

State of Rhode Island  
and  
Providence Plantations

Commissioner of Education

Leora Cieplinski

v.

The Metropolitan Regional  
Career and Technical Center

### **DECISION**

Held: The Petitioner worked for five years at the MET School and taught there under annual contract as a teacher/advisor for four years. The MET's claim that she resigned her teaching position when the students in her "advisory" graduated at the end of the 2006-2007 school year has not been substantiated. Although Ms. Cieplinski had not been issued an emergency certificate for the 2006-2007 school year, she was eligible for a renewal of emergency certification that year but the MET failed to submit her application for renewal to the R.I. Department of Education. On the record in this matter, the MET School is equitably estopped from raising the Petitioner's lack of certification as a reason for denying her request for a position for the 2007-2008 school year. The Petitioner did not attain tenure at the MET because she did not teach for the probationary period as a fully certified teacher.

DATE: May 17, 2010

## Travel of the Case

On February 27, 2009 the undersigned was designated by former Commissioner Peter McWalters to hear this matter.<sup>1</sup> The parties were offered several dates for hearing on March 4, 2009, but agreed to have this matter heard on May 28, 2009 and June 29, 2009. Thereafter the parties agreed to submit written memoranda summarizing their positions and legal arguments. They established an agreed-upon briefing schedule. The final memorandum in this matter was submitted on November 18, 2009 and the record closed on December 4, 2009.

The Commissioner has jurisdiction over this dispute under the provisions of R.I.G.L. 16-13-2, 16-13-3 and 16-39-1.

It should be noted that this appeal was not heard by the MET Board of Trustees prior to being submitted to the Commissioner. The original appeal to the Commissioner dated December 11, 2007 indicates that the parties “agreed to bypass” the MET board.

## Issues

- Did Leora Cieplinski resign her position as a teacher at the MET School?
- If she did not, did the fact that she did not hold a teaching certificate at the end of the 2006-2007 academic year preclude her from asserting a claim to a position at the MET for the 2007-2008 school year?
- Did Leora Cieplinski attain tenured status at any time during her employment at the MET?

## **Findings of Relevant Facts**

- Leora Cieplinski worked at the MET School beginning in the 2002-2003 school year. She served in an apprenticeship capacity as a “learning specialist” shadowing two advisors<sup>2</sup> and assisting students in developing their academic skills and in completing their internship projects. Tr. Vol. I pp.32-37; Joint Ex.9.
- Following the completion of her apprenticeship year, Ms. Cieplinski applied for and was offered a position as an “advisor” at the MET. This position called for her to guide sixteen (16) students from ninth to twelfth grade in social, academic, and personal development and self-guided education. The advisor also teaches the students. The structure of the MET is such that an advisor stays with the same group of students for all four years of high school. Tr. Vol. I, pp. 32-37; Joint Ex 9.

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<sup>1</sup> The previous hearing officer was required to recuse himself because of a conflict that developed with his ongoing role as legal advisor to the Certification Office of the Department of Education.

<sup>2</sup> A teacher at the MET is called an “advisor.” Tr. Vol.I.p.33, 36-37.

- Ms. Cieplinski signed an annual contract each year with the MET School from 2003-2004 through 2006-2007. Joint Ex. 12.
- At the time she was hired as a teacher/advisor for the 2003-2004 school year, Ms. Cieplinski did not hold a teaching certificate. She was informed by Ms. Patricia Holliday, an administrator at the MET, that she should fill out paperwork for emergency certification and that Ms. Holliday would handle everything from that point. Tr.Vol. I pp. 37-40, 91. Ms. Holliday testified that only the school or district can “come in and submit” an application for emergency certification or a renewal request to RIDE, after the applicant and the school provide the required information on the forms. She routinely performed this function. Tr. Vol. II pp.60-61.
- Ms. Cieplinski filled out an application for an emergency teaching certificate and provided her college transcript to Ms. Holliday. <sup>3</sup>Tr.Vol. I pp. 37-40. Her application for an emergency certificate dated August 20, 2003 was submitted by the MET to RIDE.
- A letter from the Department of Education dated September 5, 2003 was sent to Dr. Dennis Littky, Co-Director of the MET, advising him that his request for an emergency certificate for Leora Cieplinski had been denied. The letter indicated that given the surplus of certified English teachers “it is inappropriate to issue an emergency certificate in this area.” Respondent’s Ex. A; App.Ex.6.
- Ms. Cieplinski was not informed nor was she otherwise aware that the request for an emergency permit for that year had been denied<sup>4</sup>. She went on to teach at the MET for the entire 2003-2004 school year. Tr. Vol. I pp. 41 and 43.
- Ms. Cieplinski was retained as an advisor again for the 2004-2005 school year. Tr. Vol. I p.44-45.
- She filled out an Application for Renewal of Emergency Certification on September 27, 2004. Dr. Littky filled out the school’s part of the request and submitted it to RIDE on October 1, 2004, indicating that Ms. Cieplinski had completed one year of successful teaching experience at the MET under emergency certification in 2003-2004. Joint Ex. 5; App.Ex.8; Tr. p. 44. On October 1, 2004 Dr. Littky also submitted

