FRIEDA OWEN,

Grievant,

v. **DOCKET NO. 97-54-557**

WOOD COUNTY BOARD OF EDUCATION,

Respondent,

and

J. TIMOTHY SWARR,

Intervenor.

DECISION

This grievance was initiated by Grievant Frieda Owen against Respondent Wood County Board of Education, alleging a violation of W. Va. Code § 18A-4-7a occurred when Respondent filled the newly created position of Director of Curriculum and Instruction for Secondary Schools. Grievant believes she is more qualified than the successful applicant, Intervenor J. Timothy Swarr, but was not selected because of her age and favoritism. She also alleged a flaw in the selection process. Grievant requested instatement into the position and backpay. (See footnote 1) The following Findings of Fact are made based upon the evidence presented at Levels II and IV.

Findings of Fact

1. Grievant is employed by the Wood County Board of Education ("WBOE") as Supervisor for Secondary English Language Arts, Foreign Language and Gifted Education, and as principal of Rayon Center, the center for intermediate gifted students. In her Supervisor position, she has worked with English Language Arts grades seven through twelve, foreign language grades six through twelve, and gifted education grades one through twelve. She has been employed by WBOE for 25 years, and is 67 years old.

2. Prior to his selection for the posted position at issue, Intervenor served as Supervisor of the

Title I Federal Entitlement Program. He is in his early fifties, and has been employed 29 years by WBOE, with 23 of those years being in administration. He served nine years as an assistant principal, six years as a junior high school principal, six years as a high school principal, and two years as the Title I Supervisor. He taught social studies, health, and physical education six years, and was a coach.

3. As part of a reorganization of the Central Office, on July 11, 1997, WBOE posted the newly created position of Director of Curriculum and Instruction for Secondary Schools. The position was reposted on July 25, 1997, due to an error in the first posting. The posting stated as the job goal:

> To perform the duties of the Director of Curriculum and Instruction for Secondary Schools as prescribed by the Assistant Superintendent for Curriculum and Instruction as related to the development, management, and operation of the curriculum and instruction in the county's secondary schools.

4. The posting listed 11 "Major Job Functions and Expectations," as follows:

> 1. Provides leadership and direction in the development, implementation, and coordination of secondary schools' curriculum and instruction.
>
> 2. Keeps current of developments in curriculum and instruction, and provides leadership in determining their appropriateness for inclusion in county secondary educational program.
>
> 3. Directs, supervises, and evaluates the work of the secondary school principals.
>
> 4. Assists in the development and coordination of sections of the budget that pertain to curriculum and instruction in the secondary schools.
>
> 5. Provides leadership for the formation and evaluation of curriculum and instructional services in the secondary schools.
>
> 6. Effectively handles concerns and complaints received by the Board of Education and central office regarding the secondary schools' curriculum and instruction.

7. Demonstrates to an exceptional degree performance responsibilities and performance characteristics in daily job duties.

8. Works with the central office personnel, principals, and teacher committees in organizing and coordinating grade level and departmental meetings in order to affect horizontal and vertical continuity and articulation of the instructional programs in the schools of the county.

9. Assumes the responsibility for reviewing and evaluating results of county and state testing programs and for other evaluative measures used by the secondary schools.

10. Assumes a leadership role in developing and implementing courses, practices, and procedures mandated in the secondary schools by the legislature, state board of education, and the local board of education.

11. Performs such other tasks and assumes such other responsibilities as the immediate supervisor may assign from time to time.

5. In the Supervisor position Grievant has held for 18 years, she performs 10 of the 11 "Major Job Functions and Expectations" listed in the posting, as they relate to English Language Arts. She does not direct, supervise or evaluate the work of secondary school principals, and has never done so. Grievant's position will be eliminated in the reorganization.

6. Grievant, Intervenor, and four other persons applied for the posted position.

7. At Superintendent Daniel Curry's direction, a Selection Committee was appointed by Assistant Superintendent David E. White to review the applications and make a recommendation to him. The Selection Committee members were Roy McCase, Parkersburg South High School's principal, a junior high school principal (See footnote 2), two teachers, Bob Cutlip and John Coe, and Yvonne Santine, the Director of Special Education.

