RAY WILSON,

Grievant,

v. **Docket No. 00-30-112R**

MONONGALIA COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

This matter returns to level four on remand from the Circuit Court of Kanawha County, by Order dated September 26, 2001, with direction to make a factual finding as to whether Dr. Sweitzer possessed the qualifications for certification when she was assigned the position of assistant principal on January 19, 2000. (See footnote 1) Pursuant to a telephone conference, Grievant, represented by Kathleen Abate, Esq., of Cohen, Abate & Cohen, and Respondent MCBE, represented by Harry M. Rubenstein, Esq. of Kay, Casto & Chaney, agreed that the matter should be submitted on the record supplemented with stipulated findings of fact. The matter became mature for decision on January 31, 2002, upon receipt of the stipulations, and briefs filed by the parties with the Circuit Court.

Stipulated Findings of Fact

1. Both Mr. Wilson and Dr. Sweitzer were candidates for the position of assistant principal, part time at Brookhaven Elementary and part time at South Middle School. 2. The job posting required that “Certification must be Elementary Principal.”

3. Dr. Sweitzer received her Bachelor of Arts degree in psychology in May 1992 and her Master's degree in school psychology in December 1999.

4. Dr. Sweitzer was first employed by the Monongalia County Board of Education as a school psychologist in the 1997-98 school year.

5. Dr. Sweitzer received a doctoral degree in educational psychology with a minor in school psychology in May 1998.

6. Dr. Sweitzer continued to work for the Monongalia County Board of Education as a school

psychologist until January 19, 2000, when she began the job as assistant principal at South Middle and Brookhaven Elementary Schools.

7. As of the date she was hired by the Monongalia County Board of Education, Dr. Sweitzer possessed professional certification as a school psychologist.

8. In order to receive administrative certification the following courses are required:

Title	Required Credit Hours
Public School Organ. & Admin.	3
School Business Administration	3
Human Resource Management	3
Principles of Education Leadership	3
Principals of Supervision	3
School Law	3
Research/Evaluation/Assessment	3
School-Community Relations	3
Site-Based Leadership	3
Curriculum Development	3
Introduction to Research	3
(K-4, 5-8, 9-12 specialization)	3

9. As of the date Dr. Sweitzer was hired as assistant principal, an official from West Virginia University stated that if Dr. Sweitzer were to enroll in a course to receive administrative certification, she would receive credit toward certification for the following courses she had taken previously: Principles of Supervision, Research and Evaluation, Introduction to Research, and an elective. The letter further indicated that Dr. Sweitzer was eligible for a permit allowing her to serve as a principal K-9.

10. As of the date [Dr. Sweitzer] was hired, Mr. Wilson held the following certifications:

El/Mid/Jrhi Principal - K-8

Mid/Jr./Srhi Principal 5-12

Superintendent - K-12

Supv. Gen. Instruction K-12

Voc. Administration 5-Adult

Counselor 7-12

Social Studies 7-12

11. Dr. Sweitzer was hired for the position of assistant principal part time at Brookhaven Elementary and part time at South Middle School on December 14, 1999.

12. At the time she was hired, Dr. Sweitzer was eligible to receive a "PERMIT OR OUT OF FIELD AUTHORIZATION" as described in §126-136-18 of the Code of State Regulations. And, she received a first class administrative permit from the West Virginia Department of Education which was effective as of the date she was hired, January 19, 2000.

13. At the time she was hired Dr. Sweitzer did not possess the requirements for administrative certification.

14. Dr. Sweitzer received a certificate indicat[ing] that she had completed training for the evaluation of professional personnel as required by W. Va. Code § 18A-2-12 onMarch 31, 2000. Prior to receiving that training, Dr. Sweitzer did not evaluate professional personnel. The principal, Mr. Ed Collins, signed all such evaluations.

15. Between the date she was hired and December 16, 2000, Dr. Sweitzer completed the requirements for administrative certification. She received administrative certification effective December 16, 2000.

Discussion

In the "Order Remanding For Further Findings" the Court directed the undersigned to "address the application of § 18A-2-9 to this case. Specifically, whether Dr. Sweitzer possessed the requirements for an administrative certification when she was hired on January 19, 2000."

W. Va. Code § 18A-2-9, states in pertinent part,

[u]pon recommendation of the county superintendent of schools, the county board of education shall, when needed, employ and assign, through written contract, assistant principals who shall work under the direction of the school principal. Such assistant principals shall hold valid administrative certificates appropriate for their assignments."

. . .

Beginning on the first day of July, one thousand nine hundred ninety-four, the prerequisites for issuance of an administrative certificate for principals shall include that the person has successfully

completed at least six credit hours of approved course work in public school management techniques at an accredited institution of higher education and has successfully completed education and training in evaluation skills through the center for professional development, or equivalent education and training in evaluation skills approved by the state board.

West Virginia State Department of Education Policy 5200 found at C.S.R. §§ 126- 136-1, et seq. provides additional information relating to certification/licensing.Section 7.1.1. West Virginia issues seven categories of licenses to professional personnel: a) Professional Certificate; b) Temporary Certificate; c) Vocational Certificate; d) Temporary Vocational Certificate, e) Permit; f) Adult License; g) Authorization; One category of license, the Paraprofessional Certificate, is granted to service personnel.

7.2. Licenses for Professional Educators.

7.2.1. Professional Certificate. - The Professional Certificate may be issued to an individual who meets prescribed experience and/or academic and professional standards and who has been assessed as competent to assume a role in public education in keeping with the specialization(s) and grade levels designated on this license. A Professional Certificate may be issued in teaching, student support services, or administrative specializations.

* * *

7.2.5. Permit. - The Permit may be issued to an individual who does not meet the requirements for the Professional or Vocational Certificate but who has been determined by the county superintendent to be the most qualified applicant for the position.

* * *

18.1.3. Conditions for Issuance. - The applicant for the Full-Time Permit must submit evidence of satisfying the following:

a. College/University Course Work. - Verification by the designated official at the college or university through which the program is being completed that the applicant has completed 25% of the approved program in the specialization(s) for which the permit is requested; AND

b. Professional Commitment. - Submission of the Professional Commitment verifying the applicant's

enrollment in the state approved program; AND

c. Recommendation. - Receive the recommendation of the county superintendent verifying that the applicant is the most qualified candidate for the position, or, if the candidate for the permit is a county superintendent, receive a recommendation and verification of employment from the county board of education.

Based upon the foregoing, Dr. Sweitzer did not hold a professional certificate, but had been issued a permit by the Department of Education at the time she assumed her duties in January 2000. Since a permit is a license issued by the Department of Education, Dr. Sweitzer held a "valid administrative certificate" required by W. Va. Code § 18A-2-9.

Conclusion of Law

Dr. Sweitzer held a permit issued by the West Virginia Department of Education when she assumed her duties in January 2000, and was properly licensed to hold the position of Assistant Principal.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Monongalia 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. However, the appealing party is required by W. Va. Code §29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

DATE: February 20, 2002 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

Dr. Sweitzer was the successful applicant for a position of Assistant Principal at South Middle and Brookhaven Elementary Schools, for which Grievant was also an applicant. Dr. Sweitzer was an Intervenor in the prior hearing, but

has since left the employ of MCBE, and is no longer a party of interest in this matter.