ORLANTHA MAYNARD,

Grievant,

v. **DOCKET NO. 99-22-158**

LINCOLN COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

This grievance was initiated by Grievant, Orlantha Maynard, against Respondent, Lincoln County Board of Education, when she was not selected for one of six Site Coordinator positions in February 1999. She asserted she was more qualified and had more seniority than some of those selected. As relief she requested instatement into the position. (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 Lincoln County Board of Education ("LBOE") as a teacher at Atenville Elementary School. She has a Bachelor of Arts in Education, and a Master's Degree, plus 45, in Vocational Education. She has been an elementary teacher in Lincoln County since 1978.

2. Darlene Dalton, Principal at Atenville Elementary, Peggy Adkins, Principal at Harts High School, and Michael Tierney, Director of Step By Step, a non-profit organization, prepared a grant application for a "21st Century Community Learning Centers" Grant, which would be administered by LBOE. Ms. Dalton was informally notified in November 1998, that LBOE would receive the grant, and formal notification was made in December 1998. The grant was to be used for an after school program to provide academic assistance, resiliency training for at risk youth, and arts training to students in the Harts area of Lincoln County. The after school program was set up with tutoring provided for one hour, and the rest of the time was used to provide resiliency training and arts training, such as in gymnastics, guitar and piano lessons. Classroom teachers would send lessons for

the students to work on. The program was scheduled four evenings a week, and some Saturdays. A family night was scheduled once a month, during which time dinner was provided, an educational session was scheduled for parents such as computer training or assistance in applying for college financial aid, and the students would perform or show their art work. It was important that the program be in place as soon as possible.

3. The grant management team initially consisted of Ms. Dalton, Ms. Adkins, Mr. Tierney, and Bill Bryant, Principal of Ferrellsburg Elementary. Mr. Bryant later resigned.

4. The management team decided the program needed a Project Director, three Area Directors, six Site Coordinators, and Activity Directors. The three Area Directors selected were Ms. Dalton, Ms. Adkins, and Mr. Tierney. The Site Coordinators werelocated at Atenville, Harts High School, and Ferrellsburg/Big Ugly, with two Coordinators at each site.

5. LBOE posted the six Site Coordinator positions in December 1998, beginning the day before Christmas break. The posting described the positions as “extra duty assignments,” during the evening, weekends, and summer. Six people applied for the six positions. Grievant was not aware of the posting and did not apply. Due to concerns raised at an LBOE meeting that employees were not aware of the posting, the positions were posted a second time in January 1999. Eight people applied after the second posting, including Grievant.

6. Attached to the posting was a job description for Site Coordinator. It listed five qualifications, as follows:

1. Degree in education
2. Knowledge of grant writing
3. Experience in working with grants
4. Ability to conduct art, music and related activities with groups.
5. Preferred training in tutoring, micro-society, resiliency program, life skills, grant management and focus groups.

The posting listed the responsibilities of the position as:

1.

Prepare order[s] for supplies, materials and equipment.

2. Assist with scheduling of focus groups.

3. Participate in focus groups.

4. Develop a 12 month calendar of events for 21st Century Projects.

5. Provide direction for Activity Supervisor.

6. Assist with pre and post evaluations.

7. Schedule personnel for work.

8. Plan, attend and participate in Family Education Night.

9. Be able to conduct activities for groups in art, music and related other activities.

10. Work as a tutor for identified students.

11. Be able to train staff to serve as a tutor.

12. Be able to conduct after school programs[.]

7. The Site Coordinator was expected to be able to look at test scores and teacher recommendations, and then determine the type of curriculum and activities which should be offered for students with academic difficulties.

8. Ms. Dalton, Ms. Adkins, and Mr. Tierney reviewed the applications and resumes for the positions. In addition to considering the information on the applications and resumes, they considered information each personally knew about the applicants, and included this information on a document which summarized and compared the qualifications of the candidates, and was referred to as a "matrix." They did not conduct interviews, although they did meet with the six people who applied after the first posting. They recommended to Superintendent Rick Powell that Betty Thompson, Jacqueline McCann, Deborah Dingess, Kimberly Light, David Lucas, and Judith McCann be hired for the six Site Coordinator positions. LBOE approved the recommendations on February 1, 1999. (See footnote 2)

9. Ms. Dalton and Jacqueline McCann are sisters. Ms. Dingess is Ms. Dalton's cousin. Ms. Dalton participated fully in the discussions about the applicants, and in the decision to recommend the six applicants for the Site Coordinator positions.

