

State of Rhode Island
And
Providence Plantations

Commissioner of Education

Michael Devolve

v.

Rhode Island Department of
Elementary and Secondary Education

DECISION

Held: The Petitioner has not established a legal basis for a waiver of or exemption from a valid Board of Regents Regulation which established a deadline for the completion of coursework to renew his teaching certificate. If the Petitioner suffers from a disability under the Americans with Disabilities Act, he has not demonstrated that it was his disability that prevented his completion of coursework by the deadline or that he is entitled to an unlimited extension of time in which to meet the renewal requirements.

DATE: June 23, 2010

Travel of the Case:

On October 16, 2009 Mr. Michael Devolve was notified by the Director of the Office of Educator Quality and Certification at the Rhode Island Department of Elementary and Secondary Education that his request to extend his teaching certificate in secondary history had been denied. In October of 2009 Mr. Devolve sought to enlarge the time in which he had to complete requirements for renewal of the certificate (his certificate had expired on August 31, 2009) on the basis of health issues that had been exacerbated by personal difficulties he had experienced over the last several years. On November 2, 2009 Mr. Devolve's attorney requested a hearing to appeal this administrative decision.

The parties appeared before the undersigned, designated by Commissioner Deborah A. Gist, to hear and decide this appeal, on December 16, 2009. The record closed upon receipt of the memoranda summarizing the legal arguments of the parties on January 26, 2010.

ISSUE

Is Mr. Devolve entitled to an extension of time in which to complete coursework for renewal of the Professional Certificate in Secondary History and reinstatement of his certification as a teacher until he completes those requirements?

Findings of Relevant Facts:

- Michael Devolve was employed as a history teacher in the Foster-Glocester School Department until September 24, 2009 when the Rhode Island Department of Elementary and Secondary Education notified his employer that his teaching certificate had expired and that he was no longer eligible to teach in a public school. Tr.p.68; Joint Ex.3.
- Mr. Devolve was issued a Professional Certificate as a teacher of Secondary History, valid for a period of five (5) years in 2002. This certificate was subject to renewal upon completion of nine (9) credits, six (6) of which had to be graduate credits with three (3) of the graduate credits in history. Approved, in-service professional development hours could be used to satisfy three (3) of the required credits. Tr. p.21, 57, 77-78.
- In August of 2007 Mr. Devolve's Professional Certificate expired and at that time he applied for, and received, a "Special Two-Year Certificate"¹ that in effect extended the time for completion of the coursework required for renewal of his five-year Professional Certificate for an additional two years. Tr. pp. 21-23, 59, 75; Joint Ex.2; RIDE Ex. B.
- At the time Mr. Devolve was issued the "Special Two-Year Certificate" he had not undertaken any of the required coursework and did not present evidence of any professional development activity that would have counted toward the credit requirements. Tr. p. 59. A "status form" sent to him by the Department on January 29, 2008 notified Mr.

¹ The Director of Educatory Quality and Certification testified that the "Special Two-Year Certificate" is available as a "lifeline" for a professional educator who, because of extenuating circumstances or other reasons, has not completed the requirements for renewal of his or her five-year Professional Certificate. See Tr. p.73. By its terms, the Special Two-Year Certificate is available only once in an educator's career and is non-renewable. Tr.p.21 and 73; Joint Ex.2; RIDE Ex. B

Devolve that he needed to complete the required nine credits no later than August 31, 2009 and that the special certificate issued to him was not renewable. RIDE Ex. B.

- On August 31, 2009 Mr. Devolve's teaching certificate expired and when this fact was uncovered during routine monitoring in the fall, the Department of Education sent a letter to the Superintendent in Foster-Glocester to notify him that Mr. Devolve's continued employment in the system was not permitted under R.I.G.L. 16-11-1. Joint Ex.3.
- In October of 2009 Mr. Devolve wrote to the Department of Education to provide the certification office with information regarding an illness from which he suffered and personal circumstances that had interfered with his undertaking the necessary coursework. He stated in that communication that he had signed up for three graduate courses in late June of 2009, but had been prevented from completing the courses because of a worsening of his symptoms. Joint Ex. 1 A.
- At the time of hearing (December 16, 2009) Mr. Devolve was still enrolled in the three (3) on-line graduate courses and attempting to complete them. He indicated in his testimony that he has up until July of 2010 to complete the work associated with the courses, per the terms of his enrollment. Tr. pp. 56-57; Joint Ex. 1B.