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<sup>3</sup> Ms. Cieplinski graduated from Brown University in 2002 with a Bachelor of Arts degree in Comparative Literature and two foreign languages. She is fluent in Spanish and Hebrew, Joint Ex. 9.

<sup>4</sup> The letter to Dr. Littky from RIDE dated September 5, 2003 was made available by the MET when this dispute originated. It was at that point that Ms. Cieplinski learned that she had not received an emergency certificate for the 2003-2004 school year. Ms. Holliday testified it was also the first time that she learned Ms. Cieplinski was not issued an emergency certificate for 2003-2004.

to RIDE a request for issuance of an initial emergency certificate to Ms. Cieplinski. App. Ex. 8 (Page 5).

- Ms. Cieplinski was issued an initial emergency certificate in Secondary English on December 2, 2004 authorizing her to teach at the MET Center from December 3, 2004 to August 31, 2005. Joint Ex. 1.
- The emergency certificate issued to Ms. Cieplinski on December 2, 2004 listed six (6) courses that she needed to complete in order to receive a certificate in Secondary English. That document also indicated that in order for her emergency certificate to be renewed, two (2) of the six (6) courses needed to be completed prior to renewal. Joint Ex. 1.
- Ms. Cieplinski completed three of the six courses that were indicated as being required by September 12, 2005. A request for renewal of her emergency certificate was prepared on August 18, 2005 and signed by Dr. Littky. At some point the MET submitted this request to RIDE and Ms. Cieplinski's emergency certificate was issued on December 23, 2005, valid at the MET until August 31, 2006. Respondent's Ex. B; Joint Ex. 2 and 3.
- During the 2005-2006 school year, Ms. Cieplinski completed two more of the courses that she needed for certification and taught the entire year at the MET School. Respondent's Ex. B.
- Ms. Cieplinski completed the teacher's part of the application for renewal of her emergency certificate for the 2006-2007 school year on October 5, 2006. She had taken the two courses that made her eligible for renewal of the emergency certificate; however, she also sought at that time a waiver of the sixth course that she needed for full certification and prepared a written request for a waiver to RIDE. She gave both the application for renewal and the waiver request to Ms. Holliday. Joint Ex. 4 and 6; Tr. pp. 51-54.
- Neither the application for renewal nor Ms. Cieplinski's request for a waiver, was submitted to RIDE. App. Ex. 8; Joint Ex.4; Tr. Vol. I pp. 55, 87-89, 93-97; Vol. II pp.54-59<sup>5</sup>.
- Ms. Cieplinski went on to teach that entire year and completed the "loop" with the sixteen students with whom she had worked for the preceding four (4) years. Joint

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<sup>5</sup> Ms. Holliday testified that she thought she had received it from Ms. Cieplinski, but didn't recall whether or not she had submitted it as she would typically have done. We infer from all of the evidence in this case that Ex. 4 and 6 were not submitted to RIDE. This was confirmed upon our receipt of Appellant's Ex. 8 (Ms. Cieplinski's certification file at RIDE).

Ex.9; Tr. Vol. I p.51. She was unaware that there were any issues with respect to her certification status. Tr. Vol. I pp. 87-89.