8. Mr. White wanted a high school principal to serve on the Selection Committee, and there were three from which to choose. He selected Mr. McCase because one of the three high school principals was out of town, one had been ill and he did not want to impose any additional burden on him, and that left Mr. McCase. He also did not want to choose the principal who had been ill, because he was on WBOE's "hit list." (See footnote 3)

9. Mr. McCase was the assistant principal at Parkersburg South High School at the time Intervenor was principal there, and developed a close relationship with him. 10. One applicant was not interviewed. That applicant did not hold the required certification. The remaining applicants were interviewed by the Selection Committee, and Assistant Superintendent White participated in the interviews. Each member of the Selection Committee asked each applicant questions, and the applicants interviewed were asked the same questions.

11. The Selection Committee reviewed the application materials and prepared a matrix to score the applicants in the statutory criteria of certification, experience, course work and/or degree level and degree level generally, academic achievement, relevant specialized training, past performance evaluations, and other measures or indicators. Seniority was not considered.

12. The Selection Committee met on July 23, 1997, and decided to consider only secondary schools leadership and management experience in evaluating applicants in the category total experience.

13. In evaluating the candidates in the category relevant specialized training, the Selection Committee decided on July 23, 1997, to give special consideration to training in secondary schools leadership and administration, budgeting, finances, technology, the West Virginia Management Information System ("WVEIS"), secondary schools scheduling, and secondary schools curriculum and instruction. Secondary schools leadership and administration training included supervisory work at the secondary level, work as a principal and assistant principal, and work as a department chair. Budgetary and financial training consisted of training required by State Board policy related to the budgetary accounting process, and provided by WBOE to all county principals. WVEIS training related to training in use of the WVEIS technology to access student information. Secondary schools scheduling training was considered to be experience as a teacher and principal, and college courses. Secondary schools curriculum and instruction training was considered toinclude attending meetings, taking classes, and work experience. The posting did not list any particular training which was required.

14. The Director of Curriculum and Instruction for the Secondary Schools will be responsible for reviewing, supervising and directing the schedules of each of the six secondary schools in Wood County, to make sure they meet minimum requirements, and for working with the Board of Education and community in scheduling.

15. The Selection Committee decided that Intervenor prevailed in the categories of relevant specialized training, relevant experience, and other measures or indicators. The Committee scored Grievant higher than Intervenor in the category degree level. Grievant, Intervenor, and three of the other applicants tied in the remaining categories. The applicant who did not hold the required certification was not rated on the matrix.

16. The Selection Committee considered Intervenor's specialized training to be his experience as a principal, and the training received as a principal, such as principals' meetings and staff development sessions. Intervenor's experience as a principal was considered in applying both the criterion relevant experience and the criterion relevant specialized training.

17. The Selection Committee considered Grievant's Supervisor experience to be relevant specialized training.

18. The Selection Committee decided if there was no clear winner in each category, it would weight the categories by assigning a half point each to certification, degree level, academic achievement, and evaluations, four points to total experience, seven points to specialized training, and twelve points to other measures or indicators. The Committee decided that because Intervenor prevailed in three of the categories, while Grievant prevailed in only one, and no other candidateprevailed in any category, Intervenor was clearly the best qualified candidate for the position, and did not weight the categories. Assistant Superintendent White agreed with the Selection Committee's decision, and passed the recommendation on to Superintendent Curry.

19. Superintendent Curry recommended Intervenor as the best candidate for this position, and WBOE approved his recommendation.

20. Assistant Superintendent White thought Intervenor's experience as a principal made him a better qualified candidate than Grievant. This was also important to the entire Selection Committee. The posting did not require that the successful applicant have this experience. Assistant Superintendent White viewed the primary function of the posted position as providing leadership and management to the six secondary schools in Wood County.