Positions of the Parties:

The Petitioner:

The Petitioner advances several arguments as to why his appeal should be sustained. First, Mr. Devolve submits that the decision of the Director of the Office of Educator Quality and Certification, Paulajo Gaines, is seriously flawed. Ms. Gaines based her denial of Mr. Devolve's request to extend his certification on his failure to establish valid reasons that prevented him from completing renewal requirements during the "7-year period in question." The purported "7-year period" was not seven (7) years at all, but rather two (2) years. Once his five-year Professional Certificate expired in 2007, Mr. Devolve was issued a two-year certificate. A teacher granted the two-year Professional Certificate must complete the same coursework as required for the five (5) year Professional Certificate. This in effect makes a teacher's failure to complete the credits during the initial five-year period irrelevant and of no consequence, his attorney argues. Any teacher who requests one is issued the two-year certificate, automatically and without any showing of extenuating circumstances. It is a separate certificate, not an extension of the previously-issued certificate. Yet, Ms. Gaines failed to confine her consideration of the relevant timeframe to the two-year duration of this special certificate, to Mr. Devolve's detriment.

Another basis on which Ms. Gaines decision must be overruled, the Petitioner argues, is that despite admitting in her testimony that she was aware that Mr. Devolve had been diagnosed with clinical depression in August of 2009 and that his doctor had indicated that his condition prevented him from completing any academic coursework, Ms. Gaines letter of denial states:

On the basis of the information that you have provided, I am unable to extend your certification. The information fails to establish an illness and personal difficulties that prevented you from completing renewal requirements... (RIDE Ex. A, Gaines letter dated October 16, 2009).

Although Ms. Gaines testified that she conclusively accepted the two medical opinions Mr. Devolve had provided to the Department, her letter denying his request for an extension indicates that she gave little or no weight to this medical documentation.

The approach taken by the Department in essence penalizes Mr. Devolve for procrastinating, rather than acknowledging that a teacher can take courses at any time prior to expiration of his/her certificate. The implication of Ms. Gaines' decision is that she viewed Mr. Devolve to be under an obligation to have completed the necessary coursework prior to June of 2009, when he was diagnosed with clinical depression.²

Counsel points out that the only time frame binding on those who hold teaching certificates is the deadline for completion of the required coursework. Mr. Devolve could have enrolled in the courses earlier than he did, but he was not required to do so. His enrollment in the three graduate courses in early July of 2009 was timely and, he argues, **but for** his medical condition, the renewal coursework would have been completed prior to the deadline of August 31, 2009. Ms. Gaines' decision disregards the fact that worsening of a pre-existing illness prevented Mr. Devolve from completing the coursework within the window of time that he anticipated. Although Mr. Devolve may not have acted prudently in waiting until July of 2009 to sign up for these courses, the Department cannot disregard the effect his illness had on his ability to comply with the deadline or penalize him for not fulfilling these requirements sooner.

The principal argument advanced by the Petitioner is that Title II of the Americans with Disabilities Act ("ADA") provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. 12132. Counsel for the Petitioner submits that Mr. Devolve has a disability that has prevented him from meeting certificate renewal requirements. For reasons that she failed to explain, Ms. Gaines testified that in her opinion the ADA was not implicated in Mr. Devolve's case. The Petitioner argues that he has established that he is disabled within the meaning of the ADA. He has produced evidence on this record that his medical condition renders him unable to concentrate on coursework³, with the result that he was unable to meet the renewal requirements by August 31, 2009. Although the Department is aware that Mr. Devolve is an individual with a diagnosed disability that prevented him from completing coursework for renewal of his teaching certificate, it has denied his request for an extension of time to do so. Mr. Devolve's request for an extension constitutes a request for a "reasonable accommodation." and in denying this request the Department of Education is violating Mr. Devolve's rights under the ADA, according to his arguments in this case.