- In February of that year an unsigned letter from the Chairman of the MET Board of Trustees and the Co-Directors of the MET was placed in Ms. Cieplinski's mailbox at school. The February 14, 2007 letter noted that she had advised the school that she was not interested in continuing in her current teacher/advisor position beyond this academic year and stated "this is to formally accept your resignation effective the end of the 2006-2007 school year." Appellant's Ex.1; Tr. Vol. I pp. 60-64.
- Since Ms. Cieplinski had not resigned from her position, she spoke to her principal, Jeremy Thelen, emphasizing that she had not resigned, that the letter did not reflect her intentions at the MET and that she felt "uncomfortable" with the language in the letter she had received. Tr. Vol. I pp. 55-58, 64-66, 109.
- Ms. Cieplinski testified that she had never expressed to anyone at the MET, either orally or in writing that she was resigning her advisor position, but that she had expressed, in conversations throughout the year with her principal Jeremy Thelen and with Patricia Holliday, her preference to move into one of the other positions at the MET that she considered to be a promotion or more "administrative" in nature when her students graduated in June. Tr. Vol. I pp. 56-58; 101-106.<sup>6</sup> There were positions available as an internship coordinator, community leadership program coordinator and assistant to the principal. Joint Ex. 9
- Ms. Cieplinski submitted written applications for three other positions at the MET in which she had previously expressed interest. Later when a position became available as an advisor to a new group of ninth graders, she also applied for that position. She interviewed for at least two of these positions in the Spring. Joint Ex.9; Tr. Vol. I pp. 55-58.
- Ms. Cieplinski received no response from the MET about the outcome of her applications for these various positions, with the exception of the internship coordinator position. She was orally advised that she was not selected for that position a few weeks after her interview. Tr. Vol. I p. 59, 75-76.

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<sup>6</sup> Ms. Nancy Diaz Bain testified that she had discussions with Ms. Cieplinski only after the February 14, 2007 letter. Ms. Diaz let Ms. Cieplinski know that the process at the MET was such that if a teacher took another four-year advisor position, that teacher would not be allowed to interview for other types of positions that might become available. Conversely, if a teacher had given up his/her position as advisor, they would then be permitted to interview for other positions. Since Ms. Cieplinski proceeded to apply for several other positions in March of 2007 and was interviewed for them, this confirmed, as far as Ms. Diaz was concerned, that Ms. Cieplinski had "resigned" her advisor position. Tr. Vol. I pp. 222-226, 235-237.

- At some point in the Spring Ms. Cieplinski was offered a position as a senior-year advisor to replace a teacher who was in the process of being terminated. Because Ms. Cieplinski was hopeful that the teacher who had been terminated would be able to keep her position and because she had not yet heard back from the MET on the other positions, including the 9<sup>th</sup> grade “looping” position for which she had interviewed, she declined the position. Tr. Vol. I. p.71-73.
- In early Summer, Ms. Cieplinski still awaited responses with respect to her selection for any of the other positions for which she had applied, including the 9<sup>th</sup> grade advisor position. Her principal, Mr. Thelen inquired at that time if she would be interested in taking over the advisory of a tenth grade teacher who was in the process of being terminated. For the same reasons she had previously expressed, Ms. Cieplinski declined the position. Tr. Vol. I pp. 73-76.
- Ms. Cieplinski submitted a signed one-page criticism of the MET for publication in the staff newsletter and it appeared in the newsletter on June 1, 2007. Joint Ex.17. Tr. Vol. I pp. 90-91.
- On June 3, 2007 Principal Thelen notified Ms. Cieplinski of the need for her to schedule an exit interview with the human resources office. Ms. Cieplinski responded that her plans were still unsure for next year and that she would schedule an exit interview “when it makes sense for me to do so.” Appellant’s Ex.2.
- At some point in mid to late July, Ms. Cieplinski received a voice-mail message from Dr. Littky indicating that he was aware that she had applied for other positions, but he did not think that it would be a good idea to have her back at the MET. Ms. Cieplinski interpreted the message to mean that she was not welcome back at the MET in any capacity and thereupon sought legal advice. Tr. Vol. I pp. 82-85.
- On August 10, 2007 Ms. Cieplinski’s attorney wrote to Ms. Diaz Co-Director at the MET asserting his client’s entitlement to be assigned to a class as a teacher/advisor for the 2007-2008 school year. Appellant’s Ex. 4<sup>7</sup>.
- The written evaluation of Leora Cieplinski’s performance in her four years as an advisor at the MET indicates that it was excellent. Joint Ex.16.

