WEST VIRGINIA PUBLIC EMPLOYEES

GRIEVANCE BOARD

DENNIS JARVIS

Grievant,

v. Docket No. 07-33-408

MCDOWELL COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Dennis Jarvis, Grievant, employed by Respondent, the McDowell County Board of Education ("MCBOE") as an elementary principal, filed a grievance on June 15, 2007, challenging his non-selection for the posted position of principal at the new War K-8 school (also known as "Southside"). Grievant's statement of grievance alleges that the MCBOE did not hire the most qualified applicant. Grievant alleges unfair hiring practices, favoritism, harassment, and asks that the MCBOE be required "to follow all state laws and policies in regard to hiring practices." As relief, Grievant seeks placement into the position, back-pay (plus interest) and benefits.

Relief was denied at level one, and Grievant appealed to level two. A level two hearing was held on September 11, 2007. (See footnote 1) The grievance was denied in a written level two decision dated September 27, 2007. Grievant appealed. Level three proceedings werewaived. A level four hearing was convened in the Public Employees Grievance Board's Beckley office on March 27, 2008. At the hearing, Grievant was represented by Katherine L. Dooley, Esquire, of The Dooley Law Firm, PLLC, and Respondent was represented by Kathryn R. Bayless, Esquire, of Bayless Law Firm,

PLLC. This case became mature for decision on or about April 17, 2008, the deadline for the submission of the parties' proposed findings of fact and conclusions of law.

Synopsis

Grievant, a principal employed by the McDowell County Board of Education, assigned to Fall River Elementary School, challenged his non-selection for the position of principal at the new "War K-8 school," asserting allegations of a "tainted and manipulated" hiring process, harassment by his supervisor and favoritism. Grievant and four other candidates applied and interviewed for the position. The facts established that an interview committee was appointed, interviews conducted, and a consensus was reached regarding the recommendation of the successful applicant.

In November 2001, DOE intervened in the operations of the McDowell County Board of Education. The State Superintendent of Schools is under no obligation to comply with W. Va. Code § 18A-4-7a in making the final decision in the principal's selection now challenged by Grievant. No showing has been made that the State Superintendent acted arbitrarily or capriciously in filling this position. The Respondent MCBOE maintains it properly evaluated the candidates, determining that an applicant other than Grievant was the most suited for the position. Respondent provided rationale for recommending the successful applicant which included the statutory selection criteria applicable to county boards of education. The evidence does not establish that Grievant was the most qualifiedapplicant, or that there was a substantial flaw in the selection process. Grievant failed to establish by a preponderance of the evidence that the selection was arbitrary and capricious or clearly wrong. This grievance is denied.

After a detailed review of the entire record, the undersigned Administrative Law Judge makes the following Findings of Fact:

Findings of Fact

1 1. McDowell County Schools is currently operating under intervention of the West Virginia State Department of Education ("DOE"). (See footnote 2) Respondent's Interim Superintendent Jeff Nash recommended an applicant to the DOE. The final determination as to who ultimately was awarded the position, which Grievant asserts he is entitled, was made by the West Virginia State Department of Education. DOE was not made a party of this grievance.

2 2. At the time of the filing of this grievance, Grievant was employed by Respondent as the principal at Fall River Elementary School in McDowell County.

3 3. A posting for the vacancy of principal at new War PreK-8 School was made on March 22, 2007. Five individuals made application for the position.

4 4. There was an interview committee established, which was to assess candidates and recommend an applicant for the position of principal at nw War PreK-8 School. 5 5. Interim Superintendent Jeff Nash appointed the members of the interview committee. This committee consisted of five individuals, Interim Superintendent Jeff Nash, then Assistant Superintendent Suzette Cook, Curriculum and Technology Specialist Carolyn Falin, then Title I Reading Specialist April Hedinger, and Director of Special Education Clinton Henry.