For the foregoing reasons, the Petitioner requests that the Commissioner grant him the requested extension of time to complete requirements for renewal of his teaching certificate.

² Mr. Devolve testified that he had suffered from depression as early as 2005, but it was not until June of 2009 that his symptoms worsened

³ Mr. Devolve is argued to fall within the protections of the ADA because his disability substantially limits one or more of his major life activities- learning, reading, concentrating, and thinking, per the expanded list of "major life activities" of the ADAAA (the ADA Amendments Act of 2008).

The Rhode Island Department of Elementary and Secondary Education:

Counsel for the Department takes the position that the facts of this case do not establish any entitlement of Mr. Devolve to an extension of his two-year Special Certificate. Mr. Devolve had a total of seven (7) years in which to undertake and complete the nine (9) credits, three (3) of which could have been replaced by in-service professional development hours. The renewal requirements are hardly onerous, and in point of fact, Mr. Devolve did not undertake **any** activities to fulfill these requirements until July 6, 2009 not quite two full months before the expiration of his certificate on August 31, 2009. The Department points out that the Petitioner let his certificate expire on August 31, 2009 and because of this fact, he bears the burden of proving that he is entitled to regain certification as a teacher.

It was not until after Mr. Devolve's certificate had expired- when it was determined that he was in an uncertified status employed by the Foster-Glocester school system and his employer was notified that his employment was not permitted- that he came to the Department to seek an "extension" of his certificate and provided information regarding an illness and personal difficulties.

The letter Mr. Devolve sent to the Department in October of 2009 states that "financial hardship" prevented him from paying for and taking the required courses for two (2) of the years during which he held a teaching certificate, 2006-2008. For the other years in question, he advances a series of health issues, including depressive symptoms that first appeared in 2005, as interfering with his ability to undertake the coursework. The Department argues that a) Mr. Devolve has not proven that he has a disability as defined by the ADA that prevented him from completing his renewal requirements and b) extension of his certificate is not a reasonable accommodation under the circumstances here.

The Department points out that Mr. Devolve taught full-time during school years 2002-03, 2003-04, and 2004-05 with no evidence of health-related difficulties. In September of 2005 Mr. Devolve documents symptoms that caused him to seek medical treatment and he was excused from work for medical reasons for a six week period at that time. In November of 2005, he returned to work. Thereafter, Mr. Devolve taught without any significant interruptions right up to the last day of school year 2008-2009. On the last day, he collapsed at a faculty meeting and was rushed to the hospital because of undiagnosed Lyme disease. The record here establishes that, with the exception of the six-week period at the beginning of 2005-2006, Mr. Devolve was able to work and teach full time from 2002-2009. During a period of six (6) years and ten (10) months from the issuance of his five-year certificate in 2002, Mr. Devolve did not undertake any of the coursework required for renewal of his certificate. The evidence in this record, taken as a whole, does not establish that it was clinical depression that prevented the Petitioner from completing the coursework he signed up for on July 6, 2009. Furthermore, the Department argues, there is no reason to conclude that it would have been possible for anyone to enroll in three graduate courses on July 6, 2009 and successfully complete them by August 31, 2009. Thus, the Department continues to dispute the assertion that illness was the reason Mr. Devolve did not meet the requirements for renewal of his teaching certificate.

If Mr. Devolve is determined to suffer from a disability under the ADA, such that he would qualify for a reasonable accommodation, the Department submits that it is not a reasonable accommodation to extend his certificate and provide him with more time to take courses. First, his request for a disability-related accommodation is untimely in that he waited until after the

expiration of his certificate to initiate a discussion with the Department regarding needed accommodations. Secondly, the extension he requests is one of indefinite duration. Given the extensive, seven-year period Mr. Devolve has had to do this work, together with the fact that he has not completed a single course (or professional development activity), an unlimited extension is unreasonable. Only reasonable accommodations are required under the ADA.