10. Ms. Thompson was selected for one of the Site Coordinator positions at Big Ugly. Ms. Thompson is a Special Education Supervisory Aide at Harts High School, and has been a Special Education Aide since 1975. She has a Regents Degree. Most of the courses she took were in education, but she has not done any student teaching, and the record does not reflect that her degree is in education. Her resume does not reflect thatshe has knowledge of grant writing, or that she has any experience working with grants. Her resume does not reflect that she has any experience in or ability to conduct art or music with groups, or that she has training in tutoring, micro-society, resiliency programs, life skills, grant management, or focus groups. She has served as Vice President of the Lincoln County Education Support Personnel, on the State Executive Committee West Virginia Educational Support Personnel, the Lincoln County Staff Development Council, the Harts High Effectiveness Team, as a Board Member of Harts Community Development, a Harts Community Collaborative Member, a WVEIS Computer Program (RESA) Member, a JOSTEN Computer Lab Member, and on the Harts High School Unified School Team. She coached basketball for special olympics one year, and has coached special olympics at Lincoln County field day since 1980. She was the State representative at the National Educational Association Assembly in 1991, and for the Harts Community Collaborative Team in 1996-97. She was the recipient of a service personnel award and the Bonnie Lucas Memorial Award in 1991.

11. Jacqueline McCann is a teacher at Atenville Elementary. Grievant has taught in Lincoln County ten more years than Ms. McCann. Ms. McCann does not hold a Master's Degree. Ms. McCann has obtained funding for several projects through grants, including a grant focusing on classical art and music. She participated in after-school tutoring at Atenville Elementary, plays the piano and saxophone, has integrated drama into the curriculum, and is able to conduct focus groups. She has training in reading and writing assessment, whole language, micro-society, and cooperative learning. She helped develop the Summer Science Institute for students and received a grant for it. She has served as cheerleading coach at Harts High School, and on the Lincoln County Teacher's Academy Planning committee, the Harts of the Community Action Research and Community Schools Committees, the Micro Society Steering Committee, the Effective School Improvement Planning

Committee, and the discipline and attendance committees. She developed community education classes in gymnastics, photography, line dancing, computers, and math. She has given presentations locally and regionally on various topics, including micro-society.

12. Grievant's resume does not reflect that she has knowledge of or experience with grants. As an elementary teacher, she conducts art, music, and other similar activities with groups each day in her classroom. She tutored students after school one year for one hour each day. She has worked as a church camp and 4-H camp counselor. She was involved in the Parent-Community Involvement Program at her school for three years. She was Yearbook sponsor from 1982 through 1990, a “School Business Partner” from 1989 through 1991, and served on the “A-Team” committee, the discipline committee, and the attendance committee.

13. Christina Napier also applied for one of the Site Coordinator positions, but was not chosen, and has filed a grievance. She has a Bachelor of Arts Degree in Elementary Education (K-8), and a Master of Arts Degree in Reading Education (K-12), plus 30 hours. She has worked as a Title I teacher, JTPA teacher, kindergarten teacher, special education teacher, fourth, fifth, and sixth grade teacher, and computer lab teacher for LBOE since at least 1994. She has experience in ordering supplies, materials, and equipment, managing a budget, keeping purchase and inventory records, scheduling, and supervising. She has provided staff development workshops in using the internet and multi media. She has experience in grant writing, although her first experience was unsuccessful as she missed the deadline. She has additional reading and writing training, computer training, success for all training, parent involvement training, and cooperative learning training.

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). Grievant challenged only the selection of Ms. Thompson and Jacqueline McCann for the posted positions. She argued Ms. Thompson should not have been selected because she did not hold a degree in education and was therefore not minimally qualified. She argued she has more education, teaching experience, and seniority than Ms. McCann. She also pointed to her overall qualifications for the job.

Respondent argued Grievant was not as qualified as Ms. Thompson or Ms. McCann, pointing to her lack of experience with grants and micro-society. Respondent argued Ms. Thompson's degree

was in education, but pointed to no authority for this.

