

STATE OF NORTH CAROLINA
COUNTY OF HALIFAX

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12EDC07438

<p>Emma Seward, Petitioner,</p> <p>v.</p> <p>North Carolina Department of Public Instruction, Respondent.</p>	<p>FINAL DECISION</p>
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This matter came on to be heard before Beecher R. Gray, Administrative Law Judge, on May 22, 2013 in Halifax, North Carolina. Respondent submitted a draft decision on June 19, 2013. Having heard and considered sworn testimony and other evidence presented, the undersigned makes the following Findings of Fact and Conclusions of Law:

APPEARANCES

For Petitioner: Emma Seward, Pro se
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Roanoke Rapids, NC 27870

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

Whether Respondent's decision to deny Petitioner's request for an exception from licensure requirements because of extenuating circumstances is supported by the evidence.

STATUTES AND POLICIES INVOLVED

N.C. Gen. Stat. §150B-23; §115C-296; and State Board of Education Policy TCP-A-021.

FINDINGS OF FACT

1. The parties received notice of hearing by certified mail more than 15 days prior to the hearing, and each stipulated on the record that notice was proper.
2. N.C. General Statute §115C-296(a) provides, in pertinent part, as follows:

The State Board of Education shall have entire control of licensing 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 licenses..., for each grade and type of license which it authorizes.
3. N.C. General Statute §115C-296(al) provides, in pertinent part, as follows:

The State Board shall adopt policies that establish the minimum scores for any required standard examinations and other measures necessary to assess the qualifications of professional personnel as required under subsection (a) of this section.
4. Consistent with its statutory authority to control the licensure process and to set licensure standards and requirements (including establishing required test scores for licensure), the State Board of Education has adopted policy TCP-A-021 entitled "Procedure for Seeking Exception from Licensure Requirements." (R. Ex. 1)
5. This policy recognizes that the State Board of Education will consider requests for exceptions from State Board of Education licensure requirements under certain limited circumstances. Specifically, a local board of education may apply to the State Board of Education for: (A) a one-year exception from licensure requirements for an individual who, because of extenuating circumstances, has not completed the course work required to maintain a license; or (B) for an exception from licensure requirements for an individual who has not fulfilled licensure requirements, other than course work, because of extenuating circumstances. (*See* R. Ex. 1)
6. Regardless of whether the exception being sought is an exception from required course work (i.e., a request for an additional year to complete course work) or an exception from other licensure requirements, the applicant seeking an exception from licensure requirements must demonstrate that the individual was not able to fulfill the licensure requirement for which he or she seeks an exception because of "extenuating circumstances." (R. Ex. 1)
7. In this case, Petitioner initially was licensed provisionally as a school counselor in North Carolina. Petitioner's provisional license was converted to a Standard Professional I ("SPI") license in 2007 because she completed an out-of-state education program as a school counselor. That license expired June 30, 2009, pending Petitioner's passing the required Praxis II test for school counselor in order to convert the SPI license to an

SPIT (full) license. Petitioner has attempted the Praxis II test dozens of times, but has been unsuccessful in obtaining the required score for full licensure in the State of North Carolina. (T. pp. 10-11, 47-49; *see also* R. Ex. 3)

8. In May 2012, Petitioner, through her local board of education, applied to the State Board of Education for an exception from licensure requirements because of extenuating circumstances. Specifically, her application for an exception from licensure requirements requested a complete waiver of the requirement of passing the Praxis II test. (R. Ex. 2; T. pp. 52-53)
9. Upon receipt by the State Board of Education, Petitioner's application for exception from licensure requirements was reviewed by a panel of the Advisory Board on Requests for Exception from Teacher Licensing Requirements, commonly referred to as the Extenuating Circumstances Committee. (T. pp. 14-17) The Extenuating Circumstances Committee consists of several State Board of Education members and at least four professional educators appointed by the State Board of Education. (R. Ex. 1; T. p. 16) The Extenuating Circumstances Committee was created to review requests for exception from licensure requirements, to evaluate the merits of such requests, and to submit to the State Board of Education recommendations to grant or deny such requests. (R. Ex. 1; T. pp. 17-18) None of the voting members of the Extenuating Circumstances Committee is employed by the State Board of Education or the Department of Public Instruction. (T. p. 22)
10. In Petitioner's case, a panel of the Extenuating Circumstances Committee reviewed and considered the request for exception from licensure requirements submitted by Petitioner, including additional documentation submitted by Petitioner after the initial request was made. (T. pp. 20, 22-25, 28, 32-33, 35-40, 42, 45; R. Exs. 2 & 5) After review and consideration of the information and documentation presented by Petitioner, including a letter from a psychologist who opined that it was "possible that test anxiety [was] a factor" for Petitioner, the Extenuating Circumstances Committee recommended that the State Board of Education deny Petitioner's request for exception from licensure requirements. (T. pp. 13- 21, 23-24, 27-28, 31-40, 41-46; R. Ex. 2)
11. The State Board of Education approved the Extenuating Circumstances Committee's recommendation and denied Petitioner's request for exception from licensure requirements. The denial was based upon Petitioner's failure to demonstrate the "extenuating circumstances" required by Policy TCP-A-021 to warrant an exception from licensure requirements. (T. p. 28)
12. Diana Beasley and Dr. Wanda Dawson, both long-time members of the Extenuating Circumstances Committee and both of whom were on the panel that considered Petitioner's request for exception from licensure requirements, testified at the hearing in this matter. (T. pp. 30-46) Both stated that, in their view, Petitioner failed to demonstrate that her inability to fulfill the requirements of licensure was because of extenuating circumstances that she experienced. (T. pp. 39-40, 43, 45) More specifically, both Diana Beasley and Dr. Dawson testified that Petitioner had failed to show and provide supporting documentation for a causal connection between the medical

conditions she asserted and the inability to satisfy the licensure requirement at issue (achieving a passing score on the Praxis II test). (T. pp. 39-40, 43, 45)

13. In short, although it is undisputed that Petitioner unsuccessfully had attempted numerous times to achieve a passing score on the required Praxis II test, Petitioner failed to demonstrate to the State Board of Education or at the hearing in this matter, a correlation between her inability to fulfill the licensure requirements and any extenuating circumstances that she suffered.

CONCLUSIONS OF LAW

1. The parties properly are before the Office of Administrative Hearings.
2. 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).
3. Based upon a preponderance of the evidence presented, the intent of the State Board of Education in adopting TCP-A-021 was to allow exceptions to licensure requirements only when an applicant could demonstrate that his or her inability to satisfy licensure requirements was because of extenuating circumstances suffered by the applicant.
4. In reaching the determination that Petitioner has not demonstrated that her inability to satisfy licensure requirements was caused by extenuating circumstances as required by State Board of Education Policy TCP-A-021, the undersigned--in addition to independently determining the import of the facts in this case--also has relied upon the testimony of individuals with years of experience in applying the policy and the uninterrupted interpretation of that policy over the years. An administrative law judge 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. Petitioner has not met her burden of demonstrating that Respondent has deprived her of property or has otherwise substantially prejudiced her 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.

FINAL DECISION

Respondent's decision to deny Petitioner's application for an exception to the State Board of Education's requirement of achievement of a passing score on the Praxis II exam on the basis that Petitioner's inability to achieve such passing score is because of extenuating circumstances experienced by her is supported by the evidence and is **AFFIRMED**.

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.

This the 17th day of August, 2013.

Beecher R. Gray
Administrative Law Judge