

NORTH CAROLINA

OFFICE OF ADMINISTRATIVE HEARINGS

WAKE COUNTY

15 EDC 3061

LAURA KERRIGAN

Petitioner

v

**NORTH CAROLINA DEPARTMENT
OF PUBLIC INSTRUCTION**

Respondent

FINAL DECISION

This matter coming on to be heard and being heard August 26, 2015, in the Office of Administrative Hearings, and the Petitioner appeared pro se in this matter, while the Respondent was represented by Assistant Attorney General Ms. Tiffany Y. Lucas, and based upon the evidence presented and the arguments of the parties, the undersigned makes the following findings of fact:

1. The Petitioner is a citizen and resident of Wake County, North Carolina, and is employed by the Wake County Public School System as a social studies teacher at Cary High School.

2. The State Board of Education is empowered by statute to “determine and fix the salary for each grade and type of license which it authorizes.” N.C. Gen. Stat. § 115C-296(a).

3. Respondent utilizes an internal policy, TCP-A-006, entitled “Policies related to experience/degree credit for salary purpose” to determine the salary for public school employees based on certain credit for non-teaching work experience. (Respondent’s Exhibit 1).

4. There is no rule in the North Carolina Administrative Code which has been promulgated to determine the salary and creditable non-teaching work experience for public school employees.

5. The State Board of Education, however, has published policies which it holds out to the public as having the same force and effect as rules promulgated pursuant to the North Carolina Administrative Code.

6. TCP-A-006 is one such policy.

7. Pursuant to this policy, credit for non-teaching work experience can be applied to a teacher’s total licensure experience rating on the recommendation of the ... NC LEA which has employed the individual in a professional position.” TCP-A-006, Section 6.20 (Resp. Ex. 1).

8. To receive credit for prior non-teaching work experience, said work experience must be “relevant non-teaching work experience.”

9. “Relevant non-teaching work experience” is professional work experience, in either the public or private sector, which is “directly related to an individual’s area of licensure and work assignment. TCP-A-006, Section 6.20 (Resp. Ex. 1).

10. Such experience must also be at least half-time, completed after the applicant has reached 18 years of age, not an on-the-job training assignment, and paid and documented. TCP-A-006, Section 6.20 (Resp. Ex. 1).

11. Petitioner was initially licensed as a social studies teacher in 2010, and her current license will expire in 2019.

12. Petitioner is licensed in “Secondary Social Studies and Middle Grades Social Studies.” (Resp. Ex. 6).

13. Petitioner is also a nationally certified teacher through the National Board for Professional Teaching Standards.

14. Petitioner received her Bachelor’s Degree from North Carolina State University in 1989, and a law degree from William and Mary in 1992.

15. From December 9, 1997 through January 31, 2009, Petitioner served as Head Coach for the North Carolina State University (NCSU) women’s soccer program.

16. Petitioner is seeking non-teaching work experience credit for her work at NCSU during this time period. Details regarding her duties and obligations at the university are set forth more fully below.

17. On October 21, 2013, the Wake County Public School System, through Licensure Administrator Ms. Pat McCarthy, submitted a request to the Respondent to obtain eleven years of credit towards Petitioner’s license based upon her experience at NCSU.

18. Ms. McCarthy’s request was submitted on a form entitled, “LEA Recommendation for Nonteaching Experience Credit.” (Resp. Ex. 4, p8).

19. In making the request, Ms. McCarthy certified that Petitioner’s work experience as Head Coach for the NCSU women’s soccer program was “directly related to [her] area of licensure and work assignment.” (Resp. Ex. 4, p8).

20. Ms. McCarthy also certified that she calculated the years for which credit was sought “using the Department of Public Instruction, Licensure Section’s experience formula.” (Resp. Ex. 4, p8).

21. As Head Coach at NCSU, Petitioner was responsible for off-season training, on-the-field practice sessions, game preparation, and game performance ordinarily associated with running and managing an athletic team.

