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Coaching Vacancies in Public Education, Who Gets the Vacant Position?

A common issue always arising among West Virginia county boards of education relates to the filling of coaching positions in public schools. For example, does a citizen (non-employee) receive a coaching position over a currently certified professional educator? Does a professional educator receive a coaching position over a substitute employee? Does a professional educator in the home county receive priority over a professional education in an adjoining county? What is the impact of an employee who is on permit? Does a service personnel employee have any rights to be a coach?

The purpose of this month's education law newsletter is to provide some pointers to county boards of education as it relates to these common issues.

- A *certified professional educator* generally has priority in coaching vacancies. However, a *substitute* who is certified is equal to a certified regular employed professional educator. As such, a board of education does not violate *W. Va. Code § 18A-3-2a* when it hires a substitute teacher over a regularly employed teacher to fill a coaching position. *Halley v. Boone County Bd. of Educ.*, Docket No. 00-03-329 (Apr. 4, 2001).
- An employee possessing a *teaching permit* cannot receive a coaching position over a currently employed certified professional educator who has applied for the position or a certified substitute who has applied for the position. *Arrington v. Jackson County Bd. of Educ.*, Docket No. 04-18-365 (April 29, 2005).
- *W. Va. Code § 18A-3-2a* does not provide that the currently employed professional educator has to be an employee of the county in which the job is posted in order to have hiring priority. However, the *out-of-county teacher* must be able to meet the scheduling demands of the coaching position in order to be hired for it.
- *W. Va. Code 18A-3-2a(4)* states, in part: ". . . the state superintendent may issue certificates for persons to serve in the public schools as athletic coaches or other extracurricular activities coaches . . . subject to the following limitations: . . . (B) a currently employed certified professional educator has not applied for the position . . .". As such, coaching certificates may be issued to individuals who are not otherwise employed by a county board of education, but only when a currently employed certified professional educator has not applied for the extracurricular position. But, "coaching positions held by individuals [*citizen coaches*] who are not currently employed certified professional educators should be posted every year." State Superintendent Opinion dated June 2, 2003; *Shockey v. Preston County Bd. of Educ.*, Docket No. 04-39-045 (July 26, 2004).
- *Service personnel* employees are eligible to receive coaching authorizations. However, they can only receive the authorization when s/he has been offered employment as a coach and no currently

employed professional educator has applied for the position. The service employee must also meet all requirements of West Virginia Board of Education Policy 5202 and *W. Va. Code* § 18A-3-10. A county board of education cannot refuse to employ a service personnel employee as a coach because of overtime concerns.

- Service employees who hold teaching certificates do not need to hold coaching authorizations in order to be employed as coaches in West Virginia public schools. However, pursuant to *W. Va. Code* 18A-3-2a, those currently employed professional educators who are fully certified will receive hiring preference over those individuals who possess permits (e.g., sub permits). In other words, the fully certified teacher will always receive preference over individuals possessing only lesser certificates. *Arrington v. Jackson County Bd. of Educ.*, Docket No. 04-18-365 (April 29, 2005).
- The standard of review for filling coaching positions is to assess whether the Board abused its broad discretion in the selection or acted in an arbitrary or capricious manner. *Dillon v. Wyoming County Bd. of Educ.*, 177 W. Va. 145, 351 S.E.2d 58 (1986); *Chaffin v. Wayne County Bd. of Educ.*, Docket No. 92-50-398 (July 27, 1993).

Should you have any questions on this issue or any issues please feel free to contact a member of Dinsmore & Shohl's [Education Law Practice Group](#).