KAREN OLDHAM,

Grievant,

v v.

Docket No. 03-06-269

CABELL COUNTY BOARD OF EDUCATION,

Respondent,

D E C I S I O N

Grievant, Karen Oldham, filed this grievance on or about March 13, 2003, against her employer, the Cabell County Board of Education ("CCBOE" or "Board"). Her Statement of Grievance reads:

> Upon review of the data from the board meeting on Tuesday, August 5, 2003 and seeking legal consultation, I am with the conclusion that I am the most qualified candidate for the BMS Principal's position. Through research and investigation[,] I believe one will find that WV Code 18A-4-7A [sic] has been violated.
>
> Relief sought: Placement @ BMS - Principal's Position

This grievance was denied at all lower levels. Grievant appealed to Level IV on September 5, 2003, and a Level IV hearing was held on December 5, 2003, at the Grievance Board's office in Charleston. This case became mature for decision on January 26, 2004, after receipt of Grievant's proposed findings of fact and conclusions of law. (See footnote 1)

Issues and Arguments

Grievant agrees school boards have broad discretion in the selection of administrative personnel, but argues, that in this incidence, CCBOE has exceeded its discretion. Grievant asserts she was the most qualified candidate for the position ofPrincipal a Barboursville Middle School ("BMS"), and CCBOE's action of not accepting the recommendation of Superintendent David Roach was arbitrary and capricious. Respondent avers CCBOE had the right to reject Superintendent Roach's

recommendation, its reasons for rejecting Grievant were not arbitrary and capricious, and the final selection made was not arbitrary and capricious.

Findings of Fact

1. In early to mid-July of 2003, Superintendent Roach was informed by BMS's then principal, Jerry Lake, that he would probably be off the entire school year due to health problems.

2. Superintendent Roach did not believe anyone currently at the school could provide the necessary leadership for the school, and that included the current Assistant Principal, Joe Meadows.

3. On July 14, 2003, CCBOE posted a position for a temporary principal at BMS.

4. Grievant and Assistant Principal Meadows applied for the position. Superintendent Roach appointed his usual five-member Interview Committee for administrative positions to review the candidates and recommend two names without ranking them.

5. Because both candidates had recently been interviewed for other administrative positions, the Interview Committee did not reinterview the candidates. TheInterview Committee did review the applicants' Executive Summaries, (See footnote 2) and reviewed the criteria that must be considered for the matrix, pursuant to W. Va. Code § 18A-4-7a.

6. The Interview Committee submitted the names of Grievant and Assistant Principal Meadows to Superintendent Roach.

7. Although the Interview Committee did not rank the candidates, four of the five members of the Interview Committee believed Grievant was the most qualified for the position. The fifth member did not formulate an opinion, as this had not been asked for by Superintendent Roach.

8. Grievant is currently serving as an Assistant Principal at Cabell-Midland High School. She received her doctoral degree is 1999 in Public School Leadership, with a Minor in Special Education. She has been an educator since 1991, with six years in administration, one of those as an Alternative Schools Specialist, four as an Assistant Principal, and one as a Principal. Her grade point average for her doctoral degree was 4.0, and her past evaluations have been satisfactory. She has no middle school experience, but has received middle school training. She has worked with this age group both as a teacher and as an Assistant Principal and Principal in the elementary and junior high school settings. According to her Executive Summary, Grievant has extensive working knowledge of the duties and responsibilities of the position, numerous educational proficiencies applicable to the

position, and 31 relevant specialized "trainings" that relate to the position. 9. Assistant Principal Meadows received his Master's degree in 1995 in Education Administration. (See footnote 3) He has been an educator since 1986, with four years in administration as an Assistant Principal at BMS. (See footnote 4) His grade point average for his masters' degree was 4.0, and his past evaluations have been satisfactory. He has middle school experience both as a teacher and as an Assistant Principal. According to his Executive Summary, Assistant Principal Meadows performed the duties and responsibilities of his Assistant Principal position and had worked with staffing, budget needs, and scheduling. In his Executive Summary, Assistant Principal Meadows listed few educational proficiencies applicable to the position, but basically discussed duties and responsibilities of his current position. Under relevant specialized training Assistant Principal Meadows stated, "I have received training on balanced literacy that is currently the foundation of the middle school reading curriculum. I have supervised the writing project in the middle school reflecting with [sic] teachers providing narrative to the county coordinators." No other training is listed.