22. Petitioner's employment-related duties and obligations, however, included additional responsibilities that reflect the business of collegiate athletics, including, but not limited to, the following:

- a. Responsible for the program's operating budget;
- b. Responsible for the program's scholarship budget;
- c. Supervising and managing the program's assistant coaches and staff;
- d. Making personnel, financial, and facilities related recommendations for the program;
- e. Implementing risk management strategies;
- f. Engaging in public relations activities to promote NCSU and the soccer program;
- g. Engaging in fundraising activities for the program and university;
- h. Hosting youth summer camps, which she had to market, promote, and staff. In addition, Petitioner was solely responsible for budgetary operations of these camps; and
- i. Ensuring compliance with NCAA, ACC, and NCSU policies and procedures.

(Petitioner's Exhibit 1, p2).

23. While employed at NCSU, the Athletic Director asked Petitioner to serve as a Sexual Harassment Resolution Officer and as Director of the Gender Equity Committee.

24. These assignments were a direct result of her employment as women's soccer coach and part of her official duties at NCSU.

25. Petitioner was appointed by and reported directly to the Athletic Director in her capacity as Gender Equity Director.

26. Petitioner was the Athletic Department representative in her capacity as Sexual Harassment Resolution Officer, reporting directly to the Athletic Director.

27. The official job description of the Head Women's Soccer Coach at NCSU includes the catch-all phrase, "other duties as required." (Pet. Ex. 1, p2).

28. A supervisor or employer can impose additional responsibilities upon an employee that are not included in a job description, but are nonetheless part of that individual's official duties.

29. As a Sexual Harassment Resolution Officer, Petitioner investigated sexual harassment claims and issued written opinions and reports concerning those investigations. She also served "as a liaison for sexual harassment education and prevention programs" for the athletic department. (Pet. Ex. 1, p2).

30. As Director of the Gender Equity Committee, Petitioner investigated, monitored, and recommended actions needed by NCSU to ensure compliance with federal law and regulations, NCAA rules and regulations, and Title IX requirements. Petitioner's responsibility as director of this committee included reporting requirements and policy development. (Pet. Ex. 1, p2).

31. Former Associate Director of Athletics at NCSU, Mr. Barry Joyce, was Petitioner's direct supervisor and served with her on the Gender Equity Committee.

32. Mr. Joyce testified that Petitioner worked in excess of 40 hours per week fulfilling her duties associated with being the women's soccer coach at NCSU; he estimated that her administrative duties occupied 95% of her time. Only 5% of her work was on the field with student-athletes.

33. Mr. Joyce also stated that Petitioner's work at NCSU involved making informed financial decisions for effective management of the university's resources, using risk management strategies, and understanding the role of market factors in economic decision making.

34. Ms. Kerrigan also had to understand the civil and criminal justice systems in her work with the Gender Equity Committee and as a Sexual Harassment Resolution Officer.

35. According to Mr. Joyce, Petitioner's role on the Gender Equity Committee was "essential for the function of the [athletic] department."

36. The individual who succeeded Petitioner at NCSU had the same duties and responsibilities as the Petitioner.

37. Following her employment at NCSU, Petitioner began teaching social studies at Cary High School.

38. As a licensed social studies teacher, Petitioner taught courses at Cary High School in Civics and Economics and Law and Justice, among others.

39. As a former attorney, Petitioner had previously been credited with four years of non-teaching experience from 1993-1997 as a law clerk and attorney directly related to her licensure. (Resp. Ex. 8, p1). Petitioner is not seeking credit as an attorney in this matter.

40. As a social studies teacher, the classes which the Petitioner teaches can and have changed from semester to semester, and year to year.

41. Ms. Keisha Rock, Assistant Principal at Cary High School, is Petitioner's direct supervisor and evaluator. She has supervised the Petitioner for five years.

42. Ms. Rock knows the Essential Standards for the Social Studies course of study and participates in hiring decisions at Cary High School.

43. Ms. Rock reviewed the non-teaching experience supporting documentation matrix provided to Respondent, detailing the nexus between Petitioner's work experience and the "Common Core/Essential Standards course of study[.]" (Pet. Ex. 1, p3).

