

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

.....

Edward R. Jameson

v.

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

.....

DECISION

Held: Mr. Jameson’s teaching at the East Providence Career and Technical Center during school year 2005-2006 violated the provisions of R.I.G.L. 16-11-1 because he was not certified by the Rhode Island Department of Elementary and Secondary Education during that time; however, he has proven by a preponderance of the evidence, that his statutory violation was not intentional. He is entitled to receive the certificate he seeks as a vocational teacher in landscaping/horticulture, despite evidence of his failure to comply with the certification requirements in a timely manner.

DATE: October 17, 2006

Travel of the Case

On August 21, 2006 Edward Jameson, through his counsel, requested a hearing with respect to the denial of his application for certification as a vocational teacher. The matter was assigned to the undersigned hearing officer for hearing and decision on August 28, 2006. The parties agreed that the schedule for hearing this matter should be shortened because of the impending start of the school year, and the uncertainty as to whether Mr. Jameson would be able to continue to work as a teacher at the East Providence Career and Technical Center. The matter was heard on September 6, 2006 at which time both parties were represented by counsel and a full record was made. Pending receipt of the transcript, the Rhode Island Department of Elementary and Secondary Education (hereinafter RIDE) requested leave to file a written memorandum to supplement arguments made at the time of the hearing. Over objection of Mr. Jameson's counsel, RIDE's request was granted on September 12, 2006. Memoranda were filed by both parties on September 21, 2006 and the record closed upon receipt of the transcript on September 29, 2006. Decision in this matter has been expedited.¹

Jurisdiction to hear this appeal arises under R.I.G.L. 16-39-1 as well as the Rules Governing Annulment of Certificates (May 1, 1985) which, in Section X, provide for a hearing under these Rules when an applicant is denied a certificate.

ISSUE

Is Edward Jameson entitled to receive a vocational education certificate in landscaping/horticulture ?

Findings of Relevant Facts:

- Edward Jameson began teaching Landscaping/Greenhouse Management at the East Providence Career and Technical Center in January of 2003.²
- Edward Jameson was issued a temporary provisional vocational education certificate in landscaping/horticulture by the Teacher Certification Office of RIDE on June 16, 2004. By its terms, the certificate issued to Mr. Jameson expired on August 31, 2005. RIDE Ex. A and B. Mr. Jameson was notified that in order to qualify for a three-year provisional certificate in vocational education, he needed an additional nine (9) credits in vocational methods/curriculum by the date his temporary certificate would expire, i.e. August 31, 2005. RIDE Ex. B.
- During school year 2004-2005 Mr. Jameson taught under the provisions of the temporary provisional certificate described above.

¹ Superintendent Jacqueline Forbes requested that decision in this matter be expedited and her request was granted by Commissioner McWalters on September 20, 2006.

² Mr. Jameson had previously taught for many years in Massachusetts. He initially taught in Rhode Island under emergency certification. See Petitioner's Ex. 2 and RIDE Ex. A.

- In the fall of 2004 Mr. Jameson's wife was seriously ill; she was hospitalized and her condition ultimately required surgery in the Spring of 2005. Mr. Jameson was involved in her care throughout these months. Tr. pp. 23-26. Petitioner's Ex.2.
- In the Spring of 2005, Mr. Jameson enrolled in and completed a course at Rhode Island College that fulfilled the requirement for four (4) of the nine (9) additional credits he needed. Tr. p.26; RIDE Ex. C 1. At the time he registered for the Spring coursework at Rhode Island College, he learned that the other two courses he needed were not offered at RIC at that time. Tr. pp.27-29.
- In December of 2004 or early January of 2005 another teacher at the East Providence Area Career and Technical Center who needed the same two courses as Mr. Jameson for maintenance of her certification, determined that these courses would not be available at Rhode Island College until the fall of 2005. She notified the principal of the East Providence Area Career and Technical, Charles B. Rocha, of her dilemma. She also spoke to Mr. Jameson about "having the same problem" as he did.³ Tr. pp. 64-65.
- When Mr. Rocha learned that both Mr. Jameson and the other teacher, Delia Curt, required coursework to maintain appropriate certification, and that the coursework was not available at Rhode Island College, he informed the then-superintendent of East Providence schools, Manuel F. Vinhateiro of the situation. On Mr. Vinhateiro's instruction, Mr. Rocha called Joseph Gaudiosi of the Certification Office to determine what should be done. According to Mr. Rocha's testimony, Mr. Gaudiosi told him that both teachers should take the necessary courses "when they were available". Tr. pp.77-80.
- After speaking with Mr. Gaudiosi, Mr. Rocha notified both Mr. Jameson and Ms. Curt of the information he had received. He also conveyed this same information to Superintendent Vinhateiro. Tr. p.79 and 85.
- Mr. Jameson contacted Rhode Island College when he completed the course he took in the Spring of 2005, only to learn⁴ that the additional two vocational methods courses were not going to be offered until the fall of 2005. Tr.pp. 27-29, 43-45.
- At some point during the summer of 2005, as the deadline for expiration of his temporary provisional certificate approached, Mr. Jameson called the Certification Office of RIDE. After speaking to a secretary in the office, he was transferred to Mr. Gaudiosi, the chief certification officer for RIDE, to whom he spoke briefly. As a result of that brief conversation, Mr. Jameson believed that all he needed to do with respect to his certification status was to take the courses that would be offered in the fall of 2005 at Rhode Island College. Tr. pp. 29-32.
- On August 31, 2005 Mr. Jameson's teaching certificate expired. He continued to teach at the East Providence Area Career and Technical Center for the entire school year 2005-2006. He obtained the additional credits for renewal of his certificate in the fall