### **Positions of the Parties:**

#### **Petitioner Leora Cieplinski:**

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<sup>7</sup> If the MET School did reply in writing to the August 10, 2007 request for a class assignment, its response is not part of the record in this case.

The Petitioner's counsel requests (a) that Leora Cieplinski be reinstated to her teaching position at the MET, (b) that the Commissioner confirm that she has attained tenured status there (granting retroactive certification for the 2006-2007 school year, if this is necessary for tenure) and (c) award her compensation for loss of pay and other benefits.

In support of this requested relief, counsel for the Petitioner points to facts that show Leora Cieplinski never resigned, either orally or in writing, from the position that she held at the MET School. As she was about to complete a four-year "loop" as an advisor, Ms. Cieplinski received an unsolicited letter notifying her that her "resignation" had been formally accepted. She immediately contacted her direct supervisor, Jeremy Thelen, correcting any misimpression that may have existed in this regard. She confirmed with Mr. Thelen that she had not resigned, nor did she intend to do so. The Petitioner had expressed her desire to move into an administrative position at the MET, but this did not signal her intent to resign, if none of the positions she sought was offered to her. In fact, when a ninth grade "loop" advisor position did open up after she had submitted applications for three administrative positions, Ms. Cieplinski applied for that position as well. Her intent to continue at the MET School, in one capacity or another, was clear at all times, her counsel argues.

If the MET's position is that the February 14, 2007 unsigned letter that was placed in Ms. Cieplinski's mailbox constitutes a letter of resignation, it cannot legally be given such effect. It was neither tendered nor signed by Ms. Cieplinski. In fact, she refuted its contents as soon as she received it. According to the MET's own witnesses, the February 14<sup>th</sup> letter was a form letter used in furtherance of a policy that required teachers who were not being terminated, to indicate whether or not they wanted to commit to "loop around for four years" before March 1<sup>st</sup>. Those advisors who were not being terminated and who had not committed for another four years as an advisor, were sent a "resignation" letter before March 1<sup>st</sup>. In this way, the MET could better determine its staffing needs for the next year. Counsel argues that the teacher tenure act places no burden on a teacher to make such decisions by March 1<sup>st</sup>-only the district or school has the obligation to give notices by March 1<sup>st</sup> each year. In addition to the illegality of the process, the facts here are that Leora Cieplinski did not resign - either by letter, orally, or by implication from any actions she took to secure a different position (a promotion) for the following school year.

Because Ms. Cieplinski taught under the terms of an annual contract at the MET for at least three successive school years, she completed the probationary period and, under R.I.G.L. 16-13-3 (a), attained tenure. It is undisputed that at the time the MET refused to provide Ms. Cieplinski with a class assignment for 2007-2008, she had completed not only three (3) but four (4) successive annual contracts. In order to terminate her employment at that time, her counsel argues, the MET would have to demonstrate that "good and just cause" for her dismissal existed. The MET clearly has not made such contention in this case.

The fact that Ms. Cieplinski was not certified for two of the four years she taught at the MET should not preclude her from attaining tenured status. First, there is no precedent in Rhode Island for the proposition that a teacher must be certified in order for service to count toward fulfillment of the three-year probationary period. Secondly, the definition of “teacher” under the teacher tenure act is:

**every person for whose position a certificate issued by the department of elementary and secondary education is required by law.**

Thus, the General Assembly did not intend to limit the definition of “teacher” to employees holding the proper certification, but to include those holding positions which require a certificate.

Ms. Cieplinski argues that the MET cannot raise her certification status as a defense to its improper dismissal of her at the end of the 2006-2007 school year. Counsel argues that the doctrine of equitable estoppel applies and that the MET’s “inequitable conduct” resulted in a situation in which no certification was in place to permit the Petitioner to teach in 2003-2004 and again in 2006-2007. She followed her employer’s directions each year with regard to her emergency certification, filled out all of the paperwork that was requested of her, paid the fees and took all of the courses that were required for renewal of her emergency certificate. She had no knowledge that the initial request for issuance of an emergency certificate had been denied by RIDE in September of 2003. She also assumed that the application for renewal of her emergency certificate that she filled out on October 5, 2006 for the 2006-2007 school year was forwarded by the MET to RIDE, along with her written request for a waiver of the final course she needed for full certification in Secondary English. The conduct of the MET precludes it from arguing that Ms. Cieplinski’s certification status constituted a bar to her ongoing employment in the 2007-2008 school year.