W. Va. Code § 18A-4-16 defines extracurricular assignment, and provides, in pertinent part:

> (1) The assignment of teachers and service personnel to extracurricular assignments shall be made only by mutual agreement of the employee and the superintendent, or designated representative, subject to board approval. Extracurricular duties shall mean, but not be limited to, any activities that occur at times other than regularly scheduled working hours, which include the instructing, coaching, chaperoning, escorting, providing support services or caring for the needs of students, and which occur on a regularly scheduled basis. . . .

The position at issue is an extracurricular assignment. As such, “the provisions of W. Va. Code § 18A-4-7a are not applicable in the selection of professional personnel for the assignment. Hall v. Mingo County Bd. of Educ. Docket No. 95-29-529 (Mar. 28, 1996); Foley v. Mineral County Bd. of Educ., Docket No. 93-28-255 (Oct. 29, 1993); Smith v. Logan County Bd. of Educ., Docket No. 91-23-040 (July 31, 1991). Thus, 'the appropriate standard of review for decisions concerning selection of professional personnel to fill [extracurricular] assignments is abuse of discretion.' McCoy v. Kanawha County Bd. of Educ., Docket No. 94-20-141 (Oct. 13, 1994), citing Pockl v. Ohio County Bd. of Educ., 185 W. Va. 256, 406 S.E.2d 687 (1991); Foley, supra; See Dillon v. Bd. of Educ., 177 W. Va. 145, 351 S.E.2d 58 (1986); Jackson v. Grant County Bd. of Educ., Docket No. 97-12-224 (Oct.16, 1997)." Lusher v. Putnam County Bd. of Educ., Docket No. 99-40-061 (May 7, 1999). Seniority is not the determining factor in the selection of professional personnel foran extracurricular assignment. Layman v. Cabell County Bd. of Educ., Docket No. 01-06- 001 (May 8, 2001). Savilla v. Putnam County Bd. of Educ., Docket No. 00-40-058 (Apr. 7, 2000).

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, 169 W. Va. 162, 286 S.E.2d 276 (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). 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). Arbitrary and capricious actions have been found to be closely related to ones that are unreasonable. State ex rel. Eads v. Duncil, 196 W. Va. 604, 474 S.E.2d 534 (1996). An action is recognized as arbitrary and capricious when "it is unreasonable, without consideration, and in disregard of facts and circumstances of the case." Id. (citing Arlington Hosp. v. Schweiker, 547 F. Supp. 670 (E.D. Va. 1982)).

The first issue which will be addressed is whether Ms. Thompson was minimally qualified for the position. The posting required a “degree in education.” Ms. Dalton testified that she felt Ms. Thompson had a degree in education because she had taken somany education courses. Mr. Tierney and Ms. Adkins did not express this opinion, but believed Ms. Thompson's education course work and work as a special education aide was sufficient. No evidence was presented by either party to explain what a “degree in education” is, or that Ms. Thompson possessed such a degree. The undersigned cannot make a finding under the facts presented here that Ms. Thompson possessed a degree in education. The next question is whether she could be placed in one of the Site Coordinator positions when she did not hold such a degree.

“[A] county board of education has substantial discretion when establishing the qualifications for a position at the time of posting. See Cowen v. Harrison County Bd. of Educ., 196 W. Va. 377, 465 S.E.2d 648 (1995); Mounts v. Mingo County Bd. of Educ., Docket No. 96-29-479 (June 27, 1997); 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).” Glick v. Logan County Bd. of Educ., Docket No. 97-23-435 (Jan. 29, 1998). Once the qualifications are established, it is important that they be followed.

> This Grievance Board has repeatedly addressed the importance of postings being accurate. "It is well established that 'skills required by a board of education for an applicant to qualify for a position must be included in the posting.' Wall v. Putnam Co. Bd. of Educ., Docket No. 89-40-664 (July 10, 1990)." Feltz v. Marion County Bd. of Educ., Docket No. 90-24-078 (Oct. 19, 1990). "The purpose of the job posting statute to accurately reflect the teaching responsibilities of the position is frustrated and confounded when a board of education denotes required certification areas that are not necessary for the vacant posted position." Rash v. Wayne County Bd. of Educ., Docket No. 50-87-263 (June 7, 1988).