³ The other teacher at the Vocational Center proceeded to apply for, and receive, an extension of her certificate, based on the unavailability of the coursework in the Spring and Summer at Rhode Island College; her extended certificate was valid up to August 31, 2006 (RIDE Ex. E and F.)

⁴ He evidently had forgotten that this information had been conveyed to him in January by Mr. Rocha.

semester of 2005 at Rhode Island College. On March 9, 2006 he filed an application for issuance of a five (5) year professional certificate. RIDE Ex. C and C1.

- On April 27, 2006 Ms. Paulajo Gaines, Director of the Office of Educator Quality and Certification at RIDE wrote to Mr. Jameson, requesting information on the efforts he had made to complete the required coursework by the August 31, 2005 deadline. Petitioner's Ex. 1. On April 28, 2006 Mr. Jameson responded to Ms. Gaines' letter in a written communication addressed to legal counsel for the Office of Educator Quality and Certification. Petitioner's Ex. 2.
- On June 12, 2006 Ms. Gaines again wrote to Mr. Jameson, requesting that he describe what effort, if any, he had made to enroll in the necessary courses at the University of Massachusetts, Boston during the spring and summer of 2005. Petitioner's Ex. 3. Mr. Jameson responded to this communication on June 20, 2006. Petitioner's Ex. 4.
- On August 16, 2006 Ms. Gaines wrote to Mr. Jameson to notify him that his March 9, 2006 application for certification was denied. The reasons cited in the letter were his failure to complete the required coursework by August 31, 2005 and the fact that he had continued to teach in East Providence without certification in violation of R.I.G.L. 16-11-1. The letter noted that the explanation offered by Mr. Jameson for the late completion of the required coursework was found not to warrant an extension of his expired certificate nor to excuse his teaching without a certificate in violation of the statute. Joint Ex. 1.
- At the time Mr. Jameson's certificate expired, an informal protocol existed at RIDE to extend a certificate when the required courses are not available. The teacher must submit an application for renewal of his/her certificate, together with documentation that the courses are unavailable. Tr. pp. 96-97. In determining the unavailability of the coursework, a review of factors such as travel time to institutions which do offer the courses is made to determine if attendance is "feasible". If the teacher demonstrates that the coursework is unavailable, his or her certificate is renewed for an appropriate period of time. Tr. pp. 96-100.
- At no time did Mr. Jameson follow the protocol for extending the provisional vocational certificate he held which expired on August 31, 2005. Tr. pp. 100-101; 122.
- During the Spring and Summer of 2005 courses which would have satisfied the credit requirements Mr. Jameson needed were available at UmassBoston (Tr.pp.164-166;RIDE Ex. G). Had RIDE's protocol been applied to Mr. Jameson⁵, he would not have been able to demonstrate to Mr. Gaudiosi the unavailability of the coursework he needed for renewal of his certificate. Tr. pp. 124-126.

⁵ Mr. Jameson is a resident of Mansfield, Massachusetts.

