

State of Rhode Island
And
Providence Plantations

Commissioner of Education

.....

Nellie S. Francis

v.

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

.....

DECISION

Held: The petitioner has not established a legal basis for a waiver of or an exemption from valid Board of Regents' Regulations which established a deadline of December 31, 2004 for holders of provisional certificates to obtain life certification.

DATE: August 2, 2006

Travel of the Case

On December 28, 2005 Ms. Nellie Francis filed a request for a hearing with respect to her eligibility for a life certificate in Secondary Education as a Biology teacher. She had been notified that she was not eligible for issuance of a life certificate which she had requested in both 2004 and 2005. Upon receipt of Ms. Francis' request for a hearing, the Commissioner designated the undersigned to hear and decide this matter.¹ A hearing was held on January 31, 2006, the record was thereafter supplemented by agreement of the parties with additional documentation provided by Ms. Francis, and on June 20, 2006 the record closed upon receipt of the transcript and post-hearing memorandum of the Department. Jurisdiction to hear this dispute is found in R.I.G.L. 16-39-1.

ISSUE

Is Nellie S. Francis entitled to a life certificate as a Secondary Teacher of Biology despite the fact that present Board of Regents Regulations no longer provide for life certification, and the fact that she did not meet the deadline of December 31, 2004 for obtaining life certification under the transitional rule adopted by the Board of Regents in 1997?

Findings of Relevant Facts

- Nellie (Groom) Francis holds a one-year special provisional secondary biology certificate and ESL content endorsement issued on November 18, 2005. RIDE Ex.A.
- Ms. Francis has twice been determined to be ineligible for a life certificate in secondary biology. Although she held a provisional certificate at the time the Regents eliminated life certification², she did not complete all requirements for the life certificate by the December 31, 2004 deadline established by the Regents in a "transitional rule"³ adopted at the time the Board of Regents eliminated life certification. RIDE Ex.A and Ex.C.

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. See Tr. pp. 3-4.

² Although there is some testimony about the original date of issuance of her provisional certificate in teaching secondary biology as July 15, 1998 (Tr.p. 11) (a fact which would also disqualify her from receiving life certification) this was not the reason cited by the Department for her ineligibility for the life certificate. Thus we assume that she held a provisional certificate on April 30, 1997.

³ The specific provisions of the "grandfathering" were not the subject of evidence at this hearing. Because of prior hearings involving these issues, we are aware of, and take administrative notice in this case, of the transitional rule adopted by the Board of Regents when it voted on April 10, 1997 to discontinue the issuance of life certificates. The transitional rule permitted those holding a provisional certificate on the date of April 10, 1997 (the date of the Board's vote) to 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 individuals who applied for a provisional certificate no later than April 30, 1997 and established that they satisfied all requirements for issuance of the certificate as of April 30, 1997 would

- Ms. Francis completed the academic requirements for the life certificate in that she received her Master's degree and 15 graduate-level credits in biology, but she did not meet the requirement that she complete six (6) years of teaching at the secondary level (three (3) of which must be in Rhode Island) by the deadline of December 31, 2004. Tr.pp. 16-22; RIDE Ex.B.
- A year of teaching experience is calculated on the basis of 135 days (Tr.p.15). Thus, the requirement for six (6) years of teaching experience has been interpreted by the Department of Education as requiring evidence of 810 days of teaching experience.
- Ms. Francis taught for a total of 696.5 days in the Providence school department prior to the December 31, 2004 deadline for issuance of the life certificate.⁴ She has not submitted evidence of any other teaching experience for which she seeks credit. Tr. p.23; RIDE Ex. A and B.
- In correspondence submitted by the Providence school department to RIDE on March 20, 2002 the school department verified that Nellie Francis had utilized her Secondary Biology/Science certificate for 8 years. Petitioner's Ex.6; On June 2, 2004 the Providence school department verified in correspondence that Ms. Francis had utilized her certificate for 9 years. In an email submitted to RIDE on July 15, 2004⁵ the Providence school department corrected its previous statements with respect to Ms. Francis' service in the Providence school system to document 696.5 days of teaching experience. Petitioner's Ex.1(of the Supplemental packet).
- Ms. Francis testified that she incurred an on the job injury while teaching at Hope High School and that she had ongoing medical problems as a result. She testified that she was out of work (and receiving workers' compensation benefits) for a period of four and one-half (4 ½) years. Tr. pp.55-57.
- During the time Ms. Francis was out of work⁶ she testified that she communicated with staff at the certification office of RIDE about the medical problems that were impeding her from working and fulfilling the teaching experience requirement for her life certificate; that she was requested to provide, and did provide, documentation of this medical condition and that she understood that an extension beyond the deadline would be available to her. Tr. pp. 56-59. Petitioner's Ex.7-14 (of the Supplemental packet).
- On June 5, 2001 the late Doris M. Anselmo, Director of the Office of Teacher Certification of RIDE wrote to Attorney Stephen J. Dennis⁷ in response to a letter Mr. Dennis had written concerning Ms. Francis certification status. Ms. Anselmo's letter indicated that with respect to Ms. Francis eligibility to obtain life certification prior to December 31, 2004, the Certification Office would need additional information.

