

STATE OF NORTH CAROLINA
COUNTY OF CATAWBA

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
NO. 11 EDC 08899

DELENE HUGGINS,

Petitioner,

v.

NC DEPARTMENT OF PUBLIC
INSTRUCTION,

Respondent.

DECISION

This contested case was heard before Julian Mann, III, Chief Administrative Law Judge, on May 10, 2012 in the Burke County Courthouse, Morganton, North Carolina.

APPEARANCES

For the Petitioner:

Delene Huggins, Pro se
1221 Sain Road
Hickory, NC 28602

For the Respondent:

Tiffany Y. Lucas
Assistant Attorney General
North Carolina Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001

ISSUE

Did Respondent erroneously deny Petitioner's request for a waiver of repayment of the NBPTS fee to the State.

STATUTE TO BE CONSTRUED

§115C-296.2. National Board for Professional Teaching Standards Certification.

(a) State Policy. - It is the goal of the State to provide opportunities and incentives for good teachers to become excellent teachers and to retain them in the teaching profession; to attain this goal, the State shall support the efforts of teachers to achieve national certification by providing approved paid leave time for teachers participating in the process, paying the participation fee, and paying a significant salary differential to teachers who attain national certification from the National Board for Professional Teaching Standards (NBPTS).

The National Board for Professional Teaching Standards (NBPTS) was established in 1987 as an independent, nonprofit organization to establish high standards for teachers' knowledge and performance and for development and operation of a national voluntary system to assess and certify teachers who meet those standards. Participation in the program gives teachers the time and the opportunity to analyze in a systematic way their professional development as teachers, successful teaching strategies, and the substantive areas in which they teach. Participation also gives teachers an opportunity to demonstrate superior ability and to be compensated as superior teachers. To receive NBPTS certification, a teacher must successfully (i) complete a process of developing a portfolio of student work and videotapes of teaching and learning activities and (ii) participate in NBPTS assessment center simulation exercises, including performance-based activities and a content knowledge examination.

(b) Definitions. - As used in this subsection:

* * * *

(2) A "teacher" is a person who:

- a. Either:
 1. Is certified to teach in North Carolina; or
 2. Holds a certificate or license issued by the State Board of Education that meets the professional license requirement for NBPTS certification;
- b. Is a State-paid employee of a North Carolina public school;
- c. Is paid on the teacher salary schedule; and

- d. Spends at least seventy percent (70%) of his or her work time:
 - 1. In classroom instruction, if the employee is employed as a teacher. Most of the teacher's remaining time shall be spent in one or more of the following: mentoring teachers, doing demonstration lessons for teachers, writing curricula, developing and leading staff development programs for teachers; or
 - 2. In work within the employee's area of certification or licensure, if the employee is employed in an area of NBPTS certification other than direct classroom instruction.

(c) Payment of the NBPTS Participation Fee; Paid Leave. -The State shall pay the NBPTS participation fee and shall provide up to three days of approved paid leave to all teachers participating in the NBPTS program who:

- (1) Have completed three full years of teaching in a North Carolina public school and;
- (2) Have (i) not previously received State funds for participating in any certification area in the NBPTS program, (ii) repaid any State funds previously received for the NBPTS certification process, or (iii) received a waiver of repayment from the State Board of Education.

Teachers participating in the program shall take paid leave only with the approval of their supervisors.

(d) Repayment by a Teacher Who Does Not Complete the Process. A teacher for whom the State pays the participation fee who does not complete the process shall repay the certification fee to the State.

Repayment is not required if a teacher does not complete the process due to the death or disability of the teacher. Upon the application of the teacher, the State Board of Education may waive the repayment requirement if the State Board finds that the teacher was unable to complete the process due to the illness of the teacher, the death or catastrophic illness of a member of the teacher's immediate family, parental leave to care for a newborn or newly adopted child, or other extraordinary circumstances.