6 6. Grievant has thirty-two (32) years of experience in the school system. Grievant has a Master's Degree plus 45 hours, and holds certification in numerous professional, administrative, and teaching endorsement areas. Further, Grievant had previously served as principal at War K-8 School for a total of seven (7) years.

7 7. All candidates who applied for the principal's position met the criteria outlined in the job posting, went through an interview process and completed writing assignments (also referenced to as “prompts”) as part of the selection process.

8 8. Qualifications of the applicants were assessed pursuant to the first set of criteria set forth in W. Va. Code § 18A-4-7a, the selection criteria applicable to an administrative position. The completed interview score sheets illustrated that Grievant's qualifications were fairly considered, and that Grievant ranked fourth out of the five candidates interviewed.

9 9. All candidates were asked the same questions and each member scored the applicants independently and without influence from any other committee member. No specific criteria were given to the committee members by anyone in regard to rating candidates for the position. The committee did not meet and confer as a group at any time in regard to the qualifications of the candidates. 10 10. A matrix and chart(s) exist in regard to numerical rankings that were recorded for the candidates who interviewed and completed writing assignments for the principal's position. (Grievant's Exhibit 4). Members of the Interview Committee were unclear regarding the ultimate tabulation of data. Each committee member offered somewhat differing accounts of what process he or she used to provide their individual data from the interview process to be computed.

11 11. After reviewing all the qualifications of the applicants, including the information gleaned from the interview process, candidate Ann Handy was deemed the most qualified candidate and was recommended for the position.

12 12. As a result of assessing all seven statutory criteria, Grievant received a total point score of 113.8. Ms. Handy, the successful applicant, received a total point score of 133.82.

13 13. Many of Grievant's complaints about the hiring process relate to the seventh criterion where he scored 43.8 points and the successful applicant scored 60.6 points out of a possible maximum of 70 points. The scoring for the seventh criterion resulted from an interview, writing samples and an assessment of each applicant's training. The interview committee scored the interview and writing samples and Interim Superintendent Jeff Nash and Assistant Superintendent Suzette Cook scored the additional training component.

Discussion

In that this is not a disciplinary case, Grievant has the burden of proving his case by a preponderance of the evidence. Procedural Rule of the W. Va. Public Employees Grievance Board. *156 C.S.R. 1 § 3 (2008); 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). Grievant challenges his non-selection for the posted position of principal at “Southside.” Of dispute is whether Respondent lawfully selected the successful candidate and/or whether Grievant was the most qualified applicant for the position.

At the time in question, the State Department of Education had intervened in the operations of the MCBOE pursuant to W. Va. Code § 18-2E-5, suspending the operation of W. Va. Code § 18A-4-7a. However, because the Respondent MCBOE appears to have intended to follow § 18A-4-7a, in its posting and its selection decision, its adherence to those procedures will be analyzed, in order to assess the reasonableness of the recommendation to the State Superintendent.

The State Superintendent has the authority to make selection decisions in intervention counties. The West Virginia Code grants the DOE, and State Superintendent broad powers once it has taken control of a county, including the ability to make hiring decisions with regard to vacant principal and administrator positions. Specifically, W. Va. Code § 18-2E-5(p)(4)(C) provides the following:

> [t]he state board shall intervene in the operation of the school system to cause improvements to be made that will provide assurances that a thorough and efficient system of schools will be provided. This intervention may include, but is not limited to,

the following:

(v) Taking any direct action necessary to correct the emergency including, but not limited to, the following:

(I) Delegating to the state superintendent the authority to replace administrators and principals in low performing schools and to transfer them into alternate professional positions within the county at his or her discretion; and

(II) Delegating to the state superintendent the authority to fill positions of administrators and principals with individuals determined by the state superintendent to be the most qualified for the position. Any authority related to intervention in the operation of a county board granted under this paragraph is not subject to the provisions of article four [§§ 18A-4-1 et seq.], chapter eighteen-a of this code;

The Legislature clearly grants the State Superintendent the authority to fill the position to which Grievant asserts he is entitled to be awarded. Furthermore, the statute indicates this authority is not subject to W. Va. Code §§ 18A-4-1, *et seq*.