21. Grievant has a Ph.D. in English education. Intervenor holds a Master's Degree in Secondary Classroom Teaching, and has acquired an additional 49 course hours.

22. Grievant worked 15 years as a college instructor, three years as Director of Community Relations for Owensboro City Schools in Kentucky, 14 years as a teacher, 18 years as Supervisor of

Secondary English Language Arts, six years as chairwoman of the English Department at Parkersburg South High School, and three years as Principal of Rayon Center. She has no experience as a secondary school principal.

23. As chairwoman of the English Department at Parkersburg South High School, Grievant had duties related to curriculum and instruction. She worked with the department each year to determine what courses would be taught during the second semester, the goals and objectives for each course, and the resources which would be purchased for instruction in each course. 24. Grievant has received training in administrative leadership, curriculum and instruction, assessment and state and county testing, and staff development and instructional services, over a number of years. Her resume lists 34 workshops or training sessions attended as specialized training. In addition, she has published five articles in English journals. She has made 21 state or national presentations on a number of topics.

25. In her Supervisor position, Grievant has been responsible for coordinating curriculum across the county in her subject areas, and has worked with secondary principals in doing so, and she has worked with the secondary principals on accreditation. This has required her to be the lead person on compliance with standards and policy on curriculum, and to tactfully assure compliance. She also has worked on developing curriculum, has been involved in developing instructional techniques to help teachers teach, and has assisted teachers in staff development. She has been responsible for making sure that curriculum and instruction in her areas of responsibility met all state guidelines, and that they met the needs of the students of Wood County and the policies of Wood County. She also has been involved in the selection of resources and materials for curriculum and instruction, supervising teachers, and analysis of student achievement. She has been involved in the development of a curriculum guide, decisions about elective courses to be offered, and decisions about levels of foreign language to be offered.

26. In her capacity as Principal, Grievant also has worked with the curriculum for the Rayon Center.

27. Grievant is the advanced placement coordinator for Wood County, which is a decision-making position. She works with principals to determine what advanced placement honors courses will be offered in the various schools, reports to the State Department of Education on thenumber of students involved in advanced placement, and looks at staff development for teachers in that area.

28. Much of the development of curriculum occurs at the Central Office, not at the principal level, because it involves the entire county. Some curriculum development occurs at the principal level in the development of electives, however, if the electives are in the area of secondary English Language Arts, Foreign Language, or Gifted Education, development of curriculum would have been Grievant's responsibility in her position as Supervisor of those areas. Implementation of curriculum is shared by the principals and Central Office personnel. Coordination of curriculum begins at the Central Office, but involves the cooperation of principals.

29. Grievant has been involved in forming advanced placement and foreign language courses. She has evaluated textbook resources, technology materials and resource needs, and staffing needs.

30. Grievant keeps current on developments in curriculum and instruction, has been active in state and national organizations in her subject areas of responsibility, and has attended conferences in her subject areas. She is past president of the English Language Arts Council, and served on the National Committee on Teacher Preparation, where she was involved as both an editor and chapter writer for the national standards which will be used by accreditation agencies in the future.

31. Grievant's research for her doctorate, which was earned in the last decade, involved curriculum and instruction. Intervenor has 24 graduate hours in curriculum and instruction.

32. In her Supervisor position, Grievant has worked with Central Office personnel and teacher committees in organizing and coordinating grade level and departmental meetings in orderto effect horizontal and vertical continuity and articulation of instructional programs in the schools of the county.

33. Grievant has supervised and evaluated elementary and foreign language teachers and service personnel.

34. Grievant has reviewed and evaluated county and state testing programs during her entire tenure as a WBOE employee. She assisted in developing the format for in-depth analysis, and she has been working with SAT 9, a new test. She has worked with writing assessment since its inception, and has received training in holistic scoring of the assessment. She received training in norm reference testing, criteria reference testing, and performance or ulterior assessments.

35. Grievant is Wood County's deputy coordinator for accreditation. In this capacity, she has conducted staff meetings, principals' meetings, and training for accreditation, and has worked directly with schools on specific matters of compliance. The coordinators for accreditation in Wood County

review scheduling to assure minimum requirements are met.

