

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

.....

Reuben J. Paygai

v.

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

.....

DECISION

Held: The Petitioner has not shown that he is eligible for a teaching certificate in social business education under the provisions of certification regulations adopted by the Board of Regents effective January 1, 2005. He also has not proven that he should be issued a professional certificate pursuant to prior regulations which provided for the issuance of a professional certificate upon earning six credits and completing three years of documented teaching experience on the secondary level in Rhode Island while on provisional certification.

DATE: June 26, 2008

Travel of the Case

Mr. Paygai filed an appeal of a decision made by the Department of Education's Office of Educator Quality and Certification on or about January 25, 2008 that he was not eligible to receive either of the two secondary teaching certificates currently available in his field of social business education. His February 3, 2008 letter of appeal to Commissioner Peter McWalters indicates that he is appealing the denial of his request for several reasons. The undersigned was designated to hear and decide this appeal on February 27, 2008 at which time a written acknowledgment of the appeal was sent to Mr. Paygai and counsel for the Department. On March 5, 2008 hearing in this matter was held, testimony was received and documentary evidence was placed on the record by both parties. The record closed on March 14, 2008.

ISSUES

- ♦ Are the current "Requirements for the Secondary Teaching Certificate" applicable to Mr. Paygai or is he somehow "grandfathered" under prior Regulations so as to enable him to secure a Professional Certificate by meeting other requirements?
- ♦ Is Mr. Paygai eligible for issuance of either the Certificate of Eligibility for Employment (CEE) or the Professional Certificate under Requirements for the Secondary Teaching Certificate effective January 1, 2005 and currently in place?

Findings of Fact

- Reuben Paygai was issued a one year "special provisional certificate" in secondary social business education in August of 2003. This certificate was renewable annually for a period of three years. Mr. Paygai was not issued a three-year provisional certificate in August of 2003 because he had not passed the standardized teacher's examination teachers were required to take at that time to qualify for a three-year provisional certificate. Tr. pp. 8-12.¹

¹ Mr. Paygai took a standardized teacher's examination in 1996, but he did not attain the cutoff score set by the Rhode Island Board of Regents at that time. Appellant's Ex.A. Tr. pp. 10, 33-35. Pursuant to the language of R.I.G.L. 16-11-2.3 until its amendment in 2003, the Regents were not authorized to limit eligibility for a teaching certificate to those who received a passing score on a standardized teacher's examination. Regulations in effect in 2003 required that applicants for a secondary teacher's certificate take the Principles of Learning and Teaching Test 7-12, but they were not required to pass this test. The statute did authorize the Regents to require those who scored below a preset level to undergo a successful job performance review annually for three (3) years during which time they were eligible for provisional certification on an "annual" basis. The Regents and RIDE evidently continued to utilize a sub-par standardized test score to limit applicants to the "special one-year provisional certificate" even after the 2003 statutory amendment permitted the Regents to require prospective teachers to obtain a passing score. The record creates an inference that those who taught with a "special provisional certificate" for three years were on a "transition path" which

- Subsequent to his receipt of the one-year special provisional certificate in August of 2003, Mr. Paygai was employed as a teacher in the state of Rhode Island for three school years². Tr. p.18.
- During the three-year period that Mr. Paygai was employed as a teacher in the state of Rhode Island, he applied for, and received, renewals of his special provisional certificate in 2004-2005 and 2005-2006. Tr. pp. 8-18; RIDE Ex. 1 and 2.
- In the fall of 2005 Mr. Paygai completed three college credits at CCRI. Tr. pp.18-19.
- In July of 2006, Mr. Paygai submitted an application to RIDE for a five-year Professional Certificate. He submitted no documentation of college or in-service credits earned while holding the special provisional certificate. Tr. pp.14-15.
- Mr. Paygai's third annual special provisional certificate expired on August 31, 2006. Tr. p. 17.
- In late September of 2006 Mr. Paygai's application for a five-year Professional Certificate was evaluated by a staff member of the Certification Office. Tr. p.14. On September 21, 2006 he was sent a "Certification Status Form" that indicated that he was not eligible "for renewal of the 3 year Provisional Certificate" because he did not complete six credits while under Provisional Certification from August 31, 2003-August 31, 2006. RIDE Ex. 1; Tr. pp.14-15.
- In the fall of 2006, Mr. Paygai earned an additional three college credits at the University of Rhode Island. Appellant's Ex.E.
- In August of 2007 Mr. Paygai again applied for a five-year Professional Certificate. With this application he submitted a transcript showing that he had attained three credits at CCRI in the fall of 2005. Tr. p.18. Subsequently, on January 25, 2008 he provided the Certification Office with a transcript from the University of Rhode Island documenting his attainment of three credits in the fall, 2006 semester.³ Tr. p.47.
- After a thorough review of Mr. Paygai's application and supporting documentation, staff of the Certification Office determined that Mr. Paygai's prior certificate had "lapsed", that he was subject to current certification regulations and that he was required to take and pass the standardized test⁴ now required of those seeking to become certified teachers. He was notified of this in writing in a "Certification Status Form" dated January 25, 2008. RIDE Ex.2; Tr. pp.20-22.