It is not unusual for County Superintendents, in intervention counties, to recommend employees to the State Superintendent based on an analysis of the appropriate factors set forth in W. Va. Code § 18A-4-7a. The recommendation to hire Ann Handy (the applicant with the highest interview score) for the position of principal at new War PreK-8 School was made by then Interim Superintendent Jeff Nash based upon an assessment of statutory criteria, W. Va. Code § 18A-4-7a. (See footnote 3) Accordingly, a review of the selection process is appropriate on the issue of the most qualified applicant, and whether there was such a substantial flaw in the selection process that the outcome would have been different.

Grievant and the successful applicant were qualified for the position. In fact all the applicants were qualified, but the Interview Committee did not recommend Grievant or determine him to be the most qualified when compared to the other applicants. Whenfilling administrative positions, W. Va. Code § 18A-4-7a requires the best or most qualified individual be selected. These qualifications are judged by the following factors outlined in that Code Section:

(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.

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. LincolnCounty 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).

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 Res.*, 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 v. Calhoun County Bd. of Educ.,*Docket No. 98-07-085 (Aug. 28, 1998). 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.

Grievant failed to prove a violation of W. Va. Code § 18A-4-7a, or that the MCBOE acted in an arbitrary and capricious manner in the selection of the successful applicant for the position of principal. All of the statutory criteria were assessed. The weight assigned to each is not required to be equal. The most discretionary of these, the seventh criterion which involved the interview and writing exercise, were scored by a multi-member committee. The members of the committee assigned scores independently of each other and did not confer prior to scoring. No member of the committee was shown to have unduly influenced any other member of the committee. Members of

the committee were experienced professional educators who exercised their individual discretion in the scoring process.

The use of writing assignments had been directed by Superintendent Nash and the practice of using a writing prompt had been in place since the time Grievant had served on an assistant principal's selection committee several months before the position indiscussion was posted. The interviews for the assistant principal and principal position at the new Southside school involved the use of a writing prompt. The use of a writing prompt was not improper or per se “manipulative.” This requirement permitted an assessment of written language skills, skills that are important for any administrative position but particularly a position which involves a duty to communicate effectively with parents, students and staff. Grievant ranked fourth among the five applicants on the scoring for the writing prompt.

The seventh criterion also involved scoring of the additional training each applicant had acquired. Grievant did not introduce the training records of other applicants but nonetheless has asserted that his training was not properly assessed. Grievant has not established fundamental elements of his case. Even if Grievant had been awarded 18 points for training, the maximum number of points awarded to any applicant, his ranking when all criteria were scored would not have changed.

Grievant has failed to establish that his qualifications were superior to any applicant who ranked above him, much less that his qualifications were superior to those of the successful applicant. Grievant has not established that there was a “pattern and practice” of requiring applicants to provide writing samples as a means of improperly discouraging applicants. No flaw was shown in the selection process utilized. There is some ambiguity with regard to what is a rubric and who computed the matrix of scores. This issue however was not established to have materially altered Grievant's positioning in the overall ranking of applicants. No evidence was introduced which truly indicated that there was any procedural deficiency in the selection process. The Grievance Board has authority to provide relief to employees for "discrimination," "favoritism," and "harassment," as those terms are defined in W. Va. Code § 18-29-2. As to the allegation that Grievant has been the target of unfair treatment and harassment, resulting in discrimination to Grievant and favoritism of other employees, it is recognized that “favoritism” is defined by statute as "unfair treatment of an employee as demonstrated by preference, exceptional or advantageous treatment of another or other employee." W. Va. Code § 18-29-2(o). In order to establish either discrimination or favoritism claim asserted

under the grievance statutes, an employee must prove:

(a) that he or she has been treated differently from one or more similarly-situated employee(s);

(b) that the different treatment is not related to the actual job responsibilities of the employees; and,

(c) that the difference in treatment was not agreed to in writing by the employee.