(e) Repayment by a Teacher Who Does Not Teach for a Year After Completing the Process. - A teacher for whom the State

pays the participation fee who does not teach for a year in a North Carolina public school after completing the process shall repay the certification fee to the State.

Repayment is not required if a teacher does not teach in a North Carolina public school for at least one year after completing the process due to the death or disability of the teacher. Upon the application of the teacher, the State Board of Education may extend the time before which a teacher must either teach for a year or repay the participation fee if the State Board finds that the teacher is unable to teach the next year due to the illness of the teacher, the death or catastrophic illness of a member of the teacher's immediate family, parental leave to care for a newborn or newly adopted child, or other extraordinary circumstances.

(f) Rules. - The State Board shall adopt policies and guidelines to implement this section.

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing and the entire record in this proceeding, the undersigned makes the following findings of fact. In making the findings of fact, the undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case. From the sworn testimony of witnesses, the undersigned makes the following:

FINDINGS OF FACT

1. Petitioner is a citizen and resident of Hickory, Catawba County, North Carolina.
2. The Department of Public Instruction is an agency of the State of North Carolina and is acting herein on behalf of the State Board of Education. These entities shall collectively be referenced herein as Respondent.
3. Pursuant to G.S. 115C-295, all teachers employed in the public schools of North Carolina must be certified, or licensed to teach. G.S. 115C-296 provides that the State Board of Education (hereinafter, the "SBE") "shall have entire control of certifying all applicants for teaching positions in all public elementary and high schools of North Carolina" G.S. 115-C-296(a)

4. Respondent has exercised its authority to control the licensing of teachers by the adoption of numerous policies governing licensure, but Respondent has not promulgated administrative rules.

5. Teachers may obtain national licensing through the National Board for Professional Teaching Standards (hereinafter “NBPTS”). National licensing is optional.

6. National licensing involves a process that includes the development by the teacher of a comprehensive portfolio. The portfolio requires submission of at least two videotapes. In addition, the teacher must take and pass written assessments, administered at select locations and consisting of written questions.

7. The North Carolina legislature provides statutory incentives to assist teachers in achieving this certification by:

- a. Paying a fee of \$2500 directly to the NBPTS to cover the cost of the process;
- b. Allowing a participating teacher three days of annual leave; and
- c. Awarding successful completers a 12% raise for achieving the certification.

These incentives are codified in G.S. 115C-296.2.

8. Elizabeth Edwards testified regarding the role that the Respondent plays in ensuring that the mandate of G.S. 115C-296.2 are implemented. At all times relevant to this dispute, Ms. Edwards was employed by the Respondent as the Coordinator for National Board Certification.

9. Ms. Edwards worked specifically with the NBPTS teacher certification program. Ms. Edwards received the applications from teachers requesting state funds for certification and then verified the teacher’s eligibility. Once verified, Ms. Edwards requested that checks be forwarded to NBPTS. Ms. Edwards worked closely with Respondent’s Licensure Section and the School Business Section. These sections have overlapping databases in order to cross check a teacher’s

state licensure status, salary eligibility, years of employment, budget codes and National Board Certification status.

10. A teacher requesting National Board certification must first go to the NBPTS website and complete the general application. After completing the general application, the teacher may access the specific North Carolina website in order to request state funding pursuant to G.S. 115C-296.2. Petitioner engaged in the NBPTS process.

11. At the state funding website, the teacher must enter basic information that will permit the teacher's eligibility to be verified. The teacher must also agree to the terms of a promissory note. Specifically, the teacher applicant agrees to complete the certification process in one year. The teacher also agrees to teach for one full year in a North Carolina public school immediately after completing the certification process. The teacher also agrees that, if the teacher fails to complete the process in one year or if the teacher fails to teach for one full year after completing the certification process, the teacher will repay the \$2500 to the State. (Respondent's Exhibit #2)

12. The teacher must agree to the terms of the promissory note in order to proceed with on-line registration. Petitioner signed and agreed to these terms. (Respondent's Exhibit #2)

13. Once the teacher has entered the required information and has agreed to the necessary terms and conditions, the teacher's eligibility for funding is verified. If the teacher is eligible, the Department of Public Instruction then forwards a check to NBPTS.