would eventually lead them to the regular three-year Provisional Certificate rather than directly to the Professional Certificate. See Tr. pp. 10, 12-14.

² The evidence does not indicate where Mr. Paygai was employed, but in closing argument, the Department stated that Mr. Paygai was employed in the Providence school department from 2003-2006. Tr. pp. 55-56. We also infer from the record that he was employed as a teacher from 2003-2006, based on testimony that in order to renew the special one-year provisional certificate each year, he needed to provide documentation to the Certification Office of "successful (teaching) experience". Although there was testimony that the special certificate was renewed three times (Tr. p.17) the record indicates that Mr. Paygai actually renewed his one year, special provisional certificate only twice, in 2004-2005 and 2005-2006.

³ On August 23, 2007 Mr. Paygai provided certification staff with a copy of a URI transcript printed on October 5, 2006 (prior to his completion of the course) showing "0" credits. Tr. p.20, 47-48, 54.

⁴ The Principles of Learning and Teaching Test, 7-12.

- Although Mr. Paygai is subject to the requirement in current regulations that he receive a passing score on the standardized test for teachers, certification staff indicated that if Mr. Paygai successfully completes a three-credit course at CCRI from which he withdrew in the fall of 2005, they will issue him a teaching certificate. Tr. pp. 23-24.

Positions of the Parties

Reuben Paygai

Mr. Paygai's position is stated initially in his letter of appeal dated February 3, 2008. He indicated in that letter that he was appealing the Department's decision not to "renew" his teaching certificate because (a) he had met the legal requirements for the certificate (b) the nonrenewal of his certificate in 2006 was without justification (c) he did not fail the Praxis test and (d) he was asked to pay another fee of one hundred (\$100.00) dollars in August of 2007 even though his request for a certificate in 2006 had been denied.

At the time of hearing, Mr. Paygai presented additional arguments as to his eligibility to be a certified teacher in Rhode Island. He argued that at the time he took the Praxis test in 1996 there was no requirement that an applicant for a teaching certificate pass the test. Also, with respect to the course work, he was unaware of a cut-off date in which he was required to attain six college or in-service credits. He has now completed six credit hours, has provided the Department with documentation of this course work, and should be issued the Professional Certificate. Finally, if he had received a copy of the last one-year special certificate issued to him in 2005-2006, which he contends he did not, he would have been aware of the expiration date of that certificate and done what was necessary for its renewal within the time limitations imposed.

Rhode Island Department of Elementary and Secondary Education

Counsel for the Department submits that given Mr. Paygai's status as the holder of a one-year Special Provisional Certificate during 2003-2006, he was required to complete six (6) credits⁵ during this time to move to the next step.⁶ The time frame for his completion of this coursework, as indicated by an exhibit introduced by Mr. Paygai himself (Appellant's Ex.B) was three years from the date he was first certified. Mr. Paygai received his first one-year special provisional certificate in August of 2003. He renewed

⁵ Three of which may be professional development credits.