36. Grievant has experience with school and department budgets, gifted education funds, and state and federal grants. She has had to manage funds and prioritize expenditures. She has written and directed several grants.

37. Grievant has experience in handling complaints, both in her Supervisor position and her principal position.

38. Intervenor has 21 years of experience in curriculum and instruction in his roles of principal and assistant principal, and also developed curriculum and instruction techniques in assisting schools to develop Title I plans the last two years. Directing and developing curriculuminstruction is a secondary principal's major function. Intervenor also served as chairman of the curriculum team at Parkersburg South High School.

39. Intervenor has handled many complaints about curriculum and instruction.

40. Intervenor has 12 years of experience in directing and evaluating assistant principals. He has no experience in directing or evaluating principals.

41. In his Title I Supervisor position, Intervenor worked with nine to 13 elementary schools and one junior high school.

42. Intervenor attended the Principal's Academy in 1996, three Principal's seminars, strategic planning training, evaluation training for administrators, Senate Bill 300 training regarding accreditation, testing, curriculum and scheduling, and institutes on management techniques, technology and data management. Grievant has likewise attended all this training, except the strategic planning training.

43. Both Grievant and Intervenor had the budgetary and financial training provided by WBOE to principals.

44. Intervenor knew when the position would be posted, and passed this information on to Grievant.

45. Prior to Intervenor's selection, Assistant Superintendent White had heard a rumor that the WBOE members wanted Intervenor to fill the posted position at issue.

46. Grievant was well qualified for the posted position.

Discussion

Grievant bears the burden of proving each element of her grievance by a preponderance of the evidence. Conner v. Mingo County Bd. of Educ., Docket No. 95-29-476 (Mar. 28, 1996). Inthis case, Grievant bears a heavy burden, as the selection process for filling an administrative position is governed by the "first set of factors" set forth in W. Va. Code § 18A-4-7a, which 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. . . . 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, article two of this chapter; and other measures or indicators upon which the relative qualifications of the applicant may fairly be judged.

While each of these factors must be considered, this Code Section permits county boards of education to determine the weight to be applied to each factor when filling an administrative position, so long as this does not result in an abuse of discretion. Thus, a county board of education may determine that "other measures or indicators" is the most important factor. Baker v. Lincoln County Bd. of Educ., Docket No. 97-22-482 (Mar. 5, 1998).

> All that Code §18A-4-7a requires when a decision concerning the hiring [for an administrative position] is made is that the decision is the result of a review of the credentials of the candidates in relation to the seven factors set forth. Once that review is completed, the Board may hire any candidate based solely upon the credentials it feels are of most importance. An applicant could "win" four of the seven "factors" and still not be entitled to the position based upon the Board's discretion to hire the candidate it feels has the highest qualifications. Again, a board is free to give whatever weight it deems proper to various credentials of the candidates and because one of the factors is "other measures or indicators," it is extremely difficult to prove that a decision is based upon improper credentials or consideration of such.

Harper v. Mingo County Bd. of Educ., Docket No. 93-29-064 (Sept. 27, 1993). 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., 186 W. Va. 267, 412 S.E.2d 265 (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 her judgment for that of the board of education. See generally, Harrison v. Ginsberg, 286 S.E.2d 276 (W. Va. 1982). The undersigned cannot perform the role of a "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, supra. 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 problem, explained its 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).

Grievant argued that the matrix did not accurately reflect the candidates' specialized training or experience. Grievant argued she should have received more credit than Intervenor in these categories, as she had listed many relevant workshops on her resume, and the Selection Committee erred in failing to consider her six years of experience as a department chair. Respondent argued Grievant could not raise this argument in her Level IV written argument, as she had not noted this challenge on her grievance form, and had not raised the argument at Level II. Respondent acknowledged, however, that Grievant had presented evidence in support of these arguments at Level II, and did not indicate a need to take additional evidence on these matters. Grievant deniedthat these arguments were not raised at Level II. Respondent was allowed to respond, in writing, to Grievant's Level IV written argument.