Counsel for the Petitioner submits that at all times Ms. Cieplinski acted in good faith, fulfilled her responsibilities to secure emergency certification and admirably performed her role as an advisor to MET students. Equitable doctrines do not allow the MET School to assert that she had no legal right to a position in the 2007-2008 school year when the MET benefitted from her dedication and hard work during this four year period and when it was the MET that acted irresponsibly with respect to securing her emergency certificate in two of those years.

Finally, assuming arguendo that Ms. Cieplinski’s certification status precluded her from achieving tenured status at the MET by the end of 2006-2007, she should at the very least be reinstated as a teacher there for one year. The record clearly demonstrates that she did not resign her position as the MET has argued and she clearly did not receive a non-renewal notice as required under the teacher tenure act.

For the foregoing reasons, the Petitioner requests that the Commissioner sustain her appeal and grant her the relief she has requested.

### **The MET School**

The MET School takes the position that Leora Cieplinski was (and continued to be) an uncertified, non-tenured teacher who unequivocally resigned her position. Furthermore, when she resisted the notion that she had resigned, the MET offered her two positions for the following school year, which she turned down. Because the Petitioner is not a certified teacher and at all times relevant to this case she was not a certified teacher, the Commissioner lacks authority to grant her any relief. She has not proven her entitlement to a position and certainly not the tenured status which she claims in this proceeding.

Counsel argues that immediately prior to her last year at the MET (2006-2007), Ms. Cieplinski allowed her emergency certification to lapse and although the school administration was at all times ready and willing to assist her in the renewal process, the Petitioner failed to take the necessary steps for that to occur.

On August 31, 2006 her emergency certificate expired. Two weeks prior to that date she acknowledged that she had not done the coursework necessary to obtain a renewal of her certification and would therefore be in a position of having to make a request to RIDE that a course be waived. The Petitioner is the only person responsible for the fact that she is not certified or even eligible for a teaching certificate. Not only did she fail to take required courses, but she did not even submit her application for renewal and the necessary fee until more than five weeks after the expiration of her certificate. As a result Ms. Cieplinski has been ineligible to teach since August 31, 2006. While the MET may be deserving of criticism for allowing the Petitioner to remain on the payroll in violation of the law during the 2006-2007 academic year, its actions do not legitimize the Petitioner's uncertified status or enable her to be employed by the MET at any point in the future.

Ms. Cieplinski has known exactly which courses were required of her since December of 2004 when a list of six courses was provided to her in a document from RIDE (Joint Ex.1). These course requirements are not onerous and in many cases the courses can be taken via the internet and completed in as little as five weeks. Instead of simply taking the sixth course, Ms. Cieplinski decided she would seek a waiver of this requirement. On August 15, 2006 she prepared a request that RIDE waive the "Educational Measurements and Evaluation" course based on the fact that the curriculum of another course had covered this same material (Joint Ex.6). At that time Patricia Holiday told Ms. Cieplinski that the Department of Education would not renew her certificate without it, but the Petitioner nonetheless blames Ms. Holiday for her certification problems.

The law and equitable principles compel the Commissioner to deny Ms. Cieplinski's request for relief. The MET argues that beginning in September of 2006 she orally advised

the school's co-directors and her campus principal that she did not want to "loop around" again as a teacher/advisor. She ignored repeated directives from school administrators that they needed to know by the beginning of February 2007 whether she was really going to resign from her teaching position. She ignored the letter she received in February of 2007 advising her that her resignation had been accepted. Thereafter Ms. Cieplinski turned down two positions even though she was told that these positions would then be given to others if she did not accept them. The Petitioner made no attempt to participate in any of the teacher/advisor summer workshops, only to announce, through a letter from her attorney that she was ready to come back to work.