continue to be eligible for life certification until December 31, 2004. See Lyons v. Rhode Island Department of Elementary and Secondary Education, decision of the Commissioner dated April 15, 2003 at pp.1-2.

⁴ In a supplementary packet of information submitted by the Petitioner, the 696.5 – day calculation was confirmed as correct.

⁵ After a RIDE consultant questioned the accuracy of the information provided with respect to Ms. Francis' teaching service.

⁶ We infer that the period of her absence from work was during the period 1998-2004, given her testimony and the documentation she submitted in evidence in this matter.

⁷ Who, we assume, represented Ms. Francis

Attorney Dennis was directed to contact Attorney Paul Pontarelli to discuss further documentation of Ms. Francis' injury and the resulting limitations affecting her ability to complete coursework and teaching experience requirements. Petitioner's Ex. 14 (of the Supplemental packet).

- Medical documentation exists which indicates that Ms. Francis suffered from various back and shoulder conditions from approximately October of 1998 to April of 2004. Petitioner's Ex. 7-12 (of the Supplemental packet).⁸
- Mr. David Roy was the certification specialist who evaluated Ms. Francis' eligibility for life certification on November 18, 2005, a decision which prompted Ms. Francis' request for hearing. He affirmed his finding that her teaching experience (at 696.5 days) failed to meet the requirement of 810 days at the January 31, 2006 hearing. Mr. Roy testified that, prior to the hearing, he had no knowledge of a medical condition which may have resulted in her failure to accumulate the required 810 days of teaching experience. He testified he did not review any medical documentation, or correspondence from Ms. Francis' attorney, in making his determination of the amount of teaching experience she had as of the deadline for life certification, i.e. December 31, 2004. Tr. pp. 37-40, 43, 51.

Positions of the Parties

Nellie S. Francis

Ms. Francis argues that she has documented a medical disability which prevented her from working over several years during which the "clock was ticking" on the deadline for meeting requirements for life certification. She submits that when notified of her medical condition, staff at RIDE told her to provide them with documentation of the situation, and suggested that, in the meantime, she focus on completing the academic coursework which would also be needed to meet the requirements for a life certificate in teaching secondary biology. Given this advice, she thereupon completed the requirements for a master's degree, including the required 15 graduate level credits in biology. Although she does not dispute RIDE's calculation of her years of teaching experience, Ms. Francis argues that at some point in time, the Providence School Department nevertheless provided documentation to RIDE that she had six years of teaching experience.⁹ This fact, together with the reliance she placed on the advice of RIDE staff that she should not worry about the cutoff date, justifies an extension of time so that she can gain sufficient teaching experience and obtain a life certificate.

⁸ It is unclear whether Exhibits 7-12 were retained in Ms. Francis' certification file at the Department of Education.

⁹ It does not appear that Ms. Francis takes the position that the verification of teaching experience sent by the Providence School Department in error should establish that she in fact had met the 810-day requirement. Rather, we interpret her argument to be that Providence's mistake in verifying her service should be another reason to extend the deadline in her case.

