

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

.....
Linda Capone
v.
R.I. Department of Education
.....

DECISION

Held: The petitioning teacher is appealing the Rhode Island Department of Education's (RIDE's) decision not to renew her emergency teaching certificate in mathematics. In the present case, the superintendent (the appointing authority) is no longer requesting a renewal of the emergency certificate at issue, and the superintendent is not appealing RIDE's decision not to renew the certificate. The Petitioner also has not completed the course work required for a renewal of an emergency certificate. The Petitioner is therefore without any standing to claim an appeal in this case. The Petitioner's appeal is denied and dismissed.

DATE: November 22, 2002

Travel of the Case

On September 3, 2002 the office of teacher certification of the Rhode Island Department of Education (RIDE) informed the Woonsocket superintendent of schools that the petitioner's emergency teaching certificate in mathematics had expired, and that Woonsocket's request for a renewal of this certificate was being denied. This denial was based upon the petitioner's failure to complete the course work required to keep this certificate in effect. The petitioning teacher is appealing from RIDE's decision not to renew this emergency certificate. The Woonsocket school system is not appealing RIDE's non-renewal decision, and it is no longer requesting an emergency mathematics teaching certificate for the petitioner.

Jurisdiction

Jurisdiction is present under R.I.G.L. 16-39-1 and R.I.G.L. 16-39-2.

Positions of the Parties

The Petitioner

The petitioner submits that she was making a good faith effort to complete the course work required to keep an emergency teaching certificate in effect. She contends that she experienced difficulties in locating the required courses and that, when she located them, she found that they had already been oversubscribed. She argues that she had difficulty in obtaining information from RIDE staff as to exactly what course work was needed to keep the emergency teaching certificate in effect. She further argues that she will suffer significant economic loss if she is not able to retain her position as a mathematics teacher.

RIDE

First of all, RIDE submits that by virtue of the applicable regulation, the emergency teaching certificate involved in this case expired under its own terms on August 1st of 2001.¹ It further submits that only the school district can request an emergency teaching certificate or appeal a denial of an emergency teaching certificate. Since the Woonsocket school system is no longer requesting an emergency certificate for the petitioner, RIDE argues that the petitioner is without any standing to claim an appeal in this case.

¹ Exhibit 5

Secondly, RIDE argues that, even if it were so inclined, it could not grant an extension of this emergency since the petitioner has not completed the required course work. RIDE acknowledges that it can be difficult to complete the course work needed for an emergency teaching certificate. RIDE points out, however, that some hundreds of people managed to accomplish the same task that is being required of the petitioner. RIDE also acknowledges that the press of business can make it difficult for RIDE to give detailed attention to every request for information it receives, but it submits that, in the end, it was the responsibility of the petitioner to determine what course work she needed to keep her certificate in effect.

Findings of Fact

1. The petitioner experienced difficulties in locating the courses she needed to keep her emergency teaching certificate in effect. [Testimony of Petitioner]
2. The petitioner has not completed the course work required as a precondition to a renewal of an emergency certificate. [Testimony of Petitioner and Gaudiosi]
3. The press of business made it difficult for RIDE to give a prompt response to every request for assistance that the petitioner made. [Testimony of Gaudiosi]
4. Woonsocket is neither appealing the decision of RIDE not to renew the emergency certificate at issue nor is Woonsocket now requesting an emergency certificate for the petitioner for this school year. [Letter from superintendent of Woonsocket]
5. Some four hundred emergency certificates were renewed in Rhode Island last year. [Testimony of Gaudiosi]

Conclusions of Law

1. The laws of Rhode Island require all public school teachers to be certified by the Board of Regents:

16-11-1.Certification of public school teachers required – Deductions from state aid for non-compliance. – No person shall be employed to teach...in any school supported wholly or in part by public money unless the person shall have a certificate... issued by ...the board of regents. ...In any case any city or town shall pay...any of the public money to any person for teaching who did not, at the time of teaching, hold a certificate, then the

department of ...education shall deduct a sum equal to the amount so paid from the amount of the state's money due...to the city or town....²

2. Failure to have the right teaching certificate is, of course, good cause for dismissal.³ Indeed, failure to have a teaching certificate makes a teacher incompetent to sign a teaching contract or to be paid for public school teaching service.⁴ The fact that a teacher is making good faith efforts to become certified, or that the school committee has made a good faith mistake in not checking the teacher's certification, does not excuse the employment of an uncertified teacher.⁵ A teacher must have the correct certification for the position which she or he holds.⁶
3. The Rules of the Rhode Island Department of Education concerning EMERGENCY TEACHING CERTIFICATES state:

An emergency certificate is a one-year certificate issued at the written request of the local appointing authority to an individual who does not qualify for provisional certification. An emergency certificate is issued when the services of a fully certified candidate cannot be secured. The minimum requirement for the issuance of an emergency certificate is a bachelor's degree with the exception of an emergency certificate in vocational education. The emergency certificate is valid for service only in the local school district/agency having requested its issuance. An emergency certificate cannot be requested before August 1st of the school year. In requesting an emergency certificate, the local appointing authority must present evidence that the services of a fully certified candidate are not available. Such evidence must include, at a minimum, a copy of a statewide advertisement for the vacancy (within a month of the request), an affidavit that all appropriate colleges and universities having such programs have been contacted, and an affidavit that no certified candidate applied for the position. The Department of Education reserves the right to verify that a shortage exists. All emergency certificates expire on August 1st following their issuance.

An emergency certificate may be renewed if: (1) the individual has had a successful teaching experience as verified by the local appointing authority and (2) the individual has successfully completed six semester hours of college credits required for provisional

² See: *Schiavulli v. School Committee* 114 R.I. 443 at 446 (1975)

³ *Wheless vs. Westerly School Committee*, Commissioner of Education, Feb. 1979.

⁴ *Floyd County Board of Education vs. Stone*, 307 S.W. 2d 912 (Ky. 1957); Certification of Teachers, Rhode Island Department of Education, 1938.

⁵ *In Re: Narragansett School Committee – Forfeiture of Public Money*, Commissioner of Education, June 13, 1983.

⁶ *Cahalan vs. Woonsocket School Committee*, et al, Commissioner of Education, Aug. 1992.

certification in the area that emergency certification is held. An individual granted emergency certification after February 1st is required to complete only three semester hours of appropriate college credits for the first renewal of the emergency certificate. (Revised: October 7, 1998)

Discussion

We think that RIDE is correct in its contention that the petitioner lacks standing to bring this appeal. The petitioner is no more aggrieved by the failure of the appointing authority to request a renewal of “her” emergency teaching certificate than is a long-term substitute teacher who is not appointed to a position for the next school year.⁷ A substitute teacher has no expectation of employment beyond the expiration of his or her employment contract and a teacher serving under an emergency certificate can have no expectation of employment beyond the August 1st expiration date of the certificate. Under the regulations, the decision to apply for a renewal of the certificate is not left up to the teacher, but rather to the appointing authority. By its very terms, therefore, an emergency teaching certificate can grant no one a continued expectation of employment.

In the present case, the superintendent (the appointing authority) is no longer requesting a renewal of the emergency certificate at issue, and the superintendent is not appealing RIDE’s decision not to renew the certificate. Under the regulations the appointing authority has plenary authority to request or not to request an extension of an emergency certificate. Petitioner simply has no authority to seek an extension of the certificate. We recognize that the petitioner is alleging that she has standing because she will suffer an economic “injury in fact” if she does not remain an employee of the Woonsocket school system.⁸ The fact, however, is that Woonsocket has the unilateral right to decide whether or not a renewal of the “petitioner’s” emergency certificate will be sought. The petitioner is simply not aggrieved by the decision the appointing authority made in this case, any more than is a substitute teacher who is not offered employment in the next school year.

Even assuming that the petitioner had standing to bring this appeal, we think that her case must fail on its own merits. Petitioner has not completed the course work required for a renewal of an emergency certificate. She attributes this deficiency to difficulty in locating courses and difficulty in communicating with RIDE. There is, however, no hardship exemption contained in the regulation and no reason to believe that any form of estoppel could run against RIDE in this case.

⁷ *Corrigan v. Donilon*, 433 A.2d 198 (1981)

⁸ *Ahlburn v. Clark*, 728 A.2d 449 (R.I. 1999)

It must be remembered here that the purpose of the certification law is to ensure that a highly qualified teacher is in every public school classroom. Nothing that a RIDE employee said or failed to say can prejudice the rights of students to have the protection of the teacher certification law. An emergency certificate, which allows a lesser-qualified person to teach, is only granted, *faute de mieux*, for a limited period of time, in one school district, under very strict conditions. More importantly, the quality mandate of the certification statute is best served by RIDE's policy of strictly construing eligibility for this emergency exemption from full certification. A more flexible or generous approach by RIDE to granting emergency certificates, or an approach which would allow the extension of such certificates based upon alleged miscommunication, would subvert, rather than serve, the goals of the certification law. We therefore can find no estoppel in this case.⁹

Conclusion

The petitioner's appeal is denied and dismissed.

Forrest L. Avila
Hearing Officer

APPROVED:

Peter McWalters, Commissioner

November 22, 2002
Date

⁹ Providence Teachers Union v. Providence School Bd., 689 A.2d 388 (R.I. 1997) See: Lerner v. Gill, 463 A.2d 1352 (R.I. 1983)