The law does not require that a resignation be in writing. There is no legal support for the proposition that the Petitioner was entitled to keep her teacher/advisor position open indefinitely by refusing to write a formal letter of resignation while she explored a number of other administrative positions both at the MET (and elsewhere). It was the Petitioner who "non-renewed" her relationship with the MET- even as late as June of 2007 she turned down a position because she disagreed with the termination of the teacher that had resulted in the position becoming vacant. Schools like the MET need to make their staffing plans well in advance of the school year. Nothing in the law or logic permits a teacher to coyly refuse to formally acknowledge her otherwise clearly expressed intent to resign and then at the last minute decide she really didn't mean it after all.

Finally, although there is no case law in Rhode Island directly on point, rulings in other states support the proposition that service as a non-certified employee does not "count" toward the time required to acquire tenure. Precedent in other states also establishes that a teacher employed without proper certification is teaching contrary to the law and cannot acquire tenure. To count the service of an uncertified teacher such as Ms. Cieplinski as fulfilling the probationary period under our teacher tenure act would undermine the whole certification scheme in Rhode Island. That the school may be complicit in the act cannot subvert the tenure law's requirements.

For all of the foregoing reasons, the MET School requests the Commissioner to deny and dismiss this appeal.

### **DECISION**

The evidence in this case confirms the Petitioner's position that she did not resign from her position as a teacher at the MET School. When she received a letter in her mail box on or about February 14, 2007 "formally accepting" her resignation effective at the end of the 2006-2007 school year, she immediately dispelled any misconception held by MET administrators that her intention to apply for administrative positions signaled the resignation of her teaching position. Ms. Cieplinski testified credibly and convincingly that she did not

resign orally at any time that year. There is no evidence at all of a written resignation.<sup>8</sup> The testimony of the Co-Director of the MET, Nancy Diaz Bain, was that the February 14, 2007 letter was generated and sent to Ms. Cieplinski as part of an annual process of identifying which teacher/advisors had not committed to returning the following year. Since Ms. Cieplinski had previously expressed uncertainty about taking on another four-year commitment<sup>9</sup> and had indicated her desire to change to an administrative position at the MET, she received the letter “accepting her resignation” in her mailbox in mid-February.

Both of the Co-Directors of the MET testified that there is a rule at the school that if advisors wish to apply for other positions at the MET, they must resign from their teaching positions.<sup>10</sup> Hence, Ms. Diaz Bain’s testimony was that she concluded that Ms. Cieplinski had resigned because (a) she had received “the letter” and (b) she was being interviewed for other positions.<sup>11</sup> This testimony establishes that, in general, when a MET teacher actively seeks other positions for the subsequent school year, this conduct may imply that they have agreed to resign from their teaching position. In Ms. Cieplinski case, however, this inference was not created because she did not allow it to be and contested this rule. She did not agree at any point in time that she would resign in order to be a candidate for other positions at the MET. As our findings of fact indicate, Ms. Cieplinski clearly disputed the notion that she had resigned immediately upon her receipt of the February 14, 2007 letter indicating that she had already done so. When offered the classes of two teachers who had been terminated, she declined, in part, so that she could remain a candidate for administrative positions at the MET she had yet to hear about. She refused to schedule an exit interview at the beginning of June because it “did not make sense for her to do so.” Her resistance to making a choice between continuing as an advisor and seeking advancement at the MET continued well into the summer.<sup>12</sup> She clearly did not want her desire to advance at the MET to result in the loss of her position as an advisor and the MET has not proven that she did resign-in writing, orally, or by implication from her conduct.

Ms. Cieplinski correctly points out that her certification became an issue only several months later after she sought to confirm her class assignment at the MET through her attorney. It was not until December of 2007-January 2008 that details with respect to Ms. Cieplinski’s certification history were coming to light and being raised as additional reasons to support denial of her request. The light cast on the MET with respect to this issue is not favorable. Evidence in this case indicates that the MET controlled the emergency

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<sup>8</sup> In Rhode Island, a written resignation must be signed by the person tendering it. DeLuca v. Board of Elections 119 R.I. 59, 376 A.2d 326 (1977).

<sup>9</sup> It was clear that teacher/advisors in general, and Ms. Cieplinski in particular, viewed the commitment to extend for four years until the members of their “advisory” graduated

<sup>10</sup> Testimony of Dr. Littky, Tr. Vol. I p. 198; Testimony of Nancy Diaz Bain, Vol. II p. 235.