10. On August 5, 2003, Superintendent Roach nominated Grievant for the position. A discussion was held by CCBOE about whether the position really needed to be filled, and why it was being filled. It was noted that Principal Lake had not requested a formal leave of absence, and there was a concern about what would happen if he returned. 11. After this discussion, several board members did not think the position should be filled by posting a position for a temporary principal. They believed the best choice was to elevate the Assistant Principal, Assistant Principal Meadows.

12. When Grievant's nomination was voted on, these members voted to reject her, based in part on the belief that the position should not be filled. (See footnote 5) CCBOE did not examine Grievant's qualifications in any detail before it rejected her nomination. (See footnote 6)

13. Other reasons the majority of the board voted against Grievant's nomination were: 1) they were worried about the domino effect Grievant's moving to BMS would have on Cabell County High School, and the need to find a replacement for her there at the start of a new school year; (See footnote 7) 2) they believed placing Assistant Principal Meadows in the position was preferable because he had been at BMS for several years as the Assistant Principal; and 3) Grievant had no middle school experience. 14. BMS has experienced several changes in the principal's position over the past ten years, and a couple of parents had called several board members to request

Assistant Principal Meadows be placed in the position. (See footnote 8)

15. CCBOE did not accept the recommendation of Superintendent Roach. He then nominated Assistant Principal Meadows, and this recommendation was accepted. CCBOE did not examine Assistant Principal Meadows' credentials in any depth. (See footnote 9)

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2000); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code § 18-29-6. "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." Leichliter v. W. Va.Dep't of Health and Human Resources, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the employer has not met its burden. Id.

This case presents an unusual issue, and one which has not been fully addressed by the Grievance Board.

The first issue to address is qualifications. Both candidates were qualified for the position, or their names would not have been forwarded to Superintendent Roach by the Interview Committee. However the statute required the best or most qualified individual be selected. Qualifications are judged by the factors outlined in W. Va. Code § 18A-4-7a. The pertinent part of this statute 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 past performance evaluations conducted pursuant to section twelve [§ 18A-2-12], article two of this chapter; and other measures or indicators upon which the relative qualifications of the applicant may fairly be judged.

Additionally, CCBOE's Policy GBBC states, "The selection of professional personnel for any professional positions will be based upon the most qualified applicant utilizing the requirements of the current legislation related to the employment, promotion, and transfer of professional personnel." Grt. No. 7, at Level IV.

A review of the qualifications identified above reveals Grievant to be more qualified than Assistant Principal Meadows on the first six factors specified in W. Va. Code § 18A-4- 7a. Grievant has principal's experience, Assistant Principal Meadows has none; and Grievant holds a relevant Ed.D., Assistant Principal Meadows has a Master's plus 39hours. Grievant has more certifications, including many in Special Education, had assumed more duties and responsibilities on a routine basis, and has attended much more staff development and training applicable to the position than Assistant Principal Meadows. Assistant Principal Meadows does have middle school experience, while Grievant does not, but she has been trained in this area, and has experience with that age level student in both the Junior High and Elementary school setting. It is clear from the materials presented that Grievant is working hard to keep herself updated and prepared to assume leadership roles within the school system. Assistant Principal Meadows's Executive Summary does not reflect the same updating and preparation.

The argument presented by Respondent is that the factor assessed by CCBOE was the seventh factor: "other measures or indicators upon which the relative qualifications of the applicant may fairly be judged."

First, a review the Grievance Board's past ruling on the required interaction between a superintendent and board members should be beneficial in considering this grievance. The discussion in the case of Stinn v. Calhoun County Board of Education, Docket No. 98- 07-085 (August 28, 1998), is helpful in that regard.