Conners v. Hardy County Bd. of Educ., Docket No. 99-16-459 (Jan. 14, 2000). This Grievance Board has further found an abuse of discretion where a county board of education selected “an applicant who did not meet the minimum qualifications for the position, when there were other applicants available who held the appropriate credential required by the posting. See W. Va. Code § 18A-3-2; Johnson v. Cassell, 182 W. Va.317, 387 S.E.2d 553 (1989); Peters, supra.” Hoffman v. Mingo County Bd. of Educ., Docket No. 97-29-266 (June 15, 1998).

Grievant has proven that a degree in education was a minimum qualification which LBOE could not simply disregard, and Ms. Thompson did not meet this minimum qualification. However, Grievant did not meet the minimum qualifications either. The posting also required knowledge of and experience in working with grants. Grievant testified she has been to several grant writing workshops, but this was not on her resume, so the selection committee would not have known this. She acknowledges she has no experience with grants.

In addition to not holding a degree in education, Ms. Thompson's resume does not reflect that she meets at least two of the remaining three minimum qualifications. It does not list either knowledge of grant writing, or experience in working with grants. It further does not indicate that she has any experience in or ability to conduct art or music, although her experience coaching special olympics would be experience in conducting a related activity with groups. In addition, there is no indication on Ms. Thompson's resume that she meets the “preferred training in tutoring, micro-society, resiliency program, life skills, grant management and focus groups.” Ms. Adkins testified that Ms. Thompson had training in transitioning at risk students from the school system to everyday living, conflict resolution, and empowering youth, and she had worked with the responsible students program at Harts High School and with the Big Ugly Step By Step resiliency programs.

The document prepared by Ms. Dalton which compares the qualifications of the applicants lists Ms. Thompson as assisting with the Community Collaborative Grant, although it does not indicate what assistance she provided. It also lists, “wrote, supervised, and implemented Body by Choice Grant.” Ms. Adkins did not really know what Body by Choice was or about Ms. Thompson's involvement, and testified that Ms. Dalton must have known about this. Ms. Dalton testified that Ms. Adkins was the one who had known aboutMs. Thompson's participation in this grant. The document contains other training for Ms. Thompson about which no witness testified. The undersigned finds this document, to the extent is was prepared from the memories of the management team, to be

unreliable, and it cannot be used as evidence of the activities of the applicants. Further, it was improper for the management team members to consider what they thought they knew of the applicants' training and activities, but which was not included on the resumes. Certainly they could not know, and could not remember, everything about every applicant, which could give some applicants an advantage. If the management team thought the resumes were incomplete, as Ms. Dalton opined, they should have conducted interviews.

The question remains, was it an abuse of discretion to select Ms. Thompson over Grievant when neither met all the minimum qualifications. Mr. Tierney, Ms. Adkins, and Ms. Dalton explained that Ms. Thompson was selected because she had taken a lot of education courses, had experience working with at-risk students, which they defined as special education students, was quite familiar with the Big Ugly community, which was important to them, she had expressed a desire to work at that location, and she had lots of community involvement experience. While the matrix prepared by the selection committee reflects more activities than Ms. Thompson's resume, her resume does support all of this, except her familiarity with the Big Ugly community.

Looking solely at Grievant's resume, which is what Grievant chose to tell the selection committee about her abilities, the undersigned cannot conclude that Grievant's experiences and training were so superior to Ms. Thompson's that it was an abuse of discretion to select Ms. Thompson over Grievant. (See footnote 3) As to Ms. Dalton's relatives being selected, Ms. Dalton saw nothing wrong with serving on the selection committee when two of her relatives were applicants. Ms. Dalton testified she is “always very objective with both” her sister and her cousin. She pointed out that she supervises both of them as Principal at Atenville Elementary, and she is responsible for their evaluations. She stated, “had everything been equal, I would have removed myself from the management team and allowed Ms. Adkins and Mr. Tierney to make that decision, but as you can see from the resumes and the matrix, those two candidates, there were no questions regarding their qualifications.” She further stated they were “probably the two strongest” candidates, and her relationship to these candidates did not come up during the discussion of the qualifications of the candidates. She also testified, however, that Grievant had repeatedly taken sick leave and personal days to avoid staff development sessions, indicating her distaste for this behavior. Grievant explained she had indeed taken sick days rather than go to training during the period from 1991 through 1995 when she was having health problems. She tearfully stated she had used a cane, then a walker, then

a wheelchair, and finally had hip replacement surgery, and it was all she could do at that time to make it through her teaching duties. She stated she had attended every training session expected of her by Ms. Dalton since her surgery. Ms. Dalton had not alluded to this debilitating injury when describing Grievant's lack of interest in training.