W. Va. Code §§ 18-29-3(j) and (k) limit a grievant's ability to change her grievance, providing as follows:

> (j) Once a grievance has been filed, supportive or corroborative evidence may be presented at any conference or hearing conducted pursuant to the provisions of this article. Whether evidence substantially alters the original grievance and renders it a different grievance is within the discretion of the grievance evaluator at the level wherein the new evidence is presented. If the grievance evaluator rules that the evidence renders it a different grievance, the party offering the evidence may withdraw same; the parties may consent to such evidence, or the grievance evaluator may decide to hear the evidence or rule that the grievant must file a new grievance. The time limitations for filing the new grievance shall be measured from the date of such ruling.

> (k) Any change in the relief sought by the grievant shall be consented to by all parties or may be granted at level four within the discretion of the hearing examiner.

Grievant's arguments do not change the grievance or the relief sought. She is and always has been grieving her non-selection for the same position, and seeking instatement into the position. A grievant is not required to identify each argument she intends to make in her statement of grievance. In many

instances, a grievant will not know what arguments can be made until evidence is presented to clarify exactly what has occurred. However, in this case, Grievant's statement of grievance includes that she "is more qualified in terms of relevant education, qualifications and experience than Mr. Swarr". This was sufficient to place Respondent on notice of Grievant's argument. Further, Respondent was allowed to respond to what it alleges is a new argument, and did not indicate a need to place additional evidence in the record. There is no indication that Respondent was prejudiced in any way. Respondent's argument is rejected. Grievant proved she should have been credited with her experience as a department chair in the Selection Committee's assessment of the statutory criterion relevant experience. In this position she gained experience in curriculum and instruction, which would be relevant to the posted position, as well as secondary schools leadership experience. Grievant's six years as a department chair, when added to her 18 years as an administrator, gives her one more year of relevant experience than Intervenor. While it may not be appropriate to credit her with six full years of experience, it likewise would not be appropriate to credit Intervenor with two full years of experience in secondary leadership and management for the period he has served as Title I Director, as most of the schools he dealt with were not secondary schools.

Grievant also proved the Selection Committee improperly evaluated the criterion relevant specialized training by considering the applicants' work experience to be specialized training. This Grievance Board has previously stated that the criterion relevant specialized training cannot be used as a catch-all, so that applicants can count their certification or their education twice. Hall v. Mercer County Bd. of Educ., Docket No. 96-27-175 (Apr. 30, 1997); Monk v. Mercer County Bd. of Educ., Docket No. 95-27-245 (Sept. 28, 1995). The same is true here. The statute lists experience and relevant specialized training as two separate criteria which must be evaluated. To count the very same experience in both criteria effectively eliminates one of the criteria.

Grievant also argued W. Va. Code § 18A-4-7a required the relevant specialized training which would be considered to be listed in the job description. While Grievant is correct that this requirement is found in that Code Section, it is applicable only when applying the second set of factors, and is not applicable to administrative positions. Younger v. Marshall County Bd. of Educ., Docket No. 97-25-432 (May 13, 1998). Grievant has proven WBOE violated W. Va. Code § 18A-4-7a in assessing the statutory criteria relevant experience and relevant specialized training. It is clear Grievant should have prevailed in the criterion relevant specialized training. It is not so clear whether Grievant should

have prevailed in the criterion relevant experience; however, if she did prevail in this category, applying the point system developed by the Selection Committee as discussed in the Findings of Fact, Grievant would have been the Committee's recommendation for the posted position.