44. According to Ms. Rock, it would be advantageous to hire someone with prior experience creating and managing a budget, monitoring income and expenditures, running a soccer camp business to teach Civics and Economics, and that this knowledge is useful in trying to educate others.

45. Ms. Rock stated that creating and managing of budgets, monitoring income and expenditures, running a soccer camp business are all directly related to teaching Civics and Economics, and the essential standards in the curriculum.

46. Petitioner's experience with the Gender Equity Committee is directly related to the Civics and Economics curriculum and the Law and Justice curriculum, especially as it relates to the 14th Amendment, Equal Protection, and civil liability, according to Ms. Rock.

47. Work experience with practical implications of the 14th Amendment and Equal Protection requirements is directly related to teaching Civics and Economics, and Law and Justice, and the essential standards in the curriculum.

48. Petitioner's experience in investigating sexual harassment complaints and preparing reports from those investigations is directly related to the Civics and Economics curriculum and the Law and Justice curriculum, especially as it relates to the 14th Amendment, Equal Protection, and civil and criminal liability, according to Ms. Rock.

49. Work experience in investigating and reporting on sexual harassment complaints is directly related to teaching Civics and Economics, and Law and Justice, and the essential standards in the curriculum.

50. Specifically, Petitioner established that her experience directly related to the essential standards set forth below:

- a. CE. PFL.1 - Analyze the concepts and factors that enable individuals to make informed financial decisions for effective resource management.
- b. CE. PFL.2 - Understand how risk management strategies empower and protect consumers.
- c. CE. E. 1 - Understand economies, markets and the role economic factors play in making economic decisions (Supply, demand, market equilibrium, competition, production).
- d. EC. C&G. 3 - Analyze the legal system within the United States in terms of development, execution, and protection of citizenship rights at all levels of government.
- e. L&J 2.03 - Examine issues and problems confronting the civil and criminal justice systems.
- f. L&J 2.04 - Assess the effectiveness of the state and federal judicial systems in resolving issues and problems.

(Pet. Ex. 1, pp3-4).

51. Ms. Rock described Petitioner's classroom as very engaging due to Ms. Kerrigan's use of real-world examples, and her past experiences allow Petitioner to connect with her students.

52. On April 1, 2014, Respondent's Licensure Specialist, Christy Lane, notified the Wake County Public School System that the request for non-teaching experience credit had been denied because Petitioner's experience was "not directly related to social studies." (Resp. Ex. 3).

53. Petitioner and the Wake County Public School System appealed the Respondent's denial.

54. The Graduate Pay and Non-Teaching Appeals Panel met on February 20, 2015, to hear Petitioner's appeal of the denial.

55. In a 6-0 vote, the panel determined that Petitioner's experience as the Head Coach for NCSU's women's soccer program was not directly related her social studies license and her assignment at Cary High School.

56. Respondent presented no evidence in the form of minutes, notes, or benchmark requirements for credit regarding the Petitioner's matter, only an agenda that established the 6-0 decision.

57. Ms. Karoline Fisher, Regional Director for the Catawba Region Alternative Licensing Center, was a member of the appeals panel and works with current and lateral entry teachers on issues associated with licensure.

58. Ms. Fisher admitted that Ms. Kerrigan's experience at NCSU was directly related to her licensure in social studies teacher and her assignment as a civics and economics teacher, in "a small percentage."

59. Despite this acknowledgement, Ms. Fisher stated that she was tasked with determining if the duties performed by the teacher on a daily basis are similar in content to what is being taught in the classroom on a daily basis.

60. Ms. Fisher also stated that she was looking for what was done on a daily basis in the job and whether it was directly relevant to what was done on a daily basis in the classroom.

61. Neither of these are the tests set forth in the Respondent's policy.

62. Further, Ms. Fisher testified that "just because someone may have a little bit of experience that may fall under one of those small areas, does not mean that it's directly relevant to the comprehensive umbrella of social studies."