Grievant did not introduce any policy which would preclude Ms. Dalton from participating in selecting her own sister for one of these positions. While there is no indication that Ms. Dalton attempted to influence the other members of the selectioncommittee, it must be kept in mind that the committee did not confine itself to the resumes submitted by the applicants, but rather discussed with each other what they knew about the applicants. It is difficult to imagine that Ms. Dalton refrained from supplying additional positive information about her sister, while sharing her negative feelings about Grievant. Ms. Dalton should not have participated in the selection process.

Nonetheless, there is no doubt that Jacqueline McCann was certainly well qualified for the position. In fact, she met all the minimum qualifications, while, as noted, Grievant did not. Grievant argued she was better qualified than Ms. McCann because of her teaching experience and seniority, and because she had a Master's Degree. The committee members testified they gave Grievant's Master's Degree in vocational education no weight. Grievant did not explain how such a degree would make her a better candidate than Ms. McCann for this particular position, and the undersigned does not see how it would. As noted previously, seniority need not be a consideration in the selection process for an extracurricular position. While Grievant's teaching experience would give her somewhat of an edge, Ms. McCann has been teaching since 1989, and has plenty of experience, in addition to her relevant training and grant experience. Grievant has not demonstrated an abuse of discretion in the selection of Ms. McCann.

While the process used here cannot be condoned, the undersigned cannot conclude that the results must be reversed.

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. The position at issue is an extracurricular assignment. As such, “the provisions of W. Va.

Code § 18A-4-7a are not applicable in the selection of professionalpersonnel for the assignment. Hall v. Mingo County Bd. of Educ. Docket No. 95-29-529 (Mar. 28, 1996); Foley v. Mineral County Bd. of Educ., Docket No. 93-28-255 (Oct. 29, 1993); Smith v. Logan County Bd. of Educ., Docket No. 91-23-040 (July 31, 1991). Thus, 'the appropriate standard of review for decisions concerning selection of professional personnel to fill [extracurricular] assignments is abuse of discretion.' McCoy v. Kanawha County Bd. of Educ., Docket No. 94-20-141 (Oct. 13, 1994), citing Pockl v. Ohio County Bd. of Educ., 185 W. Va. 256, 406 S.E.2d 687 (1991); Foley, supra; See Dillon v. Bd. of Educ., 177 W. Va. 145, 351 S.E.2d 58 (1986); Jackson v. Grant County Bd. of Educ., Docket No. 97-12-224 (Oct.16, 1997)." Lusher v. Putnam County Bd. of Educ., Docket No. 99-40-061 (May 7, 1999).

3. 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, 169 W. Va. 162, 286 S.E.2d 276 (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). 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). Arbitrary and capricious actions have been found to be closely related to ones that are unreasonable. State ex rel. Eads v. Duncil, 196 W. Va. 604, 474 S.E.2d 534 (1996). An action is recognized as arbitrary and capricious when "it is unreasonable, without consideration, and in disregard of facts and circumstances of thecase." Eads, supra (citing Arlington Hosp. v. Schweiker, 547 F. Supp. 670 (E.D. Va. 1982)).

4. Seniority is not the determining factor in the selection of professional personnel for an extracurricular assignment. Layman v. Cabell County Bd. of Educ., Docket No. 01-06-001 (May 8, 2001). Savilla v. Putnam County Bd. of Educ., Docket No. 00-40-058 (Apr. 7, 2000).

5.

