

This matter was heard upon the appeal to the Commissioner of Education of Kara Anne Reilly from a decision of the Rhode Island Department of Education to revoke her Provisional Elementary Teacher Certificate.

The Commissioner has jurisdiction to hear the appeal by virtue of the provisions of Chapter 16-39 of the General Laws of Rhode Island, 1956 as Amended. The matter was heard by the undersigned Hearing Officer under authorization from the Commissioner.

Due notice was given to the interested parties of the time and place of the hearing. Both parties were represented by counsel. Testimony was taken, a transcript of which was made and evidence was presented. In addition to closing oral argument, counsel for the parties submitted written briefs in support of their respective positions. Upon the testimony taken and the evidence presented, we find the following:

1. The appellant graduated from Assumption College in June of 1987 with a degree in Elementary Education, grades one through six, and English.
2. The appellant took the National Teachers Examination on June 27, 1987.
3. By letter dated July 7, 1987, the appellant applied to the Department of Education for a "license to teach elementary education". (See Joint Exhibit 8)
4. The Department of Education sent the appellant an application form and a copy of the application pro-

cedures. (See Joint Exhibit 9)

5. In August of 1987, the appellant received her Examinee Score Report from the testing service which included her scores in Communication Skills, General Knowledge and Professional Knowledge. (See Joint Exhibit 7)
6. In October of 1987, the appellant received from the Department of Education a Provisional Elementary Teacher Certificate, along with notification that she had successfully met all the requirements for certification. (See Joint Exhibit 2)
7. On February 5, 1988 the Department of Education sent the appellant a copy of Form TC-1000, Certification Status, informing her that her NTE Core Battery Test scores did not meet Rhode Island's cut-off score. (See Joint Exhibit 5)
8. On February 23, 1988 the appellant was notified by the Department of Education that a mistake had been made, that she had not passed the required NTE test and that her certification was being revoked. (See Joint Exhibit 4)

Issue to be Decided

Should the Rhode Island Department of Education be estopped from rescinding the appellant's certificate because it made an error

in the initial issuance of the certificate?

Applicable State Laws and Regulations

§16-11-2. Examinations - Issuance of Certificates.- The state board of regents for education shall hold, or cause to be held, in such places in different parts of the state, and at such times as it may determine, examinations for the position of teacher in the public schools of this state; and said board of regents for education is hereby authorized to issue certificates of qualification which shall be valid throughout the state for the grade and time specified therein.

§16-11-4. Annulment of certificates.- Said board of regents for education may at any time annul for cause any certificate issued by it, after due notice to the holder thereof, and an opportunity for a hearing if desired.

Regulation - School Personnel - Certified Teaching Personnel - Elementary Certification (Adopted BR 1/12/84, Effective 10/1/84; Sec. I. D. effective 12/1/86;

This certificate is valid for teaching in grades one through eight, except where grades seven and eight are organized on the middle or secondary school plan.

I. PROVISIONAL CERTIFICATE: valid for three (3) years

- A. Bachelor's Degree from an accredited or an approved institution of higher education as defined in these regulations.
- B. Completion of an approved program designed for the preparation of elementary school teachers.
- C. Those applicants who have not completed an approved program shall present evidence of six semester hours of student teaching in the elementary grades and not less than twenty-four semester hours of coursework to include work in each of the following content areas:

Child Growth & Development, Methods and Materials of Teaching Reading, Math, Language Arts, Science, Social Studies in the Elementary Schools; the Arts, Identification and Service to Special Needs Children; and Foundations of Education.

- D. Applicants who have not previously been certified in the State of Rhode Island must successfully pass the Core Battery of the National Teachers Exam prior to being certified.

NOTE: THIS CERTIFICATE IS NOT RENEWABLE; HOLDER MUST QUALIFY FOR PROFESSIONAL CERTIFICATION UPON SERVING THREE YEARS IN RHODE ISLAND UNDER THE PROVISIONAL CERTIFICATE. INDIVIDUALS WHO HAVE NOT TAUGHT FOR ALL OR PART OF THE TERM OF THE PROVISIONAL CERTIFICATE ARE ENTITLED TO AN EXTENSION OF THE PROVISIONAL CERTIFICATE.