Frymier v. Higher Education Policy Comm., 655 S.E.2d 52 (2007); *See Bd. of Educ. v. White*, 216 W.Va. 242, 605 S.E.2d 814 (2004); *Chaddock v. Div. of Corr.,* Docket No. 04-CORR-278 (2005). Grievant's apparent belief and assertions that Ms. Cook is biased do not satisfy Grievant's burden. (See footnote 4) There is no reliable proof that Ms. Cook was biased against him or that she could not fairly assess him, along with other applicants, for this position. The fact that Ms. Cook helped to evaluate additional training credentials does not establish improper procedure. Given that Ms. Cook was the assistant superintendentassigned the responsibility of elementary education when this selection was made, it is not unreasonable or improper for her to have been involved in the selection process. Further, Ms. Cook testified that she did not harbor any ill will toward Grievant. (See footnote 5)

Under the circumstances presented here, Grievant has not established that his non- selection was the result of unlawful favoritism. The members of the committee called to testify on behalf of Grievant uniformly indicated that each believed the selection process used here was fair, that all candidates were asked the same questions and that each member scored the applicants independently and without influence from any other committee member. Questions asked during the interview were related to the position. Further, no evidence was introduced which challenged the accuracy of the points assigned to the first six statutory criteria.

W. Va. Code § 18-29-2(n) defines harassment as “repeated or continual disturbance, irritation or annoyance of an employee which would be contrary to the demeanor expected by law, policy and profession.” Grievant has failed to prove that he has been subjected to harassment by his supervisor, or other agents of Respondent, as such might reasonably relate to his non-selection. There had been events in Grievant's employment history which tend to indicate that he and his superiors did not

always agreeon the most prudent course of action. However, prior disagreement(s) highlighted by Grievant do not demonstrate an attitude or pattern of behavior by Ms. Cook, a member of the interview committee, or any other agent of Respondent which tended to establish harassment. Grievant's past and current performance evaluations are all positive. Past disciplinary action was not used to undermine Grievant's interview scores.

The recommendation by MCBOE to the State Department of Education to hire Ann Handy (applicant with the highest interview score) for the position of principal at new War PreK-8 School cannot be seen as arbitrary and capricious. It was based upon an assessment of statutory criteria. Ultimately Grievant ranked fourth out of the five candidates. The undersigned Administrative Law Judge does not find the decision-making process was fatally flawed or that MCBOE overstepped its broad discretion as described in W. Va. Code § 18A-4-7a. Grievant did not establish that MCBOE's recommendation was founded upon impermissible factors, or constituted an abuse of the discretion extended school boards when making such professional, administrative determinations.

Grievant has failed to prove by a preponderance of the evidence that the selection process was significantly flawed, legally insufficient, or that the selection of the successful applicant was unlawful, unreasonable or arbitrary and capricious. Accordingly, this grievance must be denied.

The following conclusions of law are appropriate in this matter.

Conclusions of Law

14 1. As this grievance does not involve a disciplinary matter, the grievant has the burden of proving his grievance by a preponderance of the evidence. Procedural Rule of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008); *Holly v. LoganCounty 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). “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 & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

15 2. W. Va. Code § 18-2E-5(p) specifically grants the power to fill the positions of administrators and principals in school systems under State Department of Education intervention to the State Superintendent.

16 3. When selecting an administrator, the first set of factors listed in W. Va. Code § 18A-4-7a is generally utilized by a county board of education. 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).

17 4. 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). 18 5. "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 Res.*, 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). The arbitrary and capricious standard is a high one, requiring willful and unreasonable action and disregard of known facts.

19 6. While a searching inquiry into the facts is required to determine if an action was arbitrary and capricious, the scope of review is narrow, and an administrative law judge may not simply substitute his judgment for that of the board of education. *Trimboli, supra*; *Blake v. Kanawha County Bd. of Educ.*, Docket No. 01-20-470 (Oct. 29, 2001).

