

STATE OF NORTH CAROLINA
COUNTY OF CABARRUS

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13 EDC 18876

Tara Jane Dumas,)	
Petitioner,)	
v.)	
North Carolina Department of Public)	FINAL DECISION
Instruction,)	
Respondent.)	

This matter came on to be heard before Administrative Law Judge Selina M. Brooks on March 6, 2014 in Charlotte, North Carolina.

APPEARANCES

For the Petitioner: Tara Jane Dumas, *Pro se*
731 Capstone Avenue
Concord, NC 28025

For the Respondent: Tiffany Y. Lucas
Assistant Attorney General
North Carolina Department of Justice
Post Office Box 629
Raleigh, NC 27602

ISSUE

Whether Petitioner's Standard Professional 1 (initial) license should have been converted to a Standard Professional 2 (continuing) license.

APPLICABLE STATUTES AND POLICIES

N.C. Gen. Stat. § 115-296
State Board of Education Policy TCP-A-004

WITNESSES

For Petitioner: Tara Jane Dumas

For Respondent: Nadine C. Ejire
Mary B. Webb
Julie B. Kiser
James C. Underwood, Jr.

EXHIBITS ADMITTED INTO EVIDENCE

For Petitioner: Exhibits 1 – 20

For Respondent: ExhiBits 1 – 6, 8-12

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, 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 witnesses, any interest, bias, or prejudice the witnesses may have, the opportunity for the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witnesses is reasonable, and whether the testimony is consistent with all other believable evidence in the case. Wherefore, the Undersigned makes the following Findings of Fact, Conclusions of Law and Final Decision:

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... for each grade and type of license which it authorizes.

2. Consistent with its statutory authority to control the licensure process and to set licensure standards and requirements, the State Board of Education (hereinafter the “SBE”) has adopted a policy, TCP-A-004, entitled “Policies on the Beginning Teacher Support Program.” Among other things, Section 4.00 of the policy provides that “[i]nitial (Standard Professional 1) licenses are issued to teachers with fewer than three years of appropriate teaching experience (normally considered to be public school experience) in their initial licensure area. All teachers who hold initial (Standard Professional 1) licenses...are required to participate in a three year induction period with a formal orientation, mentor support, observations and evaluation prior to the recommendation for continuing (Standard Professional 2) licensure.” (Resp. Exhibit 1)

3. Section 4.90 of the policy, entitled “Conversion Process” sets forth the process by which the Licensure Section at the North Carolina Department of Public Instruction (“DPI”) converts a teacher’s initial (Standard Professional 1) license to a continuing (Standard Professional 2) license. Section 4.90 provides, in relevant part, that “[a] principal must rate a probationary teacher “as proficient” on all five NC Professional Teaching Standards on the most recent Teacher Summary Rating Form before recommending a teacher for a Standard Professional 2 license.” (Resp. Exhibit 1)

4. In this case, Petitioner, who held an initial (SP 1) license and who was a third-year beginning teacher, was employed by the Charlotte-Mecklenburg County Public Schools

System during the 2012-2013 school year as a first-grade teacher at Reedy Creek Elementary School. (T. p. 96)

5. On or about March 20, 2013, Charlotte-Mecklenburg Schools, requested a one-year extension of Petitioner's initial license (SP 1) through June 30, 2014, in order for her to complete the Beginner Teacher Support Program. (T. pp. 103-104; Resp. Exhibit 8) At the time the extension request was made, Petitioner anticipated that she would be out of school on leave for an extended period of time, and therefore, would not have the requisite number of instructional days to count towards her third year of teaching as required in the Beginning Teacher Support Program. (T. pp. 64-65, 104; Resp. Exhibit 7, pp. DPI 000205-207) The extension request was granted by DPI; subsequently, however, Charlotte-Mecklenburg Schools notified DPI that an extension was no longer needed as Petitioner had returned to work in sufficient time to meet the instructional days requirements of the Beginning Teacher Support Program. (T. pp. 19, 104-105; Resp. Exhibit 9)

6. Thereafter, on or about May 6, 2013 Charlotte-Mecklenburg Schools submitted a recommendation to DPI that Petitioner's Standard Professional 1 license not be converted to a Standard Professional 2 license. (T. p. 27; Resp. Exhibits 10 & 11)