<sup>11</sup> Tr. Vol. II pp.235-237.

<sup>12</sup> See App. Ex. 2 and 3.

certification process for all teachers,<sup>13</sup> including the Petitioner, during school years 2003-2004 through 2006-2007. Because the MET did not submit Petitioner's application for 2006-2007,<sup>14</sup> and her emergency certificate lapsed on August 31, 2006 she taught in 2006-2007 without any certificate. The MET cannot rely on her lack of certification to bootstrap its argument that she resigned. It is equitably estopped from doing so, as the Petitioner has argued. It was because of the MET's conduct that her certification lapsed. Had the "paperwork" been submitted in a timely way, she would have received renewal of the emergency certificate for 2006-2007 because she had already taken five out of the six courses she was required to complete by the end of that school year.

Ms. Cieplinski also relied to her great detriment on her employer to submit her request to RIDE for a waiver of the final course she lacked for full certification in Secondary English. The waiver request was included in the packet of certification materials she left with Ms. Holliday on October 5, 2006. Ms. Cieplinski knew at that time that she was one course away from meeting full certification requirements,<sup>15</sup> but because she was unaware that she had not been issued an emergency certificate during her first year as a teacher, she viewed this final course as necessary for renewal of her emergency as well. Ms. Holliday may have been under the same misimpression. For reasons that remain unexplained, the MET did not forward this packet of materials to RIDE, a fact Ms. Cieplinski did not learn until her personnel file was requested by her attorney on August 10, 2007. Had these documents been submitted to RIDE in timely fashion, Ms. Cieplinski would have received a timely response to her request for a waiver of this final course. Her request was ultimately rejected.<sup>16</sup>

When the MET School received the August 10, 2007 letter from Petitioner's attorney requesting that her employment be continued in some capacity, the MET did not respond in writing to specify its reasons for denying this request. Ms. Cieplinski was treated much like the teacher whose certification had expired in the case of Schiavulli v. School Committee of North Providence.<sup>17</sup> Like Ms. Schiavulli, the Petitioner relied to her detriment on the action or inaction of her employer and may invoke the doctrine of equitable estoppel. Balancing all of the equities in this case, we find that her August 10, 2007 request to continue in the MET's employ should have been granted. As our analysis indicates, Ms. Cieplinski did not resign and the MET is equitably estopped from raising the lapse of her certificate, or any aspect of her certification status, as the reason it denied her August 10, 2007 request.

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<sup>13</sup> As does any school/district making application for issuance or renewal of the emergency "permit" as it is now called.

<sup>14</sup> Perhaps because it was Ms. Cieplinski's fourth year as a teacher at the MET, Ms. Holliday was under the mistaken impression that she was requesting the third renewal of her emergency certificate (rather than the second) and that she needed all six courses to be eligible for renewal. As indicated in our findings of fact, the MET's request for the 2003-2004 school year had been denied and it was not until December of the subsequent year that Ms. Cieplinski received her first emergency certificate.

<sup>15</sup> As indicated in her August 15, 2006 letter to RIDE if the course were to be waived, she intended to complete all certification requirements by taking the PRAXIS exam.

<sup>16</sup> App. Ex. 8, pp. 1 and 2.

<sup>17</sup> 114 R.I. 443; 334 A.2d 416 (1975)

We find, however, that Ms. Cieplinski did not attain tenured status at the MET, even though she worked there for a five year period. Her position in 2002-2003 as an apprentice teacher did not require that she hold a teaching certificate. During the four additional years in which she served as an advisor/teacher at the school she did not hold full certification. Although there is no precedent in Rhode Island on this point, logic and sound policy would require that only service as a fully-certified teacher “count” as part of the three-year probationary period under the teacher tenure act. See also the discussion of this subject in Rapp, Education Law; Section 6.06 [4] b.

The appeal of the Petitioner is sustained in part. The parties are directed to confer with respect to an appropriate remedy and if they cannot agree within sixty (60) days, we will reconvene the hearing to determine an appropriate remedy.

For the Commissioner,

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Kathleen S. Murray

APPROVED:

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Deborah A. Gist, Commissioner

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Date