W. Va. Code § 18A-2-1 describes the respective duties of the superintendent and the board of education in the employment process and states, in pertinent part:

> The employment of professional personnel shall be made by the board only upon nomination and recommendation of the superintendent. In case the board refuses to employ any or all of the persons nominated, the superintendent shall nominate others and submit the same to the board at such time as the board may direct. All personnel so nominated and recommended for employment and for subsequent assignment shall meetthe certification, licensing, training, and other eligibility classifications as may be required by provisions of this chapter and state board regulation. (See footnote 10)

The West Virginia Supreme Court has generally addressed the role of a county superintendent and held that persons holding the position are not merely employees, but "officers" of the county board with "a multitude of powers and duties independent of the board." State ex rel. Rogers v. Bd. of Educ. of Lewis County, 125 W. Va. 579, 25 S.E.2d 537, 540 (1943). "Clearly, the nomination of

persons qualified to fill vacancies is a statutory duty of the superintendent and not a responsibility which arises by virtue of his or her employment with the county board." Gore v. Monroe County Bd. of Educ., Docket No. 93-31-532 (Apr. 26, 1994). In the case of professional personnel, the superintendent's duty to nominate necessarily entails the duty to adhere to the provisions of W. Va. Code §18A-4-7a, which set forth the criteria to be used in assessing the qualifications of the applicants. "There is no law, policy, or regulation which mandates that a board of education must accept a Superintendent's, or principal's, recommendation in personnel matters." Barrett v. Hancock County Bd. of Educ., Docket No. 96-15-512 (Dec. 31, 1997). In employing administrative personnel the first set of factors is applied. It appears well settled that the chief executive officer of a county school system may not delegate the duties of the post to others. Gore, supra; See, 78 C.J.S. Schools and School Districts §171 (1952). It follows that others may not take actions which have the effect of impeding or usurping the exercise of those duties. "W.Va Code §18A-2-1 prohibits a county boardfrom participating in the evaluation process by which the superintendent reaches a decision to nominate a particular candidate, not through the use of specific language[,] but by explicitly establishing a bifurcated appointment procedure." Gore, supra.

County school boards in West Virginia also draw their powers from statute and can only exercise such authority as is expressly given them or arises by necessary implication. Evans v. Hutchinson, 158 W. Va. 356, 214 S.E.2d 453 (1975). W. Va. Code §18A-2-1 explicitly confers upon a board the ultimate authority to accept or reject the Superintendent's recommendation, and to direct the Superintendent to nominate an additional qualified candidate, if the first nomination is rejected. Thus, any interpretation of the statutory language at issue must take into account the respective duties of the board and the superintendent under W. Va. Code §18A-2-1.

"This [Code] language effectively divides the power to hire equally between the superintendent and the county board. No person may be appointed to a professional position until both have exercised their authority under the statute. Implicit in the statute is that the respective roles in the hiring process must be distinct, i.e., that the superintendent must exercise his statutory duty to nominate independent of the county board and that the board, in fulfilling its obligations under the statute, must reject or accept without undue influence from the superintendent. Otherwise, the division of authority is rendered meaningless." Rakes v. Raleigh County Bd. of Educ., Docket No. 93-41-448 (Mar. 17, 1995). Because the prohibition against undue interference by either party is an

implied and not explicit part of the statute, it is not possible to adopt a rule applicable to all situations in which a violation of that prohibition is alleged. Gore, supra. Each case must be decided on its own merits. It is well settled that county boards of education have substantial discretion in matters relating to the hiring of school personnel as long as their decisions are in the best interest of the school and are not arbitrary and capricious. See Hyre v. Upshur County Bd. of Educ., 186 W. Va. 267, 412 S.E.2d 265 (1991); Syl. Pt. 3, Dillon v. Bd. of Educ. of County of Wyoming, 177 W. Va 145, 351 S.E.2d 58 (1986). As previously stated, when selecting an administrator the first set of factors listed in W. Va. Code § 18A-4-7a is utilized. 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. Elkins v. Boone County Bd. of Educ., Docket No. 95-03-415 (Dec. 28, 1995); Hughes v. Lincoln County Bd. of Educ., Docket No. 94-22-543 (Jan. 27, 1995); Blair v. Lincoln County Bd. of Educ., Docket No. 92-22-009 (July 31, 1992). Once a board reviews the criteria required by W. Va. Code § 18A-4-7a, it has "wide discretion in choosing administrators . . . ." March v. Wyoming County Bd. of Educ., Docket No. 94-55-022 (Sept. 1, 1994). Thus, a county board of education may determine that "other measures or indicators" is the most important factor. Stinn, supra; 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.Owen v. Wood County Bd. of Educ., Docket No. 97-54-537 (May 18, 1998) (citing Harper v. Mingo County Bd. of Educ., Docket No. 93-29-064 (Sept. 27, 1993)). (See footnote 11)