7. The recommendation not to convert to a Standard Professional 2 license was based on Petitioner's failure to achieve a "proficient" rating on all five NC Professional Teaching Standards on the most recent Teacher Summary Rating Form completed by Mary Webb, the principal at the school where Petitioner was teaching. Consistent with Section 4.90 of State Board Policy TCP-A-004, therefor, Charlotte-Mecklenburg Schools did not recommend Petitioner for a continuing (SP 2) license. (Resp. Exhibit 10; T. p. 27)

8. DPI accepted Charlotte-Mecklenburg Schools' recommendation that Petitioner not be granted a continuing license and denied conversion of the Petitioner's Standard Professional 1 license to a Standard Professional 2 license. The denial was based upon the Petitioner's failure to satisfy the requirements of the Beginning Teacher Support Program under SBE Policy TCP-A-004 in that she did not achieve a rating of "proficient" in all five standards on the Teacher Summary Rating Form. (T. pp. 16, 21-22; Resp. Exhibits 10-12)

9. Petitioner appealed the decision not to convert her license to the Office of Administrative Hearings.

10. At the hearing in this matter, Principal Webb testified about her rationale for not rating the Petitioner "as proficient" or above in all five NC Professional Teaching Standards. In completing the summative evaluation for the Petitioner, Principal Webb relied upon her own observations and interactions with the Petitioner, as well upon input received from her staff, including other school personnel who had observed the Petitioner and completed formal evaluations and/or informal "walkthrough" evaluations of the Petitioner. (T. pp. 27-28, 31-33, 57-61; Resp. Exhibits 4, 5 & 6)

11. Standard IV of the NC Professional Teaching Standards – *Teachers facilitate learning for their students*, consists of eight elements:

- Element 4a provides that “[t]eachers know the ways in which learning takes place, and they know the appropriate levels of intellectual, physical, social, and emotional development of their students.”
- Element 4b provides that “[t]eachers plan instruction appropriate for their students.”
- Element 4c provides that “[t]eachers use a variety of instructional methods.”
- Element 4d provides that “[t]eachers integrate and utilize technology in their instruction.”
- Element 4e provides that “[t]eachers help students develop critical-thinking and problem-solving skills.”
- Element 4f provides that “[t]eachers help students work in teams and develop leadership qualities.”
- Element 4g provides that “[t]eachers communicate effectively.”
- Element 4h provides that “[t]eachers use a variety of methods to assess what each student has learned.”

(Resp. Exhibit 6, p. 5)

12. Julie Kiser, an instructional support person and the literary facilitator at Reedy Creek Elementary, testified at the hearing about her observations of the Petitioner’s classroom teaching during the 2012-2013 school year. (Resp. Exhibit 6, pp. 32-43, DPI 000171-187, 197-199) Ms. Kiser acknowledged that there were times “when [Petitioner] was very prepared and taught very good lessons,” but noted that the Petitioner’s “weakest area was meeting the individual needs of the children[.]” (T. pp. 75-76) The ability to provide “differentiated instruction” is important because the Petitioner, like all teachers, “had children ... [performing] severely below grade level and some performing – many performing average and some performing way above grade level. And each child deserves the opportunity to be able to get good instruction to make a year or more worth of growth during the year. You have to meet every child’s needs, not just the average children.” (T. pp. 79-80) Ms. Kiser provided input regarding her concerns about the Petitioner’s ability to provide differentiated instruction to Principal Webb. (T. pp. 76-79).

13. James Underwood, Petitioner’s colleague at Reedy Creek Elementary who served as the Dean of Students during the 2012-2013 school year, testified at the hearing about his observations of the Petitioner in the classroom both from his perspective as the Dean of Students called in to deal with disciplinary matters, as well as in his role as evaluator. Based upon his classroom observation of the Petitioner on January 10, 2013, Mr. Underwood encouraged Petitioner to vary or differentiate her instructional techniques to accommodate the various learning styles of the students in her classroom. In the January 10, 2013 evaluation document, Mr. Underwood also offered suggestions to Petitioner for making herself more accessible to all students in the classroom and to provide more consistent monitoring of students. (T. pp. 90-91; Resp. Exhibit 6, pp. 23, 28) Mr. Underwood provided input to Principal Webb about areas in which he felt Petitioner needed to improve. (T. pp. 87-89) On April 25, 2013, Mr. Underwood communicated in an e-mail to Principal Webb his concerns about the Petitioner’s lack of proximity and inattention to her students that morning when he thrice visited her classroom. (Resp. Exhibit 2, p. DPI 000027). Mr. Underwood’s concern that day was that the children in the Petitioner’s class were not getting the support and help they needed from their teacher. (T. pp. 91-93)