63. Ms. Fisher testified that Petitioner's duties at NCSU did not relate to "Comprehensive Social Studies."

64. There is no rule in the North Carolina Administrative Code which defines “Comprehensive Social Studies.”

65. Respondent has not pointed to any statute, policy, or any other purported authority which defines the term “Comprehensive Social Studies.”

66. Ms. Fisher stated that, to her, comprehensive social studies included “History, Geography, Economics, Political Science, Anthropology, there’s a lot more to it.”

67. The test, as set forth in the Respondent’s policy, is whether the non-teaching work experience is “directly related to an individual’s area of licensure” (Resp. Ex. 1).

68. Petitioner is licensed in “Secondary Social Studies and Middle Grades Social Studies.” (Resp. Ex. 6)

69. While “social studies” may include various disciplines or subject areas, such as history, geography, economics, political science, anthropology, etc., Respondent’s policy does not set forth a requirement that an applicant for non-teaching experience credit have directly related experience in all possible disciplines or subject areas.

70. Ms. Fisher and the appeals panel, however, were of the opinion that, while some of her experience at NCSU was directly related to licensure in social studies, overall the Petitioner’s experience “[d]id not embrace the total umbrella of social studies.”

71. When cross-examined by the Petitioner regarding what type of experience might meet Ms. Fisher’s various standards of “directly relevant” to “Comprehensive Social Studies”, Ms. Fisher stated that work as “a museum curator” would meet Respondent’s policy as it relates to social studies.

72. Ms. Fisher’s opinion of what is “directly relevant” defies common sense; such a restrictive application would preclude individuals with unique and valuable experiences from receiving credit for the same.

73. It borders on bad faith to utilize such a restrictive application of the purported criteria and standard.

74. Such a result lends itself to driving away uniquely qualified individuals from the field of education.

75. In addition, Ms. Fisher testified that the review panel could not determine if the Petitioner spent more than 20 hours per week in her duties with the Gender Equity Committee and as Sexual Harassment Officer.

76. This distinction was not necessary, however, as these were included in Petitioner's duties as Head Coach for the women's soccer program because they were assigned to her by the Athletic Director.

77. Respondent presented no evidence that any of the appeals-panel members had prior social studies teaching experience, any particularized social studies curriculum knowledge, or had ever conducted an observation of a social studies class being taught at any level.

78. Nothing in the Respondent's policy requires Petitioner to prove her prior non-teaching experience meets an arbitrarily determined percentage to qualify as directly related to her licensure.

79. Petitioner's impressive credentials and experience are clearly set forth in the request for credit and supporting documentation.

80. There is no evidence or allegation that Petitioner acted in bad faith in describing her responsibilities and obligations at NCSU.

81. There is no evidence or allegation that Wake County Public School System acted in bad faith in recommending Petitioner for non-teaching work experience.

82. There is no evidence or allegation that Ms. Pat McCarthy acted in bad faith in submitting paperwork on behalf of the Petitioner and Wake County Public School System.

83. Petitioner teaches or has taught Civics and Economics and Law and Justice, among other classes, in her assignment at Cary High School.

84. Petitioner's non-teaching work experience as the Head Coach of the women's soccer program and NCSU is directly related to her social studies licensure and her assignment as a teacher at Cary High School.

Based upon the foregoing findings of fact, the undersigned concludes the following as a matter of law:

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter herein.

2. Both parties were properly noticed for hearing.

3. The State Board of Education has the power to "regulate the grade [and] salary ... of teachers." *Guthrie v. Taylor*, 279 N.C. 703, 709 (1971). Specifically, as it relates to this matter, the State Board has a 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.

4. Petitioner has the burden of proving the claims alleged in the Petition by a preponderance of the evidence.

5. Petitioner alleged that Respondent deprived her of property and acted erroneously when the appeals panel decided that she was not entitled to credit towards her social studies licensure for her work as head women's soccer coach at NCSU.

