

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

.....

Christine Lyons

v.

**Rhode Island Department of
Elementary and Secondary Education**

.....

DECISION

Held: The petitioner has not established a legal basis for a waiver of or exemption from valid Board of Regents' Regulations which restrict issuance of life certificates for teachers after April 30, 1997.

DATE: April 15, 2003

Travel of the Case

On May 2, 2002 Ms. Christine Lyons sought review of a determination that she was not eligible for a life certificate as a Reading Specialist/Consultant. Ms. Lyons proceeded pro se, and the Department of Education was represented by its legal counsel. The undersigned was designated by Commissioner Peter McWalters to hear and decide this matter.¹ Hearing was held on June 11, 2002, and the record closed on July 8, 2002 upon the submission of supplementary information as requested by Ms. Lyons. Jurisdiction to hear this dispute is found in R.I.G.L. 16-39-1.

ISSUE

Is Christine Lyons entitled to a life certificate as a Reading Specialist/Consultant despite the fact that present Board of Regents Regulations no longer provide for life certification, and the fact that she does not fall within one of the two groups which continue to be eligible for issuance of life certificates up until December 31, 2004?

Findings of Relevant Facts:

- Christine Lyons received her Master of Arts in Education (Reading) from the University of Rhode Island on May 18, 1997. Dept. Ex.B.
- On June 10, 1999 Ms. Lyons applied for a certificate as a Reading Specialist/Consultant. Dept.Ex.A. At that time she indicated that a reading position at North Kingstown High School had just become available and it was her intention to apply for that position. On this basis, she requested in writing that her application for the certificate be expedited and she was issued a provisional certificate on June 14, 1999. Tr.p.6. She has taught in North Kingstown using this certificate since September, 1999.
- Although she had not submitted a formal request to the Office of Teacher Certification at the time of the hearing, Ms. Lyons had at some point in the Spring of 2002 inquired as to her eligibility for a life certificate and been informed that she was not eligible by Mr. Joseph Gaudiosi of the Certification Office. Appellant's Ex.1.
- The Board of Regents for Elementary and Secondary Education voted on April 10, 1997 to discontinue the issuance of life certificates; it determined at that same time that individuals who already had life certificates would continue to hold those certificates; the Board also determined that those holding a provisional certificate on April 10, 1997 would continue to be eligible for life certification in that area of certification, provided they completed all requirements for the life certificate by December 31, 2004; also, those who applied for a provisional certificate no later than

¹ On the record of this hearing the protocol followed by the Department in matters of this kind was described, i.e. when an impartial hearing officer is called upon to make a decision involving one of the department's own offices, there is complete separation of the hearing and advocacy functions.

April 30, 1997 and established that they satisfied all requirements for issuance of the certificate as of the April 30, 1997 date would continue to be eligible for life certification until December 31, 2004. Dept. Ex.C, D, and E.

- Ms. Lyons is an exemplary teacher with considerable experience in the North Kingstown school system; prior to becoming certified and accepting the position of a reading specialist in 1999, she was a special educator for many years, focusing on teaching reading and language arts. Tr.pp. 25-29;packet of information submitted by the petitioner on July 8, 2002; she currently has completed all requirements for the issuance of a life certificate as a Reading Specialist/Consultant. Appellant's Ex.1;Tr.p.25.
- Ms. Lyons began her Master's Degree program in 1992; her completion of the requirements for a Master's degree in Reading was delayed by her recovery from a serious illness in 1993. Tr.p. 26, packet of information submitted by the petitioner on July 8, 2002.
- Had she known sufficiently in advance that she needed to fulfill requirements for the provisional certificate as a Reading Specialist/Consultant by April 30, 1997 in order to retain eligibility for the life certificate, Ms. Lyons would have met that requirement and completed her Master's degree, or satisfied the graduate coursework requirements, prior to the date that she did, i.e. May 18, 1997, eighteen days after the deadline. Tr. pp. 26-27.

Positions of the Parties

The Petitioner

Ms. Lyons argues that the 1997 change in regulations to eliminate life certification has arbitrarily caused her, and those like her who completed their certificate requirements some eighteen (18) days after the April 30,1997 deadline, to be ineligible for life certification in their chosen fields. Now that she has essentially completed the three years of documented teaching experience as a reading specialist which would have qualified her for a life certificate had she applied for and satisfied all requirements for her provisional certificate by April 30, 1997 she takes the position that there should be flexibility in applying the April 30, 1997 deadline. In her case, she argues that the lapse of a mere eighteen days separates her from those who continue to be eligible for life certification, if they meet the requirements for the certificate by December 31, 2004. Although she acknowledges that she does not technically meet the requirements for a life certificate under the transitional rule, she argues that rigid application of the deadline is unfair.