⁶ The record answers the question of what would have happened if Mr. Paygai had received a passing score on the standardized test during this time- the record clearly indicates he would have been issued the regular Provisional Certificate and then worked toward requirements for the five (5) year Professional Certificate. Unclear on the record is whether the "next step" for holders of the special provisional certificate who did not pass the test would have been the traditional three (3) year provisional certificate or the five (5) year professional certificate. See Tr.pp.10-14. According to both testimony and the Appellant's Ex.B, it is clear that holders of the special provisional certificate were required to take six (6) credits during the three-year period of time they could be employed under this special provisional certificate, just as those holding regular provisional certificates were required to take such coursework. Thus, it may be that those holding the special one-year provisional were found to meet the requirements for the Professional Certificate by completing six credits and three years of teaching experience "while on provisional certification".

this one-year certificate twice and the last renewal expired on August 31, 2006. Although he applied for a five-year Professional Certificate in July of 2006, Mr. Paygai provided the Certification Office with no documentation whatsoever to support his request for issuance of this certificate. Thus, his application was correctly denied and notice of this was provided to him on September 21, 2006 with the explanation that he had failed to complete six (6) credits while under Provisional Certification.

A full year passed before Mr. Paygai again contacted the Certification Office of the Department of Education.⁷ In August of 2007 Mr. Paygai once again applied for the Professional Certificate. At this time he provided documentation of three credits (from CCRI) that he had completed during 2003-2006. Ultimately, during discussions with certification staff, he provided another transcript documenting an additional three (3) credits, but the evidence he submitted (the final URI transcript) shows a completion date after the expiration of his special provisional certificate on August 31, 2006. At this point it was clear to staff in the Certification Office that Mr. Paygai was not eligible to be issued a certificate under transitional rules that permitted⁸ those holding certificates issued under prior Board of Regents Regulations to exchange them for a certificate under the “new” Regulations in effect as of January 1, 2005. The Department argues that Mr. Paygai must therefore meet current Regulations and to qualify for the entry-level certificate, the Certificate of Eligibility for Employment (CEE), he must take and pass the standardized test, the Principles of Learning and Teaching Test, 7-12.

In an effort to accommodate Mr. Paygai, however, the Department has offered him an arrangement to permit him to be “grandfathered” under the old regulations. If he successfully completes a three (3) credit arithmetic course from which he withdrew in the fall semester of 2005 he will be allowed to supplement his July, 2006 application for the Professional Certificate. The Department will consider him to have earned six (6) credits “while on Provisional Certification” and will not hold him to the requirement of current regulations that he pass the Principles of Learning and Teaching Test. To date, Mr. Paygai has not followed up with CCRI to finish this incomplete course and therefore has not taken advantage of the opportunity afforded to him.

Therefore, as the holder of an expired certificate, Mr. Paygai must meet the requirements for a Secondary Teaching Certificate that have been in effect since January 1, 2005. These requirements include the achievement of a score of at least 167 on the Principles of Learning and Teaching Test. Mr. Paygai has not even taken this test, much less passed it.

DECISION

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 v. R.I. Board of Regents,

⁷ The record does not indicate whether Mr. Paygai taught during school year 2006-2007.

⁸ We assume

560 A2d 357 (R.I. 1989). In acting with respect to certification matters, and in making and amending its regulations, the Board of Regents exercises its rulemaking function. It is the Petitioner's burden to establish by a preponderance of the evidence that he meets the current Requirements for the Secondary Teaching Certificate or that the Regents have in place a protocol that enables him, as a past holder of a special provisional certificate, to become certified without meeting current requirements. Our assessment of the evidence and arguments in this case is that the Petitioner has not established his eligibility for a certificate under either theory.

The Petitioner asserts that the Department has unjustifiably denied his request for a "renewal"⁹ of his certificate on two occasions – first on September 21, 2006 and most recently on January 25, 2008. Mr. Paygai's use of the term "renewal" is inapposite. As of August 31, 2006, Mr. Paygai held no certificate which was subject to "renewal". Had he completed six credits between 2003 and 2006, as required under the terms of the one-year special provisional certificate he previously held, he would evidently have been entitled to "move on" to another certificate. It is not necessary to resolve the question as to which exact certificate that would have been. He did not complete the six credits in time and did not "move on" to the next credential for which he could have qualified. The certificate he did hold expired on August 31, 2006.