14. Assistant Principal Tonya Johnson gave input to Principal Webb concerning her evaluation of Petitioner's classroom teaching following an observation conducted on March 8, 2013. In the evaluation document, Assistant Principal Johnson noted concerns about the Petitioner's development in Standard II – *Teachers establish a respectful environment for a diverse population of students*; and in Standard IV – *Teachers facilitate learning for their students*. With respect to Standard II, Assistant Principal Johnson commented that, “[a]s part of Mrs. Dumas’ support plan, she is working toward establishing positive relationships with her diverse student population. During this lesson, Mrs. Dumas was more subject centered than student centered.” With respect to Standard IV, Assistant Principal Johnson commented that “[o]verall, [Petitioner] is developing in this standard. Mrs. Dumas is learning to address individual student’s needs through differentiation. This will help support higher time on task and facilitate student engagement.” (Resp. Exhibit 6, pp. 8-19) Principal Webb discussed the concerns raised in the evaluation document with Assistant Principal Johnson following the observation. (T. pp. 57-58)

15. Based upon her own observation of the Petitioner, as well as upon input from her administrative team, Principal Webb concluded that Petitioner had not yet achieved proficiency in the majority of the elements comprising Standard IV. In the evaluation she completed on Petitioner following a classroom observation conducted on October 23, 2012, Principal Webb indicated her concerns about the Petitioner in satisfying the elements of Standard IV, noting that “differentiation and resources supports are not consistently provided for instructional objectives...all students did not have a clear understanding of what was expected for the math game. There was no differentiated instruction or supports observed.” “By differentiating instruction, all students will be more successful on the instructional activities.” (Resp. Exhibit 6, pp. 50-52) Subsequently, on February 12, 2013, Principal Webb communicated in a letter to the Petitioner that she was at risk of insufficient ratings in Standards II and IV. (T. pp. 49-51; Resp. Exhibit 4, pp. DPI 000074-75) Then, on March 19, 2013, Principal Webb communicated in an e-mail to the Petitioner that the area in which she was not consistently proficient was Standard IV. (T. pp. 39-40; Resp. Exhibit 2, pp. DPI 00037-38)

16. By the time Principal Webb completed the Petitioner's summative evaluation on or about April 25, 2013, although Petitioner had demonstrated proficiency in the areas of integrating and utilizing technology in her instruction (element 4a), as well as in helping students work in teams and develop leadership skills (element 4f), in Principal Webb's view, Petitioner was not yet proficient in the other six elements comprising Standard IV. Petitioner failed to demonstrate that she could effectively “differentiate her instruction based on the learning needs of her students.” Therefore, because Petitioner failed to “consistently provide lessons that meet the learning needs of students during the entire instructional day,” and because Petitioner had “not yet developed the skills that allow her to consistently assess and adjust teaching so learning can take place[,]” Principal Webb gave Petitioner an overall rating of “developing” rather than “proficient” in Standard IV. (T. pp. 47-49, 67; Resp. Exhibit 3, p. DPI 000065; Resp. Exhibit 6, p. 5)

17. Nadine Ejire, Assistant Section Chief in the Licensure Section at DPI, testified that because local school district personnel have direct contact with teachers on a daily basis, the school districts are in the best position to evaluate whether teachers have satisfied the NC

Professional Teaching Standards. Accordingly, DPI based its decision not to convert Petitioner's initial license to a continuing license on the recommendation and supporting documentation received from Charlotte Mecklenburg Schools regarding the Petitioner's failure to achieve the required level of proficiency in all five NC Professional Standards under TCP-A-004. (T. pp. 21-22).

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in this matter. To the extent the Findings of Fact contain conclusions of law, or that the Conclusions of Law are findings of fact, they should be so considered without regard to the given labels.

2. The burden is on Petitioner to demonstrate, by a preponderance of the evidence, that the Respondent erred in not converting her initial license to a continuing license. Peace v. Employment Sec. Comm'n, 349 N.C.315, 507 S.E. 2d 272 (1988)

3. 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.

Based on the foregoing, the undersigned makes the following:

DECISION

The Petitioner has not met her burden of proof by the preponderance of the evidence and, therefore, the Petition for Contested Case hereby is **DENIED**.

NOTICE

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

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 the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **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 03.0102, 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 1st day of May, 2014.

Selina M. Brooks
Administrative Law Judge