Mr. Devolve has had seven (7) years in which to complete the requirements to renew his five-year certificate⁴. He waited until the end of his certification period to begin the coursework. The delay in tending to his renewal requirements during this period was not attributable to a disability as defined by the ADA and, with respect to the period of time after June of 2009, the Department contends that there is insufficient proof that a disability actually prevented him from “completing” renewal requirements. The medical documentation he has submitted is insufficient to establish that Mr. Devolve suffered from a disability in the summer of 2009. He was able to complete a full year of work as a teacher with no interruptions despite an illness that allegedly began “in June.” Doing the amount of academic work associated with nine (9) graduate credits in the span of seven (7) weeks was an impossible task and renders implausible the assertion by Mr. Devolve that it was in fact his medical condition that prevented him from completing the coursework by August 31, 2009.

For the reasons summarized in its memorandum, the Department requests that Mr. Devolve’s request for an extension of his social studies certification be denied.

DECISION

Mr. Devolve’s five-year Professional Certificate in Secondary History required him to complete nine (9) credits of which six (6) had to be graduate courses with three (3) of the graduate credits required to be in history. He had the opportunity to substitute forty-five hours of professional development for three (3) of the required credits. Because he requested the one-time-only two-year Special Certificate, the total period of time he had to meet the renewal requirements for his five-year certificate was seven (7) years. Both the extent of time Mr. Devolve had and the fact that he did not attempt to fulfill these requirements at any point prior to July 6, 2009 undermine his claim under the Americans with Disabilities Act.

Accepting the fact that Mr. Devolve was a “qualified individual with a disability” under Title II of the ADA from June of 2009 going forward, it has not been shown that he was denied the benefits of the teacher licensure program administered by the Department of Education “by reason of his disability” (42 U.S.C. 12132). A person seeking relief under the Americans with Disabilities Act may show that he or she has been excluded from or denied the benefits of a public entity’s services or programs “by reason of such disability” if it can be shown that the disability was a **substantial cause** (emphasis added) of the exclusion or denial. Henrietta D. v. Bloomberg et al., 331 F.3d 261 (C.A. 2 (N.Y.) 2003). In this case, the Petitioner’s attorney has made a valiant attempt to argue that “**but for** his disability” Mr. Devolve would have met the requirements for renewal of his certificate by the August 31, 2009 deadline. The facts in this case do not establish a causal connection between Mr. Devolve’s disability and his failure to meet renewal requirements.

⁴ Because he availed himself of the special 2-year certificate available on a one-time-only basis.

During an almost seven-year period Mr. Devolve did not enroll in a single course or undertake any professional development activities that would have counted toward the nine (9) credits he needed. If he had undertaken at least some component of the required coursework during this period of time, the record would support a conclusion that he was otherwise both capable and willing to do what was required for him to participate in the teacher certification program. Under the facts here, however, his attorney's argument that "**but for**" his disability, Mr. Devolve would have completed renewal requirements is a difficult argument to support. For an extended period prior to being disabled, the Petitioner made no attempt to do the work that was required. On this record we find that the causal connection between Mr. Devolve's disability and his failure to obtain the nine (9) credits by August 31, 2009 is not demonstrated. The Department's argument that attaining nine (9) graduate credits within a seven week period was virtually impossible reinforces the lack of any nexus between Mr. Devolve's disability and his failure to meet the renewal deadline.

For the above-stated reasons, it is our opinion that Mr. Devolve has not demonstrated his entitlement to a modification to the rules governing issuance and renewal of teaching certificates. Assuming, arguendo, that Mr. Devolve was entitled to a modification or accommodation, the accommodation he did request (and pressed at the time of hearing in mid-December of 2009) is not a reasonable one. At the time of hearing, over five (5) months after his enrollment in three courses, he testified that he was still "attempting to" participate in the activities connected to the courses. The implication was- and is- that he seeks an unlimited extension of time in which to fulfill requirements for renewal of his certificate. An unlimited extension of time would undermine consistency in the application of regulatory requirements, including applicable deadlines for renewal of teaching certificates. Also relevant to a determination of reasonableness is that the Petitioner has not yet completed any of the credits he is required to obtain.

For the foregoing reasons, the appeal of Mr. Devolve is denied and dismissed.

For the Commissioner,

Kathleen S. Murray

APPROVED:

Deborah A. Gist, Commissioner

June 23, 2010

Date