We have assumed that Mr. Paygai would have been eligible to move up the certification ladder (had he completed the credit requirements by August 31, 2006) pursuant to a transitional protocol established by the Board of Regents when it voted to adopt the Regulations which took effect January 1, 2005. Clearly without some type of transitional rule, Mr. Paygai would not have been eligible in August of 2006 for any certificate under the regulations which became effective as of January 1, 2005.¹⁰ We infer from the record that there was an opportunity provided to teachers already in the certification "pipeline" on January 1, 2005 to obtain the professional certificate, even those teachers who, like Mr. Paygai, had not previously been issued the full three-year provisional certificate. Although the specifics of the transitional protocol are not in evidence in this record, the fact that Mr. Paygai did not fulfill these requirements is clear, as is the fact that this was communicated to Mr. Paygai on September 21, 2006.

There is some confusion created in the mind of the hearing officer¹¹ as to why the document issued to Mr. Paygai by the Certification Office on September 21, 2006 (RIDE Ex.1) indicates that he was lacking completion of six (6) credits "for renewal of the 3 year Provisional Certificate". At that time Mr. Paygai did not hold, and never had held, the three-year Provisional Certificate. The Provisional Certificate had been phased out under the Regents' Regulations which became effective January 1, 2005, over eighteen months previously. The new Regulations provided for only two certificates, a Certificate of

⁹ Mr. Paygai's February 3, 2008 letter of appeal refers to a denial of a "renewal" of his teaching certificate.

¹⁰ We might also observe that, absent a transitional rule, Mr. Paygai would not have been eligible for the second renewal of his special provisional certificate on August 31, 2005. The regulations that took effect January 1, 2005 required all prospective teachers to pass the standardized test (Mr. Paygai had not). The statutory language prohibiting a rule which required passage of a standardized teacher's exam and authorizing the "special" provisional certificate (which Mr. Paygai held) had been repealed in 2003.

¹¹ And possibly in Mr. Paygai's mind as well.

Eligibility for Employment and a five-year Professional Certificate. It was the Professional Certificate for which Mr. Paygai had applied in July of 2006. When the Certification Office responded to Mr. Paygai's second application for a Professional Certificate in August of 2007 the form appears to have been updated and accurately describes his certification status with reference to applicable Regulations. See RIDE Ex. 2 "Certification Status Form January 25, 2008".

Given that Mr. Paygai had not fulfilled the requirements under the transitional protocol¹² to qualify for ongoing certification, the denial of both his July, 2006 and August, 2007 applications for certification are supported in this record. The January 25, 2008 "Certification Status Form" correctly states the reasons supporting denial of the certificate. That document (RIDE Ex. 2) notes that Mr. Paygai did not complete the required six credits in the three year period of time allocated. The record indicates that Mr. Paygai had received specific written notice of the time limit required for completion of this coursework (Appellant's Ex.B). The "Certification Status Form" also correctly states that completion of a course in the fall of 2006 is not acceptable for issuance of a five year professional certificate.¹³ Because Mr. Paygai permitted his prior certificate to expire and he missed the opportunity to be "grandfathered" under prior regulations, he must meet the requirements in current regulations. He has not, to date, provided evidence of a score of at least 167 on the Principles of Learning and Teaching Test. In order to become certified, he must do so.¹⁴

His appeal is denied and dismissed.

Kathleen S. Murray, Hearing Officer

APPROVED:

Peter McWalters, Commissioner

June 26, 2008
Date

¹² That he complete six (6) credits during the period August 31, 2003-August 31, 2006

¹³ The arrangement offered to permit Mr. Paygai to complete a course from which he withdrew at CCRI in the fall of 2005 is arguably inconsistent with this statement and may have further confused him. If completion of a course in the fall of 2006 is not acceptable, how would a course completed in the summer of 2008 be acceptable?

¹⁴ Mr. Paygai has not argued that he should be exempt from passing the PLT test because the regulations state that only "Applicants who have not previously been certified in the State of Rhode Island" must achieve a passing score on the PLT. Is Mr. Paygai (and others like him whose certificates have expired) exempt because he has been "previously certified"? Did the Board of Regents intend to say "currently certified"? Is this language of the regulation inconsistent with R.I.G.L. 16-11-2.3 which exempts from the standardized test only those who "obtained an initial certificate prior to January 8, 2002"? Mr. Paygai has waived any additional arguments.