14. No money is transferred until the teacher agrees to all the terms and conditions of the promissory note.

15. Other than providing financial incentives, Respondent does not administer, evaluate, assess, or grade the certification materials or submissions. The teacher has an independent relationship with NBPTS.

16. After Respondent submits payment to NBPTS, the teacher receives from NBPTS a box containing information, directions, and forms necessary to complete the certification process.

Petitioner initiated and completed this process.

17. In the event a teacher discovers a hardship or barrier to completion of the process, the teacher may withdraw prior to the date the portfolio is due and prior to the assessment, but will not be assessed the full repayment of the \$2500 but be assessed in the amount of \$500. The procedures for withdrawal are set forth on the website for both NBPTS and North Carolina. The procedures are also provided in the information sent to the teacher by NBPTS at the beginning of the process. The teacher is responsible for submitting a timely withdrawal in accordance with those procedures. Petitioner did not withdraw from the process.

18. When a teacher timely withdraws from the NBPTS process, Respondent recoups all but \$500 of the certification fee. Because the \$500 is an administrative fee, it is not refunded and as a result, the teacher who withdraws is responsible for repaying this amount.

19. Teachers may withdraw anytime before the portfolio is due on March 31st of the school year in which certification is being attempted.

20. Typically, the certification process takes several months. Assessments are taken no later than June of the school year in which certification is sought.

21. Because of the time needed for scoring, NBPTS does not release the applicant's scores until November of the following school year.

22. Following the release of the scores in November, NBPTS notifies Respondent of the names of all applicants who did not complete the process, made no attempt to complete the process, or timely withdrew from the process.

23. Individuals designated by NBPTS as “non-completers” are then notified that they have not complied with the conditions of the promissory note requiring them to complete the process in one year, and if they have not properly and timely withdrawn, they must repay the \$2500 participation fee. In the event individuals did timely withdraw, they are notified they must repay \$500.00. Petitioner did not withdraw from the process and was informed of her responsibility to repay \$2,500. (Respondent’s Exhibit #3 and #4).

24. Pursuant to G.S. 115C-296.2(e), a teacher for whom the state pays the participation fee who does not teach for a year in a North Carolina public school after completing the process shall repay the certification fee.

25. The statute provides “[r]epayment is not required if a teacher does not teach in a North Carolina public school for at least one year after completing the process due to the death or disability of the teacher.” Id.

26. In certain limited circumstances, Respondent “may extend the time before which a teacher must either teach for a year or repay the participation fee if Respondent finds that the teacher is unable to teach the next year due to the illness of the teacher, the death or catastrophic illness of a member of the teacher’s immediate family, parental leave to care for a newborn or newly adopted child, or other extraordinary circumstances.” G.S. 115C-296.2(e)

27. Extensions of time to fulfill the one-year teaching requirement or repay the certification fee are discretionary with Respondent and, thus, the burden is on the teacher to demonstrate that the statutorily described circumstances existed and the teacher’s inability to fulfill the one-year teaching obligation immediately following completion of the certification process was a result of those circumstances. Petitioner requested that “the loan be excused.” Petitioner stated reasons why she believed this remedy was justified. (Respondent’s Exhibit #5).

28. The letter that notifies teachers that did not timely fulfill the one-year teaching obligation also informs the teachers that they may seek a waiver as provided by statute and sets out the process for requesting a waiver. The letter also informs the teachers that they may seek an extension of time as provided by statute and sets out the process for requesting an extension.