> This Grievance Board has repeatedly addressed the importance of postings being accurate. "It is well established that 'skills required by a board of education for an applicant to qualify for a position must be included in the posting.' Wall v. Putnam Co. Bd. of Educ., Docket No. 89-40-664 (July 10, 1990)." Feltz v. Marion County Bd. of

> Educ., Docket No. 90- 24-078 (Oct. 19, 1990). "The purpose of the job posting statute to accurately reflect the teaching responsibilities of the position is frustrated and confounded when a board of education denotes required certification areas that are not necessary for the vacant posted position." Rash v. Wayne County Bd. of Educ., Docket No. 50-87-263 (June 7, 1988).

Conners v. Hardy County Bd. of Educ., Docket No. 99-16-459 (Jan. 14, 2000). This Grievance Board has further found an abuse of discretion where a county board of education selected “an applicant who did not meet the minimum qualifications for the position, when there were other applicants available who held the appropriate credential required by the posting. See W. Va. Code § 18A-3-2; Johnson v. Cassell, 182 W. Va. 317, 387 S.E.2d 553 (1989); Peters, supra.” Hoffman v. Mingo County Bd. of Educ., Docket No. 97-29-266 (June 15, 1998).

6. While Ms. Thompson did not meet at least three of the four minimum qualifications for the posted Site Coordinator position, Grievant's resume does not reflect that she met two of the four minimum qualifications. It is the duty of the applicant to inform the person making the selection of her qualifications. Beckley v. Lincoln County Bd. of Educ., Docket No. 95-22-107 (Feb. 29, 1996). 7. Comparing the resumes of Ms. Thompson and Grievant, Grievant's qualifications for the posted position were not so superior to Ms. Thompson's that it was an abuse of discretion to select Ms. Thompson over Grievant for a Site Coordinator position.

8. Grievant did not demonstrate an abuse of discretion in the selection of Jacqueline McCann, who met all the minimum qualifications and was otherwise well qualified, for one of the posted Site Coordinator positions.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or to the Circuit Court of Lincoln County. Any 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 Grievance Board with the civil action number so that the record can be prepared and transmitted to the circuit court.

BRENDA L. GOULD

Administrative Law Judge

Dated: January 23, 2002

Footnote: 1

This grievance was filed on or about February 11, 1999, and was denied at Level I on that date. Grievant appealed to Level II, and a hearing was held on February 22, 1999. The grievance was denied at Level II on March 3, 1999, and Grievant appealed to Level III. The Lincoln County Board of Education declined to hear the grievance at Level III, and Grievant appealed to Level IV on April 22, 1999. At the request of the parties, this grievance was placed in abeyance pending the outcome of the appeal of the Grievance Board decision in Napier v. Lincoln County Bd. of Educ., Docket No. 99-22-116 (July 15, 1999). On July 2, 2001, the Supreme Court of Appeals of West Virginia reversed this Grievance Board's determination that it was without jurisdiction to hear Ms. Napier's grievance (Appeal No. 28486). A Level IV hearing was then held on November 9, 2001. Grievant was represented by Jason Poling, Esq., and Respondent was represented by James W. Gabehart, Esq. This case became mature for decision on December 12, 2001, upon receipt of Respondent's written argument. Grievant declined to submit written argument.

Footnote: 2

The other applicant who was not selected, Christina Napier, also filed a grievance. It was her grievance that was dismissed for lack of jurisdiction by this Grievance Board, which decision was reversed by the Supreme Court of Appeals of West Virginia. Ms. Napier's grievance currently is assigned to the undersigned Administrative Law Judge, as part of Baker, et al., v. Lincoln County Board of Education, Docket No. 01-22-528. The other Grievants in that grievance were applicants for the Project Director and Area Director positions.

Footnote: 3

While this Grievance Board, as a rule, does not consider any skills or activities which an applicant does not make known to the selection committee (Beckley v. Lincoln County Bd. of Educ., Docket No. 95-22-107 (Feb. 29, 1996)), in this case the selection committee took it upon itself to go beyond the resumes without interviewing the applicants, or otherwise asking them for additional information, relying instead upon their own knowledge of the applicants, and their own memories. The undersigned pointed out to the parties at the Level IV hearing that this was a concern, and told Grievant she would be allowed tointroduce evidence of her qualifications for the position which did not appear on her resume, contrary to the normal rule, although what role this evidence would play in the final decision was not clear. Grievant took advantage of this opportunity and discussed additional training and experiences. The undersigned concludes, however, that it is not necessary to look beyond the resumes to determine whether there was an abuse of discretion.