6. Petitioner has met her burden of proof.

7. Petitioner's non-teaching work experience with the operating budget of the NCSU women's soccer program is directly related to her social studies licensure and her assignment at Cary High School.

8. Petitioner's non-teaching work experience with the scholarship budget of the NCSU women's soccer program is directly related to her social studies licensure and her assignment at Cary High School.

9. Petitioner's non-teaching work experience with Supervising and managing a staff of assistant coaches with the NCSU women's soccer program is directly related to her social studies licensure and her assignment at Cary High School.

10. Petitioner's non-teaching work experience making personnel, financial, and facilities related recommendations with the NCSU women's soccer program is directly related to her social studies licensure and her assignment at Cary High School.

11. Petitioner's non-teaching work experience implementing risk management strategies with the NCSU women's soccer program is directly related to her social studies licensure and her assignment at Cary High School.

12. Petitioner's non-teaching work experience in public relations activities promoting NCSU and the soccer program is directly related to her social studies licensure and her assignment at Cary High School.

13. Petitioner's non-teaching work experience in fundraising with the NCSU women's soccer program is directly related to her social studies licensure and her assignment at Cary High School.

14. Petitioner's non-teaching work experience hosting youth summer camps, which she had to market, promote, and staff while with the NCSU women's soccer program is directly related to her social studies licensure and her assignment at Cary High School.

15. Petitioner's non-teaching work experience with the camp budget while with NCSU women's soccer program is directly related to her social studies licensure and her assignment at Cary High School.

16. Petitioner's non-teaching work experience ensuring compliance with NCAA, ACC, and NCSU policies and procedures while with the NCSU women's soccer program is directly related to her social studies licensure and her assignment at Cary High School.

17. Petitioner's non-teaching work experience with the Gender Equity Committee while with the NCSU women's soccer program is directly related to her social studies licensure and her assignment at Cary High School.

18. Petitioner's non-teaching work experience as a Sexual Harassment Officer while with the NCSU women's soccer program is directly related to her social studies licensure and her assignment at Cary High School.

18. Respondent acted erroneously pursuant to N.C. Gen. Stat. § 150B-23(a)(2), in failing to give credit towards Petitioner's social studies licensure for her work as head women's soccer coach at NCSU because the Respondent, through the appeals panel:

- a. Misapplied relevant review criteria.
- b. Applied varying criteria in reviewing Petitioner's background.
- c. Utilized standards that are not set forth in the department's own policy.
- d. Ignored the certifications and recommendations of the LEA.
- e. Failed to utilize any specialized or particularized knowledge in rendering its decision.
- f. Failed to give due consideration to the Petitioner's actual job functions, duties, and responsibilities with the NCSU women's soccer program.
- g. Acknowledged in this hearing that the Petitioner's actual job functions, duties, and responsibilities are directly related to her licensure and assignment, implementing an arbitrary percentage requirement that is not included in the policy, and for which a percentage was not defined.
- h. Disregarded the essential standards for Civics and Economics, Civics and Government, and Law and Justice in analyzing Petitioner's actual job functions, duties, and responsibilities in reaching its conclusion.

Based upon the foregoing findings of fact and conclusions of law, the Petitioner's request is granted, and she shall be credited with 11 years of service towards her licensure in Secondary Social Studies and Middle Grades Social Studies for her experience as Head Coach for the women's soccer program at North Carolina State University.

NOTICE

This is a Final Decision on the issue of the state tax refund, and 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.

This the 21st day of September, 2015.

Philip E. Berger, Jr.
Administrative Law Judge

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15EDC03061

<p>Laura Kerrigan Petitioner</p> <p>v.</p> <p>Department Of Public Instruction Respondent</p>	<p style="text-align: center;">ORDER AMENDING DECISION</p>
---	---

Pursuant to 26 NCAC 3.0129, for the purpose of correcting a clerical error, IT IS HEREBY ORDERED that the Notice in the above-captioned Decision, issued from this Office on September 21, 2015 is amended as follows:

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 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.

This the 15th day of October, 2015.

Philip E. Berger, Jr.
Administrative Law Judge