The standard of review for a county board of education's decision is whether it was arbitrary and capricious or an abuse of discretion. "Generally, an action is considered arbitrary and capricious if the agency did not rely on criteria intended to be considered, explained or reached the decision in a manner contrary to the evidence before it, or reached a decision that was so implausible that it cannot be ascribed to a difference of opinion. See Bedford County Memorial Hosp. v. Health and Human Serv., 769 F.2d 1017 (4th Cir. 1985); Yokum v. W. Va. Schools for the Deaf and the Blind,

Docket No. 96-DOE- 081 (Oct. 16, 1996)." Trimboli v. Dep't of Health and Human Resources, Docket No. 93- HHR-322 (June 27, 1997). 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." Eads, supra (citing Arlington Hosp. v. Schweiker, 547 F. Supp. 670 (E.D. Va. 1982)). The arbitrary and capricious standard is a high one, requiring willful and unreasonable action and disregard of known facts.

Additionally, nothing in the language of W. Va. Code § 18A-4-7a restricts the area of measures or indicators, as long as they are factors "upon which the relative qualifications of the applicant may fairly be judged." Stinn, supra. Indeed, W. Va. Code§ 18A-4-7a contemplates that county boards may look beyond certificates, academic training, and length of experience in assessing the qualifications of the applicants. Stinn, supra. Anderson v. Wyoming County Bd. of Educ., Docket No. 93-55-183 (Sept. 30, 1993). The selection of candidates for educational positions is not simply a "mechanical or mathematical process." Hoffman v. Mingo County Bd. of Educ., Docket No. 97-29-266 (June 15, 1998)(citing Tenny v. Bd. of Educ., 183 W. Va. 632, 398 S.E.2d 114 (1990)); See Deadrick v. Marion County Bd. of Educ., Docket No. 90-23-071(Jan. 30, 1991). This is especially true in the selection for an administrative position.

In summary, a review of W. Va. Code § 18A-2-1 reveals no requirement for a board of education to conduct an independent review when it rejects the recommendation of a superintendent. This Code Section states a board of education may "refuse to employ the person nominated," and the superintendent "shall nominate others." Of course, the requirement of W. Va. Code § 18A-4-7a, to select the candidate with the highest qualifications, is still in effect. Stinn, supra; Barrett, supra. This is the key issue here. The question is whether CCBOE rejected Grievant's nomination for valid reasons that pertain to W. Va. Code § 18A-4-7a.

In the present case, the Board's actions are not within its statutory mandate, and its actions were based on arbitrary and capricious reasons, not on the seven factors required by law. CCBOE rejected Superintendent Roach's nomination for a variety of reasons. First, CCBOE rejected Grievant because they were not sure the position should be filled by a temporary principal, and questioned whether a substitute would be a better solution. This appears to be valid concern. Certainly, if CCBOE did not feel the position should be filled, or there were additional questions that needed to be asked,

such aswhether Principal Lake going to file an official request for a leave of absence, it would be appropriate for CCBOE to table the issue and direct Superintendent Roach to obtain more information. It was noted by the parties that these types of openings of unknown duration were frequently filled by retired principals. Whatever the past practice was, it was not appropriate to vote against Grievant for this reason. A rejection of a nominated candidate must be based on the criteria outlined in W. Va. Code § 18A-4-7a, and a decision based on this factor does not relate to Grievant's qualifications.

Second, CCBOE rejected Grievant's application because it would require the posting and movement of other positions, and these board members believed Grievant's experience at Cabell Midland High School would be needed because a new principal had been hired for that school. A rejection for this reason is not based on the qualifications listed in W. Va. Code § 18A-4-7a, and penalizes Grievant for matters beyond her control. Grievant is attempting to advance within the system as many professional employees strive to do, and promotions frequently require the movement of others within the organization. This reason for denying Grievant the position is arbitrary and capricious. Accord Keatley v. Mingo County Bd. of Educ., Docket No. 98-29-035 (May 22, 1998).