In her own individual case she argues that she is unnecessarily inconvenienced by the requirement for ongoing professional certification that she take graduate credits, many of which are redundant and not helpful to her. As a dedicated and committed professional in her school and school system, she engages in numerous school improvement activities, serves on many committees, etc., all of which are time consuming. The requirement that she take coursework at the graduate level is a

distraction from these important professional undertakings. For her, lifelong learning in her professional field is not something that needs to be mandated, as she has demonstrated the motivation to engage in professional development above and beyond what is required. She would prefer to direct the course of her ongoing professional development and do it on her “own terms”. Additionally, life certification would provide her with recognition as a master teacher in her field, which she feels she has earned.

The Department

Counsel for the Department describes the process of amending the certification regulations to eliminate life certification as a thoughtful and deliberate one. The April 30, 1997 deadline for obtaining a provisional certificate which would permit the holder to later fulfill the requirements for a life certificate by December 31, 2004 was purposely chosen. The clear intention of the Board of Regents was to exclude those persons who would qualify for a provisional certificate after the April 30, 1997 date. Implicitly, the phase-out of life certification was to occur immediately, with only a limited window of opportunity for those who at the time of the Regents’ vote already met the qualifications for a provisional certificate, but had not yet applied to the Department.

The Petitioner, the Department points out, does not qualify for the extension of time for issuance of the life certificate, since she neither submitted an application, nor met the requirements for the provisional certificate, by the date of April 30, 1997. The Department has no authority to grant a waiver to Regents’ regulations to the petitioner to enable her to obtain a life certificate, especially given the fact that the deadline established was chosen with the intent to exclude those who might be qualifying for a provisional certificate in May or June of 1997.

As to the Petitioner’s argument that there is a burden presented by a requirement that she complete six graduate credits during the three year² period, counsel for the Department notes that because she already holds her Master’s degree in Reading she is allowed to fulfill the credit requirements by earning either college credits or approved in-service credits. Thus, especially given the extensive professional activities described by the Petitioner, the earning of six approved in-service credits should not be burdensome, or even inconvenient.

DECISION

It is clear from this record that the Board of Regents carefully weighed the effects of a deadline of April 30, 1997 for candidates to apply for provisional certification, meet the requirements for that certificate, and thereby have continuing eligibility for life certification up to December 31, 2004. The Rhode Island Supreme Court has recognized that the Board of Regents exercises broad powers in the field of education, including the power to adopt standards and qualifications for the certification of teachers. See Reback

² or five year period for the professional certificate

v. R.I. Board of Regents, 560 A2d 357 (R.I. 1989). In acting with respect to certification matters, and in amending its regulations, the Board of Regents exercises its rulemaking function. In this matter, the Petitioner has made no argument that the provision which would disqualify her from receipt of a life certificate as a Reading Specialist/Consultant is not a valid rule or regulation, from either a substantive standpoint or based on the procedures accompanying its enactment.³ We must assume, therefore, since we have no evidence to the contrary, that the regulatory provision with which she takes issue is valid.

There is no basis for the exemption of the Petitioner from a valid rule, duly promulgated by the Board of Regents. While we take administrative notice of a “Protocol for Granting Variances in Regulations of the Board of Regents or Regulations of the Commissioner” adopted by the Board on May 27, 1993, this protocol does not provide for waivers of regulation and is not accessible to individuals. The variance protocol is available only to local educational agencies which must establish an “alternative method of compliance” with the regulation or regulations from which relief is sought. The petitioner argues for an individual waiver of a valid regulation. We have no authority to do so, since valid regulations are binding on the agency adopting them. Furthermore, the record does not establish a legitimate reason for such exemption even if such authority existed. By definition a rule is an agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedure, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule. R.I.G.L. 42-35-1(h). The principle of general applicability is inconsistent with the notion of exemption or waiver for individuals, no matter how compelling the circumstances. This is especially true in the adjudicative context in which this case is brought under R.I.G.L. 16-39-1.

For the foregoing reasons, the request of the Petitioner is denied.

For the Commissioner

Kathleen S. Murray, Hearing Officer

APPROVED:

Peter McWalters, Commissioner

April 15, 2003

Date

³ We would note that the General Assembly made the rulemaking provisions of the Administrative Procedures Act applicable to the Board of Regents in 1997, in P.L. 1997 ch. 305 Section 1.