similar subject and grade level, when possible, (emphasis added) and who shall serve as a mentor for the beginning teacher". It should be noted that this item appears within the context of policy or goals and is not placed within that of administrative procedures. At the foot of page one, reference is made to State Board Policy 5900 (Policy 5900) and the School Laws of West Virginia, §18A-3-2b. There is much similarity between Policy 5900 and the Tyler County Beginning Internship Program.

There are also differences. The Tyler County program, although based upon state policy, is somewhat different. The support team for the Tyler County program is listed on a page called, "Tyler County Policy: GAM". The undersigned could find nothing in the record defining "GAM". However, from its placement at the very beginning of the Program, it is consistent with a mission statement or statement of goals and could mean goals and mission. The second page of the Program is entitled, "Administrative Procedures". The third page has a paragraph which describes the qualifications of the mentor. There was no requirement among these qualifications that the mentor teach the same or similar subject and grade level.

The State Beginning Educator Internship Program (Policy 5900) is arranged differently from Tyler County GAM. It lists the makeup of the professional support team not as policy, but as Requirement One, from a list of nine program requirements. As part of Requirement One is the direction that the mentor be, "an experienced classroom teacher at the school who teaches the same or similar subject and grade level as the beginning teacher, when possible." (emphasis added)(See Level IV, Bd. Ex. # 4). This language is identical to Tyler County Policy. Policy 5900 has no other mentor qualifications. The facts of this grievance, reveal clearly that Mr. Ritchie and Mr. Ammons do not teach the same or similar subject and grade level. Respondent opted to choose whom it thought was the better candidate, whom it thought would be the better influence upon the new teacher. "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." Dillon v. Board of Educ., 177 W.Va. 145, 351 S.E.2d 58 (1986).

The testimony indicates that the decision of the Respondent to hire Mr. Ritchie was not arbitrary and capricious. The selection was made after an examination of the qualifications of each candidate. Their relative strengths and weaknesses were compared and contrasted. Mr. Ritchie was selected because he was regarded as the best for this position. The decision was based only upon qualifications. To select a mentor from within the same or similar subject matter was desirable, but it was not a qualification and was to be achieved only “whenever possible”. This was interpreted by Respondent to be when the best qualified candidate is also of the same or similar subject. (Level IV testimony, Jimmy Wyatt). Conceivably, if the candidates were equal in qualifications, the mentorship would be awarded to the one who was of the same or similar subject matter.

Grievant also alleged that Respondent's Beginning Teacher Intern Program is flawed in that it deviates from the requirements of W.Va. Code §18A-3-2b. No evidence was offered to show that the Respondent's program was required to conform to this statute. Although similar in goals, the Tyler County program was neither instituted nor created under the authority of the above statute. No state monies were used. County funds compensated the mentor.

Consistent with the foregoing, the following Findings of Fact and Conclusions of Law are appropriate.

FINDINGS OF FACT

1. Grievant is employed by Respondent as a vocational agriculture teacher at Tyler County Consolidated High School.

2. Respondent had in place a Beginning Educator Internship Program, under which experienced teachers were selected to assist, evaluate, and otherwise mentor a new, inexperienced teacher.

3. The Beginning Education Internship Program was separate from, but similar to, the state program authorized by W. Va. Code §18A-3-2b.

4. A main difference between the two programs was that the state program required that the new teacher have a teaching certificate. The Tyler County program did not.

5. In the state program, it was a requirement that the mentor teach the same or similar subject matter as the new teacher.

6. In the Tyler County program, it was stated in the form of a goal that the mentor teach the

same or similar subject matter as the new teacher, but it was not one of the qualifications specified for the position.

7. Both programs compensated the mentor in the amount of $600.00, the Tyler County program using its own county funds.

8. At the beginning of the 1996-1997 school year, Leon Ammons, a new substitute vocational agriculture teacher at Tyler Consolidated High School was selected to be mentored as part of the Tyler County program. Mr. Ammons did not have a teacher's certificate and was not eligible for the state program.

9. Grievant expressed interest in the mentor position, however, Larry Ritchie, a social studies teacher was selected. 10. The decision to recommend Mr. Ritchie was made independently by both principals at Tyler County Consolidated High School after a careful examination of both candidates' qualifications.

CONCLUSIONS OF LAW

1. In a nondisciplinary action, Grievant has the burden of proving his case by a preponderance of the evidence. Procedural Rules of the W.Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 §4.19 (1996); Gwilliam v. Preston County Bd. of Educ.. Docket No. 95-39-255 (December 22, 1995).

2. Given that the beginning teacher, Mr. Ammons, was serving as a substitute and did not possess the necessary teaching certificate, Respondent was not required to comply with the provisions of W.Va. Code §18A-3-2b and State Policy 5900 in selecting a mentor.

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 interest of the schools, and in a manner which is not arbitrary and capricious. Dillon v. Board of Educ., 177 W.Va. 145, 351 S.E.2d 58 (1986).

3. Respondent's decision to select Larry Ritchie to mentor Leon Ammons was made after an examination of the qualifications of Grievant and Mr. Ritchie, and was not arbitrary and capricious.

Accordingly, this grievance is **DENIED**. Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Tyler 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.

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JAMES D. TERRY

Administrative Law Judge

DATE: October 27, 1997

Footnote: 1

See Level IV, Respondent's Ex. Nos. 3, the county guideline and 4, Policy 5900.

Footnote: 2

Level IV, Respondent's Ex. No. 4 is the legislative rule designed to interpret W.Va. Code §18A-3-2b.