Third, CCBOE believed Grievant's placement would disrupt a school which had already had too many disruptions. While this point is understandable, there was no evidence to believe this would be true. Assistant Principal Meadows would still be at the school, and he, as Assistant Principal for four years, would be able to assist Grievant. Additionally, Grievant had served as a principal before and understood how the job was to be done. This concern about disruption of is not one of the factors identified in W. Va. Code § 18A-4-7a, and this concern cannot included in "other measures or indicators uponwhich the relative qualifications of the applicant may fairly be judged" because it has nothing to do with the candidates qualifications.

Fourth, Grievant did not have middle school experience and Assistant Principal Meadows did. After a review of the evidence, it appears this was not the reason Grievant was not selected, but more of an afterthought to support the decision after it had been made. Since CCBOE did not really review Grievant's credentials before it rejected her, it would have been unaware of her lack of experience in this area.

In reevaluating the actions CCBOE as whole, these actions must be seen as arbitrary and capricious, as it did not rely on the criteria intended to be considered, and CCBOE did not select the

candidate with the highest qualifications. The undersigned Administrative Law Judge finds that the decision-making process was fatally flawed, and that CCBOE overstepped its broad discretion as described in W. Va. Code §§ 18A-2-1 and 18A-4-7a.

The above-discussion will be supplemented by the following Conclusions of Law.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2000); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code § 18-29-6. "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." Leichliter v. W. Va. Dep't of Health and Human Resources, Docket No. 92-HHR-486 (May17, 1993). Where the evidence equally supports both sides, the employer has not met its burden. Id.

2. It is the duty of the superintendent to nominate candidates for the consideration of the county board of education after he has considered all the factors identified in W. Va. Code § 18A-4-7a. See W. Va. Code § 18A-2-1.

3. It is the duty of the county board of education to consider the candidates recommended or nominated by the county superintendent in a thoughtful manner, and with the best interest of the schools in mind. The rejection of the recommended or nominated candidate, must not be arbitrary and capricious or demonstrate an abuse of discretion. Stinn v. Calhoun County Bd. of Educ., Docket No. 98-07-085 (Aug. 28, 1998).

4. W. Va. Code §18A-2-1 provides that a county board of education and its superintendent must share equally in hiring decisions. The respective roles of each should remain distinct and it is contrary to the intent of the statute for either to take actions designed to influence or interfere with the other's decision as to which candidate should be selected

5. County boards of education have substantial discretion in matters relating to the hiring of school personnel as long as their decisions are in the best interest of the schools and are not arbitrary and capricious. See Hyre v. Upshur County Bd. of Educ., 186 W. Va. 267, 412 S.E.2d 265 (1991); Syl. Pt. 3, Dillon v. Bd. of Educ. of County of Wyoming, 177 W.Va 145, 351 S.E.2d 58 (1986).

6. Once a board reviews the W. Va. Code § 18A-4-7a criteria it must consider, it has "wide discretion in choosing administrators . . . ." March v. Wyoming County Bd. of Educ., Docket No. 94-55-022 (Sept. 1, 1994). 7. 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. Elkins v. Boone County Bd. of Educ., Docket No. 95-03-415 (Dec. 28, 1995); Hughes v. Lincoln County Bd. of Educ., Docket No. 94-22-543 (Jan. 27, 1995); Harper v. Mingo County Bd. of Educ., Docket No. 93-29-064 (Sept. 27, 1993); Blair v. Lincoln County Bd. of Educ., Docket No. 92-22-009 (July 31, 1992). 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).

8. 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). An administrative law judge cannot perform the role of a "super-interviewer" in matters relating to the selection of candidates for vacant positions. Harper, supra; Stover v. Kanawha County Bd. of Educ., Docket No. 89-20-75 (June 26, 1989).