Positions of the Parties

Rhode Island Department of Elementary and Secondary Education

The department notes at the outset that the Office of Educator Quality and Certification has a duty to evaluate the character and professional fitness of each applicant who seeks to be certified to teach in Rhode Island. In its evaluation of Mr. Jameson's March 9, 2006 application⁶, the department perceived behavior that did not demonstrate the professional qualities that are expected of certified teachers. The Director of the Certification Office found no evidence of the good character that is required for a teacher to function as a role model for students. The department explained at the hearing that because Mr. Jameson had originally been issued a one-year temporary provisional certificate to enable him to teach in school year 2004-2005, completion of the nine credits was a *quid pro quo*. Thus, he clearly understood that in order to continue to teach in the 2005-2006 school year he needed to fulfill the terms of the agreement that had facilitated his teaching during 2004-2005. Not only did he fail to honor this "bargain", but he demonstrated little or no concern over the prospect of the expiration of his certificate on August 31, 2005. He refused to recognize the fact that when his certificate expired, he was no longer authorized to teach in a Rhode Island public school.

Instead of admitting that he did not take the August 31, 2005 expiration of his provisional certificate as a serious matter, Mr. Jameson attempts to place responsibility on others for the situation that developed. Rather than admit that he did not avail himself of courses offered at UmassBoston in the Spring and Summer of 2005, he claims that his understanding was that only courses taken at Rhode Island College would satisfy requirements for recertification. As a fall-back position⁷ Mr. Jameson's counsel argues that there was a "pre-approval process" at RIDE which made Rhode Island College the preferred institution at which to take credits for certification and made enrollment at other institutions "risky". Counsel for the department points out that, unlike his colleague, Ms. Curt, who found herself in need of the same coursework within the same timeframe, Mr. Jameson did not come down to the Certification Office and follow the established protocol. If he at least accepted responsibility for not having done so, the Certification Office may not have concluded that he lacked the necessary good character and professionalism to be certified.

Mr. Jameson continues to display unprofessional, even dishonest, behavior which justifies withholding his certificate at this time. Counsel argues that the record contains incredible and contradictory explanations for Mr. Jameson's failure to obtain the necessary credits by the August 31, 2005 expiration date. The department takes the position that the testimony of both Mr. Jameson and Mr. Rocha, especially with respect to their purported conversations with Joseph Gaudiosi of the Certification Office, is simply not credible. Mr. Gaudiosi has no recollection of either of these conversations. If they did occur at all, what Mr. Gaudiosi is claimed to have said is not accurate. Mr. Gaudiosi testified that in any

⁶ As supplemented by his written responses to the two inquiries of the Director of the Office of Educator Quality and Certification, Ms. Paulajo Gaines.

⁷ An argument counsel for RIDE describes as a "red herring"

discussion of the issue of unavailable coursework and expiring certificates, he would have made reference to the protocol that needed to be followed and which was not followed in this case.

Mr. Rocha's testimony about an alleged early January, 2005 telephone conversation with Mr. Gaudiosi stands uncorroborated. Neither Mr. Jameson, nor Ms. Curt mentioned such a conversation in their testimony. The inconsistencies in the testimony raise clear questions of credibility. According to Mr. Jameson's recollection of the sequence of events, he first learned of the unavailability of the Rhode Island College courses in June of 2005, not January when Mr. Rocha testified the issue arose, and was resolved by the call to Mr. Gaudiosi. The department disputes the veracity of Mr. Jameson's testimony that he, too, spoke to Mr. Gaudiosi in the summer of 2005. An important fact, from the department's perspective, is that "no one at RIDE was contacted about (Jameson's) situation".

Based on these facts, there is no justification for the violation of R.I.G.L. 16-11-1 which occurred. The importance of enforcing the law which requires that all who teach in Rhode Island public schools hold appropriate certificates cannot be over-emphasized. The statutory penalty imposed on a district⁸ for employing a non-certified teacher is substantial—the forfeiture of all monies paid to the non-certified employee. The individual teacher also shoulders responsibility in regard to maintaining the necessary certification, and when that responsibility is not taken seriously, and the statute is flaunted, as the facts in this case show, the certificate should be withheld. For these reasons, the department requests that the appeal in this matter be denied.

