

STATE OF NORTH CAROLINA
COUNTY OF CABARRUS

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12EDC02718

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| <p>Larry Douglas Efird Petitioner,</p> <p>v.</p> <p>NC Department of Public Instruction Respondent.</p> | <p>FINAL DECISION</p> |
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THIS MATTER CAME ON TO BE HEARD before the undersigned Administrative Law Judge on October 1, 2012 in Charlotte, North Carolina, and the Court having heard and considered testimony and other evidence presented, the undersigned makes the following Findings of Fact and Conclusions of Law:

APPEARANCES

For the Petitioner: Larry Douglas Efird, *Pro se*
300 East First Street
Kannapolis, NC 28083

For the Respondent: Tiffany Y. Lucas
Assistant Attorney General
North Carolina Department of Justice
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ISSUE

Whether the Petitioner met his burden to show that the Respondent erroneously denied Petitioner's request for graduate pay.

STATUTES AND POLICIES INVOLVED

N.C. Gen. Stat. sec. 150B-23; §115C-296; and State Board of Education Policy TCP-A-006.

FINDINGS OF FACT

1. N.C. General Statute §115C-296(a) provides, in pertinent part, as follows:

The State Board of Education shall have entire control of certifying all applicants for teaching positions in all public elementary and high schools of North Carolina; and it shall prescribe the rules and regulations for the renewal and extension of all certificates and shall determine and fix the salary for each grade and type of certificate which it authorizes...

G.S. 115-296(a)

2. Pursuant to its statutory authority to “determine and fix the salary for each grade and type of certificate which it authorizes,” the State Board of Education (hereinafter the “SBE”) has adopted a policy, TCP-A-006, entitled “Policies related to Experience/Degree Credit for Salary Purposes.” (Resp. Exhibit 1).

3. The policy recognizes that educators employed in the public schools may be awarded salary credit for past employment experience as well as for certain graduate degrees. Generally, the salary credit falls into three main categories: prior experience as a teacher, prior work experience that is non-teaching in nature and possession of a graduate degree. (*See* Resp. Exhibit 1).

4. In order to be eligible to receive credit for a graduate degree, the degree must meet several criteria. The critical factor for deciding whether to award salary credit for a graduate degree, however, is whether that degree is “directly related” to an individual’s area of licensure and work assignment (Exhibit 1)

5. Specifically, TCP-A-006 provides, in pertinent part, as follow:

The master’s or higher degree is in an education or subject area directly related to an existing area of licensure and current teaching assignment or instructional support responsibilities.

State Board of Education Policy TCP-A-006, section 6.50 (emphasis added).

6. Petitioner is currently employed as a teacher with the Kannapolis City Schools. He teaches high school English. Petitioner is licensed in secondary English. (Resp. Exh. 2).

7. Upon beginning employment as an English teacher in the public schools in North Carolina in 2007, Petitioner, through his LEA, requested non-teaching experience credit (six years’ worth) for his experience as a headmaster/teacher at Westminster Presbyterian Church, as well as graduate pay credit for his Master’s Degrees in biblical studies and theology. (Resp. Exh. 12; Resp. Exh. 6; Resp. Exh. 7) At the time of the initial request, Petitioner acknowledged that “neither of [his Masters Degrees] is specifically in the teaching field of English” but noted

that he had taken “three years of Greek and two years of Hebrew, as well as many hours in Biblical literature.” (Resp. Exh. 7).

8. Petitioner’s request for non-teaching experience credit was granted. (T. pp. 62-64) However, Petitioner’s request for graduate pay credit was initially denied by members of licensure staff at the Department of Public Instruction. (Resp. Exh.16). The denial was based upon the Department’s determination that the Petitioner’s Masters Degrees in theology and biblical studies were not directly “relevant” to his area of licensure and teaching assignment. (Resp. Exh. 16).

9. Approximately four and a half years after this initial denial, Petitioner, through his employer, Kannapolis City Schools, requested a review of the denial by the Experience Credit Appeals Panel. (Resp. Exh. 2).

10. The school system and Petitioner submitted further documentation in support of his request for graduate pay credit, including official transcripts from the institutions at which the Petitioner earned his advanced degrees, official course descriptions, and Petitioner’s own statement regarding the correlation of courses in the Standard Course of Study to his licensure areas. (Resp. Exh. 2).

11. All of the information submitted by Petitioner in support of his request was presented to the Appeals Panel at its March 22, 2012 meeting. (Resp. Exh. 2; T. pp. 130-134). The Panel reviewed the material and compared the Petitioner’s area of licensure and teaching assignment with the coursework that led to his Masters Degrees. (T. p. 134).

12. The Appeals Panel consists of professional educators, none of whom is employed by the State Board of Education or the Department of Public Instruction. The Appeals Panel considers appeals of requests for non-teaching work experience or graduate salary. Members include local school system personnel administrators, faculty from institutions of higher education, and representatives from professional teacher organizations. The Panel was created to give another level of review in the process and specifically to permit teachers another opportunity to present information in an objective forum. (T. pp. 128-130, 134).

13. The Panel here thoroughly reviewed and considered the information submitted, and after deliberating, voted to deny the graduate pay credit request. (Resp. Exh. 3).