9. "Generally, an action is considered arbitrary and capricious if the agency did not rely on criteria intended to be considered, explained or reached the decision in a manner contrary to the evidence before it, or reached a decision that was so implausible that it cannot be ascribed to a difference of opinion. See Bedford County Memorial Hosp. v. Health and Human Serv., 769 F.2d 1017 (4th Cir. 1985); Yokum v. W. Va. Schools for the Deaf and the Blind, Docket No. 96-DOE-081 (Oct. 16, 1996)." Trimboli v. Dep't of Health and Human Resources, Docket No. 93-HHR-322 (June 27, 1997). Arbitrary andcapricious 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." Eads, supra (citing Arlington Hosp. v. Schweiker, 547 F. Supp. 670 (E.D. Va. 1982)). The arbitrary and capricious standard is a high one, requiring willful and unreasonable action and disregard of known facts.

10. The actions of CCBOE in not selecting Grievant for the position at BMS were arbitrary and

capricious as they were not based on the "criteria intended to be considered" in the selection process for a principal's position. Bedford, supra.

Accordingly, this grievance is **GRANTED**.

CCBOE is **ORDERED** to place Grievant in the position immediately with all back pay and any other benefits to make her whole. Grievant is to be credited with administrative experience as if she had received the position in August 2003. Of course, since it is late in the school year, the parties may wish to arrange another method of resolving this grievance, and it would be up to the parties to work out an amicable arrangement.

Any party may appeal this decision to the Circuit Court of Kanawha County, or to the Circuit Court of Cabell 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 Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

JANIS I. REYNOLDS

ADMINISTRATIVE LAW JUDGE

Dated: February 27, 2004

Footnote: 1

Grievant was represented by Attorney Brent Wolfingbarger, and CCBOE was represented by Attorney Howard Seufer of Bowles Rice McDavid Graff and Love.

Footnote: 2

The Executive Summary is one of the major tools used to assess applicants for administrative positions. A candidate is asked to state his or her knowledge of the duties and responsibilities required for the position, list educational proficiencies, and enumerate relevant specialized training related to the position.

Footnote: 3

Assistant Principal Meadows has a Master's plus 39 hours.

Footnote: 4

There was some indication Assistant Principal Meadows had assumed the responsibilities of the Principal from time to time, but his Executive Summary only states he had assumed the duties of the Assistant Principal from time to time before his appointment to this position.

Footnote: 5

It is clear from the testimony, that several of the board members and Superintendent Roach do not relate well together, and it appears several board members do not understand the role of a superintendent.

Footnote: 6

One Board member stated she did not know the school laws, but voted for what she thought was in the best interest of the students. Another board member stated the matrix was very subjective, so he did not feel it really had to be closely followed. Another board member stated he had never voted for Grievant in any position she had applied for because she did not originally work in Cabell County.

Footnote: 7

One Board member stated Superintendent Roach should receive a reprimand for failing to have all the principal positions filled at the end of the school year. It is noted that at the end of the school year BMS had an assigned principal, and Superintendent Roach did not find out Mr. Lake would not be returning for the school year until mid-July. This is the same board member who believed Superintendent Roach should call each of the board members before he posted "certain" positions.

Footnote: 8

Assistant Principal Meadows had publically stated he would not work under Grievant if she received the position. It was unclear from the testimony if the board members had heard this statement.

Footnote: 9

Several board members complained because they did not receive any information on the candidates before a vote, and they were not told who the other candidates were when they were asked to vote on the candidate nominated by Superintendent Roach. First, it is clear that many of the board members knew Assistant Principal Meadows was an applicant because of the calls they received. Additionally, a superintendent is to nominate the applicants one at a time, in order from the most qualified to the least qualified. A board of education is then to accept or reject the candidates based on his or her qualifications. The board is not to be given the list of applicants to then pick and choose the one they like. See W. Va. Code § 18A-2-1, infra.

Footnote: 10

Code §§18-4-10(2) and 18A-2-9 also address the manner in which persons are employed by a county board of education. Their language essentially mirrors that of Code §18A-2-1, the more general statute. For the purposes of this decision, reference is made only to the latter.

Footnote: 11

It has already been determined by this Board that an applicant's greater experience in education administration does not necessarily entitle him to an administrative position. March, supra.