Edward Jameson

The Petitioner submits that he has not shirked his professional responsibilities and has not flaunted certification rules. He points out that, but for the unanticipated illness of his wife in the fall of 2004, he would have taken the required coursework at that time and not been faced with the situation that evolved. With his wife's health still of great concern in the Spring of 2005, Mr. Jameson enrolled in, and successfully completed, the only course he required and Rhode Island College offered at that time. Upon realizing in June that the Rhode Island College offerings he needed would not be available again until the fall (after expiration of his certificate), he contacted Joseph Gaudiosi of RIDE's Certification Office. As a result of his telephone conversation with Mr. Gaudiosi, Mr. Jameson contends that he received a verbal extension of the August 31, 2005 deadline. Stated another way, he relied on Mr. Gaudiosi's statement that he should take the courses as soon as they were offered and that there was nothing else he needed to do to be in compliance with certification regulations. Mr. Jameson argues that he effectively obtained a waiver of the August 31, 2005 expiration date to permit both the completion of his coursework and his continued employment at the East Providence Area Career and Technical Center. His employment as a teacher in the 2005-2006 school year

⁸ a penalty still under consideration in this matter with respect to the East Providence School Department. See pp. 207-208.

did not violate R.I.G.L. 16-11-1. If Mr. Jameson is guilty of anything at all, it is a mistake in judgment in that he did not follow up to obtain the waiver Mr. Gaudiosi had given him in writing.

Counsel for Mr. Jameson argues that there is precedent for verbal waivers being granted by the Certification Office and that this situation conforms to the requirements for such a waiver. Mr. Jameson gave notice to the Certification Office that the required courses were not available. Since his colleague, Delia Curt, had already provided independent verification from Rhode Island College that the courses were not offered until the fall, Mr. Jameson was not required to do so. Both individuals received verbal extensions of the August 31, 2005 expiration date. Like Ms. Curt, Mr. Jameson completed the required courses as soon as they were available, i.e. in the fall semester of 2005. Thus, it is clear that Mr. Jameson's certificate was extended and that he complied with the conditions attached to this verbal waiver. He thereafter submitted his application, with documentation of the necessary credits, to the department.⁹

Counsel for Mr. Jameson submits that when RIDE relies on any ground other than an applicant's failure to meet the academic requirements for a teaching certificate, the department is in essence annulling the certificate. Annulments are controlled by R.I.G.L. 16-11-4 which places the burden on the department to prove¹⁰ that there is just cause for annulment of the teacher's certificate. Since this case has not been presented as an annulment of Mr. Jameson's certificate, the hearing officer cannot consider, and must dismiss, the ground related to his alleged violation of R.I.G.L. 16-11-1, i.e. teaching in a public school without a certificate. Thus, in considering the merits of Mr. Jameson's appeal, the case should be restricted to whether or not he has met certification requirements and whether denial of his application for certification is justified.

Without waiving the above argument, the Petitioner contends that since he, and the East Providence school department, believed that a waiver of the August 31, 2005 expiration date had been granted, there has been no violation of R.I.G.L. 16-11-1 – surely not an intentional one. Counsel also notes that when Mr. Jameson did submit his application for re-certification on March 9, 2006, it was not until April 27, 2006 that the director of the Certification Office responded, and, when she did so, she did not notify him that he was teaching in violation of R.I.G.L. 16-11-1. The April 27, 2006 letter from Ms. Gaines does not notify Mr. Jameson that he must immediately remove himself from the classroom. The letter states only that “without those credits, you cannot be certified as of September 1, 2005”.¹¹ Thus, if Mr. Jameson were teaching without certification during 2005-2006, he should have been clearly notified of this on April 27, 2006. Implicitly, the argument is that Mr. Jameson's good faith as to his statutory compliance persisted

⁹ Counsel also argues that RIDE's attempt to distinguish Mr. Jameson's situation from that of Ms. Delia Curt on the basis that UmassBoston courses were “available” for him since he is a resident of Massachusetts are unpersuasive for a number of reasons. Given the expedited nature of this decision, we will not discuss those reasons here.

¹⁰ The inference is that the burden would be by some evidentiary standard other than a preponderance of the evidence, e.g. clear and convincing evidence.

¹¹ We would note that the sentence in the April 27th letter goes on to state “as required under Rhode Island law”.

throughout the 2005-2006 school year. Not until August 16, 2006 was he notified of his alleged violation of the statute, when formal notice was also given by Ms. Gaines that his March 9, 2006 application for certification had been denied.

Finally, Mr. Jameson argues that the statutory penalty set forth in R.I.G.L. 16-11-1, the forfeiture of an amount of state aid equal to the amount paid by a city or town to the uncertified teacher, preempts any other responses by RIDE. The department is not authorized to withhold Mr. Jameson's certificate as a penalty for a violation of 16-11-1, should a violation of this statute be found to have occurred. For these reasons, counsel requests that Mr. Jameson's appeal be granted and that he receive his certificate forthwith.