Grievant alleged she was unlawfully discriminated against because of her age, in violation of W. Va. Code §§ 18-29-2(m) and 5-11-1, et seq. (the Human Rights Act), and the federal Age Discrimination in Employment Act, 29 U.S.C. §§ 621, et seq. ("ADEA"). "This Grievance Board does not have authority to determine liability for claims that arise under the West Virginia Human Rights Act . . .. Nevertheless, the Grievance Board's authority to provide relief to employees for `discrimination,' `favoritism,' and `harassment,' as those terms are defined in W. Va. Code § [18-29-2], includes jurisdiction to remedy discrimination that would also violate the Human Rights Act." Bowman v. W. Va. Educ. Broadcasting Auth., Docket No. 96-EBA-464 (July 3, 1997).

W. Va. Code § 18-29-2(m) defines discrimination, for purposes of the grievance procedure, as:

> any differences in the treatment of employees unless such differences are related to the actual job responsibilities of the employees or agreed to in writing by the employees.

This definition encompasses all types of discrimination, including discrimination based upon age. It is not necessary to analyze Grievant's claim under either under the Human Rights Act or the ADEA, as such claims are subsumed by § 18-29-2(m). See Vest v. Bd. of Educ., 193 W. Va. 222, 455 S.E.2d 781 (1995); Hendricks v. W. Va. Dept. of Tax and Revenue, Docket No. 96-T&R-215(Sept. 24, 1996); and Aglinsky v. Bd. of Trustees, W. Va. Univ., Docket No. 95-BOT-387 (Jan. 31, 1995).

W. Va. Code § 18-29-2(o) defines favoritism as:

> unfair treatment of an employee as demonstrated by preferential, exceptional or advantageous treatment of another or other employees.

A grievant alleging discrimination or favoritism must establish a prima facie case by demonstrating:

> (a) that he is similarly situated in a pertinent way, to one or more other employee(s);

> (b) that he has, to his detriment, been treated by his employer in a manner that the other employee(s) has/have not, in a significant particular;

and,

(c) that such differences were unrelated to actual job responsibilities of the grievant and/or the other employee(s), and were not agreed to by the grievant in writing.

Robert Ridinger, et al., v. Hancock County Bd. of Educ., Docket No. 97-15-452 (Mar. 31, 1998); West v. Putnam County Bd. of Educ., Docket No. 97-40-524 (Mar. 20, 1998); Steele, et al., v. Wayne County Bd. of Educ., Docket No. 89-50-260 (Oct. 19, 1989).

Once a prima facie case has been established, a presumption exists, which the employer may rebut by demonstrating a "legitimate, nondiscriminatory reason" for its action. Grievant may still prevail by establishing that the rationale given by the employer is "mere pretext". Steele, supra.

Grievant asserted that because she was better qualified than Intervenor, she should have been selected; and since she was not, this proved her claim of discrimination. Grievant was treated exactly the same way as all other applicants. She was interviewed and asked the same questions, and evaluated in the same areas as the other candidates. The fact that she was not selected is not sufficient to meet her burden of proving discrimination. In support of her allegation of favoritism, Grievant pointed out that Mr. McCase's relationship with Intervenor would make him biased. While another person would have been a better choice, there was no evidence that Mr. McCase influenced any other member of the Selection Committee. As the Committee's vote for Intervenor was unanimous, Mr. McCase's vote alone is not determinative.

Grievant also argued that Intervenor had inside knowledge of when the position would be posted, and that WBOE favored Intervenor. Although Intervenor knew when the position would be posted, Grievant did not demonstrate this had given him an unfair advantage. Likewise, although the rumor was that WBOE favored Intervenor for the posted position, Grievant was evaluated in exactly the same manner as the other applicants. The problem lies in the method by which all candidates were evaluated.

