

STATE OF NORTH CAROLINA
COUNTY OF MADISON

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
NO. 12 EDC 12183

MATTHEW SCHNEIDER,

Petitioner,

v.

NC DEPARTMENT OF PUBLIC
INSTRUCTION,

Respondent.

FINAL DECISION

This matter coming on to be heard before the undersigned Administrative Law Judge on June 21, 2013, and the court having heard and considered the testimony and other evidence presented, the undersigned makes the following Findings of Fact and Conclusions of Law.

APPEARANCES

For the Petitioner: Matthew Schneider, Pro Se
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Mars Hill, NC 28754

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

Whether the Respondent wrongfully denied Petitioner's request for salary credit for "non-teaching" experiences based upon his prior experience as: a student services coordinator at the University of Phoenix; an assistant director of admissions at Mars Hill College; an admissions counselor at Montreat College; and an assistant manager at Helzberg Diamonds jewelry store.

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 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 and shall determine and fix the salary for each grade and type of license which it authorizes.

G.S. 115C-296(a)

2. Pursuant to its statutory authority to “determine and fix the salary for each grade and type of license 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.”

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.

4. In order to be eligible to receive credit for prior “non-teaching” work experience, the prior work experience must meet several criteria. The critical factor for deciding whether to award “non-teaching” work experience credit, however, is whether that prior work experience is “directly related” to an individual’s area of licensure and work assignment.

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

‘Relevant non-teaching work experience’ shall be defined as professional work experience in public or private sectors that is directly related to an individual’s area of licensure and work assignment.

State Board of Education Policy TCP-A-006, section 6.20 (emphasis added).

6. Petitioner is employed by the Madison County Public Schools as a secondary level social studies teacher.

7. After beginning employment in 2011, Petitioner requested credit for eleven years of past non-teaching work experience. At the time, Petitioner was licensed in social studies. Petitioner’s teaching assignment at the time of his request was in history and geography.

8. Petitioner’s request for credit for his experience as a student services coordinator at a university; as an assistant director of admissions at a college; as an admissions counselor at a college; and as an assistant manager at a jewelry store was accordingly denied by members of licensure staff at the Department of Public Instruction. The denial was based upon the Department’s determination that the prior experience was not “directly related” to Petitioner’s area of licensure and teaching assignment.

9. Following this initial denial, and pursuant to SBE Policy TCP-A-006, Petitioner, through Madison County Public Schools, requested a review by the Experience/Degree Credit Appeals Panel.

10. The Panel consists of professional educators, none of whom is employed by the State Board of Education or the Department of Public Instruction. 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.

11. The Panel here thoroughly reviewed and considered the information submitted, including a detailed letter by the Petitioner in which he explained how his previous work experience related to the teaching profession in general, as well as job descriptions relating to Petitioner's past work experiences. After deliberating, the Panel voted to deny Petitioner's request. In the Panel's opinion, Petitioner's prior work experience, while helpful to Petitioner as a teacher generally, was not directly related to the subject area in which he was licensed and his current teaching assignment.

12. 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 a term of art that is understood by the licensure staff, by members of the Panel, and by personnel administrators in the local school systems. It is defined by a "subject matter" test: Is the prior experience in a subject area that the teacher is both licensed in and assigned to teach?

13. In this case, while Petitioner's prior work was helpful in his teaching duties, the prior work did not involve the subject area he was licensed in and assigned to teach and thus did not meet the definition of "directly related" as used in TCP-A-006.

CONCLUSIONS OF LAW

1. Petitioner bears the burden of proving the claims alleged in the Petition by a preponderance of the 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. Finally, the State Board has the statutory authority to "determine and fix the salary for each grade and type of certificate which it authorizes... ." G.S. 115C-296(a).

4. Based upon a preponderance of the evidence presented, the intent of the State Board of Education in adopting TCP-A-006 was to recognize prior work experience that directly supported the subject area to which a teacher was assigned and licensed to teach. Incidental skills or duties that are helpful in any work environment are not deemed to be directly related to

the subject area in which the teacher is licensed and assigned to teach and thus are not creditable for salary purposes.

5. 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).

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:

- a. Exceeded its authority;
- b. Acted erroneously;
- c. Failed to use proper procedure;
- d. Acted arbitrarily or capriciously; or
- e. Failed to act as required by law or rule.

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 15th day of July, 2013.

Selina M. Brooks
Administrative Law Judge