DECISION

In this proceeding, Mr. Edward Jameson has the burden of proving that he is qualified for certification as a vocational teacher of landscaping/horticulture. The department has argued that this is a case of complete disregard of certification requirements bringing into question Edward Jameson's professionalism, ability to take responsibility for his actions, and even his veracity. Based on the facts presented to the department by Mr. Jameson's March 9, 2006 application, it has concluded that he has demonstrated irresponsible, unprofessional and illegal behavior. We agree with the department's position that assessments of character and professionalism, to the extent facts exist which bring these matters into question, must be made at the time of application for a teaching certificate. The department's authority in this regard is clear. In numerous cases, not all of which have been in the context of annulment¹² the Commissioner has stated that in order to be fit to teach, an individual must have good moral character, be able to communicate sound values to students and to function as a role model for students. When such matters are called into question, the department may withhold the certificate.

In the hearing of this dispute, sworn testimony was presented from two witnesses who maintained that Joseph Gaudiosi of the Certification Office advised them in two separate conversations, that Mr. Jameson¹³ needed only to take the two courses which were needed for re-certification when they were offered, or "as soon as" they were offered at Rhode Island College. Both witnesses testified credibly. Mr. Gaudiosi also testified credibly that he had no recollection of either of these conversations but that he typically would have followed the protocol established in such situations and, in addition to other steps, requested verification of the unavailability of courses. In Mr. Jameson's case, since he was a resident of Mansfield, Massachusetts he would have been required to demonstrate that the courses were not offered at UmassBoston. Given the testimony in this case, we find that such conversations did occur, and that as a result, Mr. Jameson was under a good-faith, if mistaken, impression that he did not need to provide further documentation or take any additional steps to secure an extension of his temporary provisional certificate which expired on August 31, 2005. Mr. Gaudiosi understandably could not rebut the versions of

¹² See e.g. Rhode Island Department of Elementary and Secondary Education v. Silva, decision of the Commissioner dated May 17, 1995.

¹³ And per Mr. Rocha's testimony, Delia Curt as well.

the conversation offered by the Petitioner. Mr. Gaudiosi's testimony of what he likely would have said must be balanced against the testimony of two individuals as to what he said. On this basis, we find that the conclusion that has heretofore been drawn with respect to Mr. Jameson's lack of good character has been rebutted by evidence of his lack of intent to violate R.I.G.L. 16-11-1¹⁴.

Mr. Jameson did not exercise due diligence in getting his coursework done, would probably not have qualified for an extension of his certificate if Mr. Gaudiosi had applied the protocol to him and did teach without a certificate in violation of R.I.G.L. 16-11-1. We conclude, as did the Certification Office, that Mr. Jameson's behavior was irresponsible and illegal. We do not find, however, that there was no contact, directly or indirectly, with the Certification Office with respect to Mr. Jameson's situation.¹⁵ The testimony concerning the contact that was made is sufficient to establish the absence of his willful violation R.I.G.L. 16-11-1. In spite of the professional shortcomings which are demonstrated on this record, Mr. Jameson's fitness to hold the vocational certificate for which he has met academic requirements has been established by a preponderance of the evidence.

Assuming, for the sake of argument, that Mr. Gaudiosi made the *exact* statement that is attributed to him, this statement did not, and could not, operate to alter the statutory requirement that all those employed to teach in the public schools hold a valid certificate. Mr. Gaudiosi described in his testimony the protocol that existed which required further written documentation and the issuance of a certificate which would authorize the individual to teach until the courses were available. This protocol was not followed here. For this reason, the record created in this matter, and the decision with respect to Mr. Jameson's entitlement to hold a teaching certificate, are not dispositive with respect to the issue of any statutory penalty to be imposed on the East Providence school district by 16-11-1, or on any other consequences which may result from Mr. Jameson's uncertified status during the 2005-2006 school year.

For the foregoing reasons, Mr. Jameson's appeal is sustained and the department is directed to issue him the certificate for which he has proven his eligibility.

For the Commissioner,

Kathleen S. Murray, Hearing Officer

APPROVED:

Peter McWalters, Commissioner

October 17, 2006
Date

¹⁴ See Epstein v. Benson 618 N.W. 2d 224 (Wis App 2000) 147 Ed. Law Rep. 1059, a case in which the issue of intent and credibility were crucial to entitlement to a teacher's license.

¹⁵ This was one of the basic factual premises of the department in denying Mr. Jameson's March 9, 2006 application for certification.