DENNIE BROWN,

Grievant,

v. **Docket No. 05-55-372**

WYOMING COUNTY BOARD OF EDUCATION,

Respondent

and

DIEDRE CLINE, Intervenor.

DECISION

Dennie Brown ("Grievant") initiated this grievance on July 18, 2005, challenging the selection of Intervenor Diedre Cline for the position of Principal of Pineville Middle School. Grievant seeks placement in the position, with back pay and benefits. The grievance was denied at level one on July 18, 2005. A level two hearing was conducted on July 27, 2005, and the grievance was denied on August 31, 2005. Level three consideration was waived, and Grievant appealed to level four on October 3, 2005. At level four, the parties agreed to submit this grievance for a decision based upon the record developed below, accompanied by written fact/law proposals. (See footnote 1) The parties' written submissions were received by November 18, 2005, and this matter was assigned to the undersigned administrative law judge for a final decision on November 21, 2005.

The following material facts have been proven by a preponderance of the evidence of record.

Findings of Fact

1. Grievant has been employed by Respondent for approximately 31 years. He is currently teaching Language Arts at Oceana Middle School.

2. Grievant served as a middle school principal for 2 years in the early 1990s. His total experience as an administrator for Wyoming County is just over 10 years.

3. On May 31, 2005, Respondent posted a vacancy for the position of Principal of Pineville Middle School.

4. Of the six applicants who applied for the position, Grievant and three other individuals were interviewed by a committee consisting of Superintendent Frank Blackwell and Assistant Superintendents Frank Mann and James McGrady. All of the applicants were asked identical interview questions.

5. Based upon the seven statutory criteria contained in West Virginia Code § 18A-4-7a, Grievant was granted credit in the category of administrative experience, as the applicant with the most experience relevant to the position. He was also given credit in the categories of performance evaluations and appropriate certification, as was Intervenor, who was the successful applicant. Intervenor was the only applicant granted credit in the categories of degree level, academic achievement, and other measures or indicators (the interview).

6. Grievant holds a Master's Degree in Elementary Education and had less than a 4.0 grade point average.

7. Intervenor holds a Master's Degree in Administration and had a 4.0 grade point average. Prior to being placed in the position at issue, she was employed as an assistant principal. She had 16 years of experience, and approximately 3½ years as anassistant principal. Because of her recent administrative experience, Intervenor displayed an in-depth knowledge of pertinent administrative issues, and impressed the interview committee as being the most qualified applicant.

8. Because Grievant was going to be out of town on the day of the scheduled interviews, he agreed to have his interview with approximately two hours' notice. This was proposed due to conflicts with Grievant's schedule and those of the members of the interview team, and Grievant did not request to have the interview at any later date.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his claims by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2004); 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.

County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel. 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). However, a county board of education must make decisions affecting the hiring of professional administrative personnel on the basis of the applicant with the highest qualifications. In judging qualifications for administrative positions, consideration must be given to each of the following seven factors:

> (1) Appropriate certification, licensure or both;
>
> (2) 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;
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> (3) The amount of course work, degree level or both in the relevant field and degree level generally;
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> (4) Academic achievement;
>
> (5) Relevant specialized training;
>
> (6) Past performance evaluations conducted pursuant to section twelve, article two of this chapter; and
>
> (7) Other measures or indicators upon which the relative qualifications of the applicant may fairly be judged.

W. Va. Code § 18A-4-7a.

While each of the statutory 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. 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 candidatebased 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)).

Although Grievant's argument is somewhat unclear, it appears that he is contending that Respondent improperly assigned too much weight to the interview in making this selection decision. However, as set forth above, a board of education is clearly permitted to assign the greatest weight to the interview, under the category of other measures or indicators, if it so chooses. He also appears to take issue with Respondent's failure to place “assigned value” on the other six categories contained in the statute. Again, as discussed above, a board of education is not required to assign any specific value to each of the statutory criteria, so long as each criterion is applied to the applicants' qualifications. The evidence in this case establishes that this was, indeed, accomplished.

In his testimony, Grievant also made issue of the short notice he had prior to his interview, while the other applicants had several days to “prepare.” However, Grievant did not really describe how this disadvantaged him, and he admitted that he willingly held the interview at the agreed time, without requesting that it be held later. Moreover, the evidence in this case establishes that the interview committee's overwhelming consensus that Intervenor's interview was the best was based largely upon her detailed answers and explanations, which evidenced her recent administrative work

and experience. Grievant has neglected to explain how additional preparation time would have assisted him in thisregard, especially in light of the fact that none of the candidates had advance notice of the interview questions or subject matter.

Grievant has failed to meet his burden of proof in this case. Respondent applied each of the required statutory criteria to the applicants' qualifications and reached the unanimous conclusion that Intervenor was superiorly qualified for the position at issue. There is no evidence that Respondent abused its wide discretion in such matters.

The following conclusions of law are consistent with the foregoing.

Conclusions of Law

1. Grievant has the burden of proving his claims by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2004); 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.

2. A county board of education must make decisions affecting the hiring of professional administrative personnel on the basis of the applicant with the highest qualifications. In judging qualifications, consideration must be given to each of the following seven factors:

(1) Appropriate certification, licensure or both;

(2) 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;

(3) The amount of course work, degree level or both in the relevant field and degree level generally;

(4) Academic achievement;

(5) Relevant specialized training;

(6) Past performance evaluations conducted pursuant to section twelve, article two of this chapter; and

(7) Other measures or indicators upon which the relative qualifications of the applicant may fairly be judged.

W. Va. Code § 18A-4-7a.

3. Because the factors are not prioritized, and the statute does not mandate that any one area be afforded particular significance, a county board may objectively or subjectively assign different weights to the various aspects of the applicants' credentials. Jenkinson v. Greenbrier County Bd. of Educ., Docket No. 95-13-503 (Mar. 31, 1996); Fisher v. Marion County Bd. of Educ., Docket No. 93-24-042 (Mar. 11, 1993); Marsh v. Wyoming County Bd. of Educ., Docket No. 94-55-022 (Sept. 1, 1994). See Saunders v. Cabell County Bd. of Educ., Docket No. 97-06-149 (Dec. 29, 1997); Bell v. Lincoln County Bd. of Educ., Docket No. 97-22-013 (July 28, 1997). 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).

4. “Grievant bears the burden of proving, by a preponderance of the evidence, that he should have been selected for a particular position rather than another applicant, by establishing that he was the more qualified applicant, or that there was such a substantial flaw in the selection process that the outcome may have been different if the proper process had been used. 156 C.S.R § 4.21 (2004); Black v. Cabell County Bd. of Educ., Docket No. 89-06-707 (Mar. 23, 1990); Lilly v. Summers County Bd. of Educ., Docket No. 90-45-040 (Oct. 17, 1990), *aff'd* Cir. Ct. of Kanawha County, No. 90-AA-181(Mar. 25, 1993). See also, W. Va. Code § 18-29-6.” Goodwin v. Monongalia County Bd. of Educ., Docket No. 01-30-495 (June 26, 2003).

5. Grievant has failed to prove by a preponderance of the evidence that Respondent's selection of Intervenor for the position at issue was a violation of the applicable statute or an abuse of its wide discretion in the selection of administrative personnel.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County, or to the Circuit Court

of Wyoming 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.

Date: December 21, 2005

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DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

Grievant was represented by Ben Barkey of the West Virginia Education Association (WVEA); Respondent was represented by counsel, Gregory W. Bailey; and Intervenor was represented by William B. McGinley of WVEA.