14. Toya Kimbrough, a member of the DPI Licensure Section staff, and Teresa Shipman, a member of the Appeals Panel, testified at the hearing of this matter. Both stated that, in their view, the Petitioner’s advanced degrees were not sufficiently related to the Petitioner’s area of teaching – secondary English – to award graduate pay credit. (T. pp. 117-118, 134, 136, 148).

15. While Petitioner described some correlations to the standard course of study – for example, biblical references in books and literary passages being taught in the Petitioner’s English classes – as Respondent’s witnesses pointed out, the Petitioner’s Master’s Degree courses aligned with a relatively narrow area of the secondary English curriculum as opposed to

the much broader standard course of study in North Carolina for secondary English to which many of Petitioner's particular degree courses did not directly relate. (T. pp. 114-115, 134).

16. As Respondent's witnesses also pointed out, there are advanced degree areas that would more readily support a claim that the degree is "directly related" to the licensure area (English) and teaching assignment (secondary English), such as an advanced degree in communications. (T. pp. 114, 118-120). Likewise, there are licensure areas and teaching assignments, such as religious studies or the Bible, and even history or social studies, that would more readily support a claim that the Petitioner's advanced degrees are "directly related". (T. 113-114; 136-137; 143).

17. The term "directly related" as used in the State Board Policy at issue here, and as applied by DPI staff and the Panel members, is understood by the licensure staff, by members of the Panel, and by personnel administrators in the local school systems based on training and years of experience in applying the policy. (T. pp. 93-97; 109-110; 121-122).

18. Licensure staff is trained on the job for six to nine months prior to being permitted to apply the policy without oversight by supervisors. The Panel members worked closely with the policy in earlier attempts to revise portions of it and have had substantial experience in applying it to real situations. (T. pp. 95; 121-122; 126-128).

19. As explained by Teresa Shipman, a former classroom educator, the Licensure Director of Charlotte-Mecklenburg Schools, and a member of the Panel, there is no precise formula for determining whether the advanced degree obtained is in a subject area that is "directly related" to one's area of licensure and teaching assignment. Panel members must look beyond the title of the degree and in depth at the courses taken by the teacher alongside the teacher's area of licensure and teaching assignment. (T. pp. 148-149). In this case, the direct relationship did not exist and the Panel voted to deny the credit.

CONCLUSIONS OF LAW

1. Petitioner bears the burden of proving the claims alleged in the Petition by a preponderance of evidence. Peace v. Employment Sec. Comm'n, 349 N.C.315, 507 S.E. 2d 272 (1988).

2. The State Board of Education has the constitutional power "to supervise and administer the free public school system and the educational funds provided for its support." N.C. Const. art IX, § 5. This power includes the power to "regulate the grade [and] salary ... of teachers." Guthrie v. Taylor, 279 N.C. 703, 709, 185 S.E. 2d 193, 198 (1971), cert. denied, 406 U.S. 920, 32 L.Ed.2d 119 (1972). The State Board has the specific duty "to certify and regulate the grade and salary of teachers and other school employees." N.C. Gen. Stat. § 115C-12(9)a; Guthrie at 711.

3. Based upon a preponderance of the evidence presented, the intent of the State Board of Education in adopting TCP-A-006 was to recognize advanced degrees in subject areas that directly relate to the subject area to which a teacher was assigned and licensed to teach.

4. In reaching this determination the Court relies upon the testimony of individuals with years of experience in applying the policy and the uninterrupted interpretation of that policy over the years. This Court may rely upon consistent interpretation by a State Agency of its own statutes and policies in reaching a conclusion with regard to the application of a particular policy to a given set of facts. See State v. Jones, 358 N.C. 473, 598 S.E.2d 125 (2004); Frye Regional Medical Center, Inc. v. Hunt, 350 N.C. 39, 510 S.E.2d 159 (1999). Moreover, the agency's interpretation of its own policies is controlling unless it is plainly erroneous. Morrell v. Flaherty 338 N.C. 230, 237, 449 S.E.2d 175, 179-80 (1994).

5. Although Petitioner has exhibited the applicability of his Master's degree in Biblical Studies and Theology to certain areas of English Literature, his argument could also be made for many other disciplines, giving this degree's almost global applicability to many other generally related subject areas. Therefore, deference is required to be given to the convention of the Department in its determination that the master's degree in biblical studies and theology is not directly related to his subject area.

6. Petitioner has not met his burden of demonstrating that Respondent has deprived him of property or has otherwise substantially prejudiced his rights and that Respondent has:

- (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.

ACKNOWLEDGMENT

It is acknowledged that whenever, in this document, reference is made to the Undersigned, the undersigned Judge, or the Court, reference is being made to the undersigned Administrative Law Judge with the Office of Administrative Hearings.

DECISION

The undersigned finds and holds that there are sufficient undisputed facts, findings, and evidence in the record to support the Conclusions of Law stated above that the Petition for Contested Case should be denied. The preponderance of the evidence supports the decision by the State Board of Education and Petitioner has failed to meet its burden to show otherwise.

ACCORDINGLY, based upon the foregoing, it hereby is ORDERED, ADJUDGED, AND DECREED as follows:

1. The relief requested by the Petition for Contested Case hereby is DENIED.

This is a final decision under the authority of N.C.G.S. § 150B-34.

NOTICE

Under the provisions of North Carolina General Statute 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.012, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. §150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. §150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

IT IS SO ORDERED.

This the 11th day of June, 2013.

J. Randall May
Administrative Law Judge