Rhode Island Department of Elementary and Secondary Education

The position of the Department is that Ms. Francis did not (and still does not) have the requisite teaching experience to establish her eligibility for a life certificate in Secondary Education (biology). There is no substantiation in her file of Ms. Francis' claim that she received advice or assurances that any inability she had to continue teaching in Providence, because of a medical condition, would excuse her from meeting the requirements for the life certificate by the deadline established by the Board of Regents. In fact, Mr. Roy's testimony was that the existence of a medical condition would not be relevant to a determination of whether she would continue to be eligible for a life certificate. An applicant's personal reasons for not meeting the teaching experience requirement do not bear on their eligibility. Thus, the medical documentation which Ms. Francis contends was part of her certification file was not referenced by Mr. Roy in making his determination. He indicated that if he had reviewed this medical documentation, his decision with respect to Ms. Francis' eligibility for life certification would remain unchanged. Her request for an extension of time in which to meet the 810 day teaching experience requirement is premature, the Department submits. If at some point in the future she actually accumulates 810 days of experience, she would then be in a position to have a request for life certification reviewed on appeal.

DECISION

It is difficult to analyze a case in which a request for an exemption from a deadline in meeting certification requirements is unaccompanied by evidence that an extension would result in the petitioner receiving the requested certificate. At no time prior or subsequent to the expiration of the December 31, 2004 deadline did Nellie Francis fulfill the requirement of six years of teaching experience. It is uncontradicted that she had, even at the time of hearing on January 31, 2006¹⁰, only 696.5 out of the required 810 days of teaching experience. Thus, as we view it, her request is not for a limited "extension" of the deadline established by the Board of Regents in its transitional rule, but rather an open-ended window of opportunity for her to meet requirements for life certification. The petitioner is actually requesting that the Department of Education be ordered to apply to her (at some point in the future when she *may* complete another 113.5 days of teaching service) certification regulations which were repealed in 1997. She seeks an indefinite extension of the December 31, 2004 deadline.

Granting the petitioner's request would constitute an individual waiver of a valid regulation and the Department of Education has no such authority. Valid regulations are binding on the agency adopting them. Also, as we have pointed out in prior decisions¹¹, the fairness in enforcing regulatory provisions is found, in part, in the consistency with which the agency charged with this function applies the regulations. Absent a situation in which application of the regulation produces an irrational result, or a case in which one of

¹⁰ Over a year after the December 31, 2004 deadline

¹¹ See Lyons v. Rhode Island Department of Elementary and Secondary Education, decision of the Commissioner dated April 15, 2003.

the factual premises on which denial of the certificate is based is incorrect¹² there is no room for flexibility or exceptions. See D'Acchioli v. Department of Education, decision of the Commissioner dated March 9, 1977.

Even if the Department had the authority to “extend the December 31, 2004 deadline” as the Petitioner requests, there has been no factual record created which establishes a legitimate reason to do so. There may have been an initial error in the documentation received by RIDE from the Providence School Department –to the effect that Ms. Francis had “utilized her certificate” for a period in excess of the six years required. There is no evidence that this erroneous information was relied on or caused Ms. Francis to forego employment she would have otherwise undertaken to fulfill the six-year requirement. She herself should have been aware that the verification sent by Providence overstated the length of time she actually performed her teaching duties there. Once RIDE determined the existence of the error, it quickly notified Ms. Francis of her certification status on August 17, 2004, citing the deficiency in her teaching experience.

Although it may be that the Petitioner was injured, that she was disabled and that her medical condition prevented her from teaching for a period of years¹³ such facts do not constitute a legitimate basis for a waiver of the deadline established in the “transitional rule”. The cut-off date for establishing eligibility for life certification was an exercise of the broad powers in the field of education that have been delegated to the Board of Regents. It would have been within the prerogative of the Regents to establish any exceptions on the basis of medical conditions, or other compelling reasons. The Regents transitional rule has no such exceptions.

The Petitioner’s claim that she received assurances that she would continue to be eligible for life certification (beyond the December 31, 2004 deadline) because of her medical situation has not been substantiated on this record.

For the foregoing reasons, her appeal is denied.

For the Commissioner,

Kathleen S. Murray, Hearing Officer

APPROVED:

Peter McWalters, Commissioner

August 2, 2006
DATE

¹² See Brouillette v. R.I. Department of Elementary and Secondary Education and East Providence School Committee, decision of the Commissioner dated August 18, 1992.

¹³ Facts which, for purposes of the arguments Ms. Francis makes in this case, we will assume to be established