NOTE: The student teaching requirement may be waived for an applicant who has had two or more documented years of successful teaching experience in an approved elementary setting. Certified Early Childhood or Secondary teachers who have had two or more years of teaching experience and who seek Elementary Certification may fulfill the student teaching requirement by completing a one-year supervised internship at the elementary level. After completing the necessary coursework for the elementary certificate, and arranging through the local community for a one-year internship, the individual may request the issuance of a one-year temporary provisional certificate. The Department of Education must approve the internship in advance and the supervisor must have at least 3 years of teaching experience. Upon successful completion of the internship, the individual will be issued a three-year provisional certificate

Position of the Parties

The appellant testified that in accordance with all applicable statutes, regulations and procedures, after graduating from Assumption College in June of 1987, and taking the National Teacher Examination on July 7, 1987, she applied to the Department of Education for a Provisional Elementary Teacher certificate. Shortly thereafter, she was notified by the Department that her application was in compliance with the State's requirements except for the fact that they had not yet received her scores for the NTE Core Battery Test. In August of 1987, both the appellant and the Department received the Examinee Score Report of the NTE which listed the appellant's scores as: Communication Skills-649; General Skills-635; and Professional

Skills-640. The appellant realized that the scores fell below the requirements of the Board of Regents which are 657, 649 and 648 respectively. However, since in October of 1987 the Department of Education issued the appellant a Provisional Elementary Teacher certificate together with notification that she had successfully met all of the Department's requirements, she assumed that the Board of Regents' stated cut-off scores had been revised downward, and as a result, she had passed the examination. Subsequently, she began submitting applications for employment to several Rhode Island communities although she was employed at St. Rocco's Parochial School in Johnston and was contractually committed to remain there through the end of the school year in June 1988. Certification is not required to teach in a parochial school.

Sometime around February 5, 1988, she received a communication from the Department of Education informing her that she had not passed the National Teacher Examination and as a result she had not met all the requirements for certification. Shortly thereafter, by letter dated February 23, 1988 from Edward L. Dambruch, Director School and Teacher Accreditation, she was officially informed that she was erroneously issued a provisional elementary teacher certificate and as a result, it was being revoked. The appellant testified that because four months had elapsed between the time when she received the certificate in October of 1987, and the notice of annulment in February of 1988, she was deprived of two opportunities to retake the NTE - - October 1987 and March 1988. She stated that she is scheduled to retake the NTE on June 25, 1988.

The appellant argues that she will suffer injustice and undue hardship as a result of the unilateral error made by the Department of Education, and accordingly, the Department of Education should be estopped from revoking her certificate. In support of her position, appellant cites Schiavulli v. School Committee of the Town of North Providence, 334 A.2d 416, 114 R.I. 443 (1975). In that case, the Supreme Court stated that the Committee's actions were "not only tardy, but also with no defense" and that the school committee was estopped from denying that the teacher's absence was a result of her being on a leave of absence.

The respondent takes the position that the certificate issued in October of 1987 is void from its inception because of the fact that the appellant had not achieved a passing grade on the National Teacher Examination which is an essential requirement for the issuance of a teaching certificate.

The respondent further argues that the Hearing Officer has no jurisdiction to extend the relief sought by the appellant, that is, extension of her invalid certificate until she is able to take and pass the NTE in June of 1988 because the certificate she was issued is invalid and void, and thus extending it would only compound the error that was committed when it was erroneously sent to her in October of 1987.

The respondent argues that the appellant has not experienced any loss as a result of the mistake made by the Department of Education when it issued her a certificate since as she has testified, she has secured employment at St. Rocco's School for the 1987-88 school year through a

contractual commitment made in September of 1987. In support of its position, respondent cites R.I.G.L. 16-11-1, 16-11-2, 16-11-4, and 16-11-2.1.

There is no question that the Board of Regents for Education can annul any certificate issued by it for cause. This authority is granted to the Board of Regents by law, more specifically, §16-11-4. The determination to be made by this Hearing Officer is whether or not the Department of Education should be estopped from the revocation of the appellant's certificate and whether or not Schiavulli, supra, is governing.

The Rhode Island Supreme Court has rendered a more recent decision on the matter of estoppel and which is probably more applicable than the Schiavulli decision. In Lerner v. Gill, 463 A.2d 1352 (R.I. 1983), the Supreme Court stated:

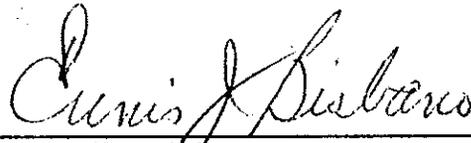
Even if prisoner's family moved from Massachusetts to Rhode Island and his mother commenced a business there solely on basis of his apparent imminent parole eligibility, such occurrences did not inflict a grave hardship on either prisoner or his family so as to estop State from taking away prisoner's parole eligibility status upon determining that it was erroneously granted.

In determining whether estoppel is an appropriate device to use against the government, court must not only consider the problems encountered by party seeking the estoppel but also be mindful of the public interest involved.

It is the opinion of this Hearing Officer that the Rhode Island

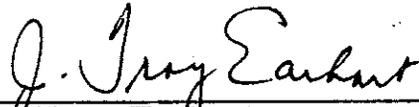
Department of Education should not be estopped from revoking the Provisional Elementary Teacher Certificate, erroneously issued to the appellant in October of 1987 and that the principles of estoppel as stated in Lerner, supra, are governing.

Accordingly, the appeal is denied.



Ennis J. Bisbano
Hearing Officer

Approved:



J. Troy Earnhart
Commissioner of Education

June 20, 1988