29. An “Appeals Panel” has been established by Respondent consisting of professional educators. The panel consists of those who are nationally certified. Respondent’s staff mails in advance to Panel members all materials and documentation submitted in support of the teachers’ appeals. Teachers are informed in advance that they must submit adequate documentation, including time lines, to support their requests for waivers. Teachers are informed in advance that they must submit all documents in support of their request for a waiver by a specified deadline and that no documentation will be accepted after that date. Teachers are also informed that they may appear personally before the Panel to present their request, but that they must include a valid e-mail address. (Respondent’s Exhibit #4).

30. The Panel then meets to consider each waiver or extension request. The Panel assesses the request and looks for extraordinary circumstances justifying the waiver or extension request, including the nature and timing of the circumstances. The Panel considered Petitioner’s request. (Respondent’s Exhibit #5).

31. The Panel’s recommendations are then forwarded to Respondent for a final decision. Teachers are notified of the decision and also notified of the right to appeal the decision to the Office of Administrative Hearings.

32. After reviewing and carefully considering all of the documentation submitted in support of Petitioner’s waiver request, including a written statement from Petitioner setting forth a timeline and description of her difficulties at the school where she taught, the Panel

recommended that the Petitioner's request for waiver be denied. The Respondent approved the Panel's recommendation and denied the waiver request. The denial was based upon Petitioner's failure to demonstrate "death or disability" as required for a waiver of repayment, or to demonstrate the circumstances required by G.S. § 115C-296.2 to warrant an extension of time to fulfill the one-year teaching obligation, which extension of time Petitioner did not request. (Respondent's Exhibit #5, #7 and #8).

33. Petitioner submitted and received \$2500 to participate in the NBPTS licensing certification process pursuant to G.S. 115C-296.2, but Petitioner did not complete the one-year teaching obligation because of her separation from the Catawba County Public School System. (Respondent's Exhibit #5). Petitioner has not shown circumstances that would justify a waiver of the obligation to repay the certification fee to the state due to the failure to fulfill the one-year teaching obligation immediately following completion of the certification process which was not due to the death, disability of the teacher, or similarly related circumstances but was due to Petitioner's separation from the Catawba County Public School System. Respondent did not consider Petitioner's assertions contained in Respondent's Exhibit #5 as showing extraordinary circumstances that would justify an extension of time to fulfill the one-year teaching requirement.

34. Petitioner resigned from the Catawba County Public School System before completing her one-year teaching obligation. Although Petitioner challenged the circumstances that caused her resignation, Petitioner did not challenge her separation.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal and subject jurisdiction of this contested case pursuant to Chapters 150B and 115C of the North Carolina General Statutes.

2. Petitioner resigned from the Catawba County Schools prior to completion of her one-year teaching obligation and Respondent did not deem this an “extraordinary circumstance” justifying an extension nor did Petitioner request an extension. Respondent fully considered this circumstance. Petitioner has not carried her burden by the preponderance of the evidence to justify a waiver or extension. It was incumbent for Petitioner to officially challenge her resignation and separation from Catawba County Public Schools which she elected not to do and cannot now collaterally challenge this separation in this contested case no matter how meritorious her allegations as to the legitimacy of the separation. Nothing in this decision or record adversely reflects on Petitioner’s present standing as a classroom teacher, which the undersigned takes notice is in a field requiring the very best that a system has to offer. The undersigned’s decision is based upon the narrow grounds permitted by statute and Respondent’s consideration of Petitioner’s appeal.

3. Petitioner has not shown that Respondent erred in denying her request pursuant to G.S. 115C-296.2 for a waiver or that Respondent otherwise:

- (1) Exceeded its authority;
- (2) Acted erroneously;
- (3) Failed to use proper procedure;
- (4) Acted arbitrarily or capriciously; or
- (5) Failed to act as required by law.

DECISION

The decision of the Respondent denying Petitioner’s request for a waiver should be **AFFIRMED.**

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency is required by G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the North Carolina State Board of Education.

This the 28th day of June 2012.

Julian Mann, III
Chief Administrative Law Judge