20 7. The selection decision at issue was based upon reasonable justifications, was not arbitrary and capricious, and was not an abuse of Respondent's discretion in such matters.

21 8. The actions of the Respondent MCBOE in recommending the successful applicant for the position in question were not arbitrary and capricious, the Board did not reach a decision contrary

to the evidence, and the decision reached was not so implausible that it could not be ascribed to a difference of opinion. *Bedford, supra.* 22 9. The Grievance Board has authority to provide relief to employees for "discrimination," "favoritism," and "harassment," as those terms are defined in W. Va. Code § 18-29-2. In order to establish either a discrimination or favoritism claim asserted under the grievance statutes, an employee must prove:

(a) that he or she has been treated differently from one or more similarly-situated employee(s);

(b) that the different treatment is not related to the actual job responsibilities of the employees; and,

(c) that the difference in treatment was not agreed to in writing by the employee.

Frymier v. Higher Education Policy Comm., 655 S.E.2d 52 (2007); *See Bd. of Educ. v. White*, 216 W.Va. 242, 605 S.E.2d 814 (2004); *Chaddock v. Div. of Corr.,* Docket No. 04-CORR-278 (2005).

23 10. Grievant has failed to establish by a preponderance of the evidence that the selection decision at issue was arbitrary and capricious, clearly wrong, or the result of discrimination or favoritism.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the "circuit court of the county in which the grievance occurred." Any such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code § 18-29-7. (See footnote 1). 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 theBoard with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

Date: December 19, 2008

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Landon R. Brown

Administrative Law Judge

Footnote: 1

In 2007, the Legislature, 2007 Acts ch. 207, abolished the West Virginia Education and State Employees Grievance Board, replacing it with the West Virginia Public Employees Grievance Board. W. Va. Code §§ 18-29-1 to 18-29-11 and W. Va. Code §§ 29-6A-1 to 29-6A-12 were repealed and replaced by W. Va. Code §§ 6C-2-1 to 6C-2-7 and W. Va. Code §§ 6C-3-1 to 6C-3-6 (2007). Grievances which were pending prior to July 1, 2007, are decided under the former statutes, W. Va. Code §§ 18-29-1 to 18-29-11, for education employees, and W. Va. Code §§ 29- 6A-1 to 29-6A-12, for other state and higher education employees. References in this decision are to the former statutes, which continue to control the proceedings in this case.

Footnote: 2

In November 2001, the West Virginia State Department of Education intervened in the operations of the McDowell County Board of Education, limiting its authority as to the employment of school personnel, by delegating this authority to the State Superintendent of Schools. As a result of the intervention pursuant to W. Va. Code §18-2E-5, the State Board approves all personnel actions and the local board is informed of those actions at their scheduled board meetings.

Footnote: 3

Pursuant to W. Va. Code §18-2E-5, the final determination as to who ultimately is awarded the position, in discussion, is made by the West Virginia State Department of Education, not Respondent MCBOE.

Footnote: 4

Ms. Cook had issued a written reprimand to Grievant in October 2005. That reprimand by its very terms, was later removed from Grievant's personnel file. The scoring matrix reveals that Grievant received the maximum points allowed for satisfactory evaluations. There is no evidence that the reprimand was considered during this selection process.

Footnote: 5

It was uncontested and established by collaborating testimony that during a portion of the time that Grievant was principal of War Elementary (a K-8 school) his authority to govern the school was altered for a period of time. Grievant objected to the extent of authority his then assistant principal was granted by Ms. Cook; resulting in Grievant's primary assignment being the middle school and the assistant principal's focus at the elementary level. Each administrator oversaw separate buildings, separated by approximately a half mile. Grievant alleges this was a deliberate act taken for personal reasons by Ms. Cook. Ms. Cook testified that all duties assigned to the then assistant principal (Ms. Cruey) fell within her job description and that the division of labor occurred because of the distance of the two buildings from each other.