Grievant pointed out that Assistant Superintendent White decided how to evaluate the candidates after applications had already been submitted following the first posting. Thus, he had the opportunity to skew the ratings to select the applicant he preferred. The record reflects that the Selection Committee made this decision, not Assistant Superintendent White. Nonetheless, this decision did occur after at least some applications had been received. It is curious that WBOE evaluated the specialized training criterion quite differently when it selected F. Gale Hammett over Grievant in this reorganization for the newly created position of Assistant Superintendent, Pupil/Personnel Services. The Screening Committee in that selection process decided that it could not verify the content of the

workshops and such listed by the applicants, and simply gave each applicant credit for having specialized training, and did not attempt to decide which applicant had the most specialized training. See Owen v. Wood County Bd. of Educ., Docket No. 97-54-537 (May18, 1998). While the statute does not require that the applicants be rated in the amount of relevant specialized training each has, nor does it preclude this, to switch back and forth in the very same summer gives the appearance that the evaluation method chosen depends upon who the candidates are, and who WBOE wishes to select. It is also curious that the Selection Committee and Assistant Superintendent White placed so much emphasis on experience as a principal, when the job goal focuses on "development, management, and operation of the curriculum and instruction in the county's secondary schools," which is the area in which Grievant's qualifications clearly exceed Intervenor's.

Grievant has made a prima facie case of preferential or advantageous treatment of Intervenor, in that the manner in which the statutory factors were applied was skewed in favor of Intervenor. Respondent did not rebut this. This favoritism manifested itself in the flaws in the selection process previously discussed. The appropriate remedy is to require a reevaluation of the candidates.

The following Conclusions of Law support the Decision reached.

Conclusions of Law

1. Grievant bears the burden of proving each element of her grievance by a preponderance of the evidence. Conner v. Mingo County Bd. of Educ., Docket No. 95-29-476 (Mar. 28, 1996).

2. County boards of education have substantial discretion in matters relating to the assignment of school personnel, so long as they act reasonably, in the best interests of the school, and in a manner which is not arbitrary and capricious. See Hyre v. Upshur County Bd. of Educ., 186 W. Va. 267, 412 S.E.2d 265 (1991). 3. With regard to the hiring for an administrative position, boards of education must select the applicant with the highest qualifications. In evaluating qualifications, a board of education must consider each of the seven "qualifying factors" set forth in W. Va. Code §18A-4-7a: appropriate certification, experience relevant to the position, degree level, course work and/or degree level in the relevant field and degree level generally, academic achievement, relevant specialized training, past performance evaluations, and other measures or indicators upon which the relative qualifications of the applicants may be fairly judged. The appropriate weight to be given each factor is within the discretion of the board of education. Baker v. Lincoln County Bd. of Educ., Docket

No. 97-22-482 (Mar. 5, 1998); Harper v. Mingo County Bd. of Educ., Docket No. 93-29-064 (Sept. 27, 1993).

4. Grievant proved the Selection Committee erred in its application of the criteria relevant experience and relevant specialized training, and that the error was so significant, based upon the manner in which the Committee made its recommendation, that the outcome may have been different absent the error.

Accordingly, this grievance is **GRANTED**. The Wood County Board of Education is **ORDERED** to reevaluate the applicants for the posted position of Director of Curriculum and Instruction for Secondary Schools in the statutory criteria relevant experience and relevant specialized training, based upon the experience and training the applicants had when the Selection Committee first evaluated them, giving Grievant appropriate credit for her experience as a department chairwoman, and omitting work experience in evaluating the criterion relevantspecialized training, and to select the most qualified candidate for the position, consistent with the findings in this Decision.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Wood 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: July 2, 1998

Footnote: 1

This grievance was filed on September 17, 1997, and was denied at Level I September 25, 1997. Grievant appealed to Level II, where the grievance was denied on December 11, 1997, following a hearing held on October 28, 1997. Level III was waived, and Grievant appealed the Level II Decision to Level IV on December 17, 1997, asking that the grievance be decided on the record developed at Level II. Grievant was represented by Richard D. Owen, Esq., and J. David Fenwick, Esq., and Respondent was represented by Dean A. Furner, Esq. This case became mature for decision on February 10,

1998, upon receipt of the last of the parties' written arguments. This grievance was displaced on the undersigned's docket at the request of Grievant by another selectiongrievance she had pending, which became mature for decision on March 19, 1998. She elected to have that grievance decided first.

Footnote: 2

The record does not reflect the name of the junior high school principal.

Footnote: 3

The record does not indicate exactly what this means.