

GUTTENBERG EDUCATION ASSOCIATION AND ZENAIDA FRANQUI, :
APPELLANTS, :
V. :
LEO F. KLAGHOLZ, COMMISSIONER OF :
EDUCATION, : STATE BOARD OF EDUCATION
RESPONDENT, : DECISION
AND :
BOARD OF EDUCATION OF THE :
BOROUGH OF GUTTENBERG, HUDSON :
COUNTY, :
RESPONDENT. :

Equivalency granted by the Commissioner of Education, January 9, 1998

For the Appellants, Zazzali, Zazzali, Fagella & Nowak (Richard A. Friedman, Esq., of Counsel)

For the Respondent Leo F. Klagholz, Commissioner of Education, Nancy Kaplen, Assistant Attorney General (Terri A. Cutrera, Deputy Attorney General, on the brief) (Peter Verniero, Attorney General of New Jersey)

For the Respondent Board of Education of the Borough of Guttenberg, Giblin & Giblin (John L. Schettino, Esq., of Counsel)

This is an appeal from an equivalency granted to the Board of Education of the Borough of Guttenberg (hereinafter "Board" or "Guttenberg Board") by the Commissioner of Education pursuant to N.J.A.C. 6:3A-1.1 et seq. By adopting these regulations, which became effective on July 3, 1995, the State Board of Education

delegated to the Commissioner the authority to approve on a case-by-case basis applications made by district boards for waivers or equivalencies with respect to the other administrative rules adopted by the State Board pursuant to the Administrative Procedures Act.¹

In this instance, the Commissioner approved the Guttenberg Board's application for an equivalency. The Commissioner's approval letter indicated that the grant was for an equivalency of N.J.A.C. 6:29-3.3(c) to "[p]ermit persons with a county substitute certificate and subject matter expertise to provide world language instruction."² The Board's application represented that it had approved Berlitz International, Inc. as its "World Language teacher" and that it was seeking an equivalency "because the Berlitz teacher/program is not certified...." The application further stated that the Board was

¹ An equivalency is defined in the regulations as "the granting of approval to achieve the intent of a specific rule through an alternate means that is different from, yet judged to be comparable to or as effective as, those prescribed within the rule." N.J.A.C. 6:3A-1.2.

In contrast, a waiver is defined as "the granting of approval to avoid compliance, either with the specific procedures or the substantive requirements of a specific rule for reasons that are judged educationally, organizationally, and fiscally sound." Id.

² N.J.A.C. 6:29-3.3, "Athletics personnel," provides:

(a) Any person not certified as a teacher and not in the employ of a district board of education shall not be permitted to organize public school pupils during school time or during any recess in the school day for purposes of instruction, or coaching or for conducting games, events or contests in physical education or athletics.

(b) School districts shall be permitted to employ any holder of a New Jersey teaching certificate to work in the interscholastic athletic program provided that the position has been advertised.

(c) In the event there is no qualified and certified applicant, the holder of a county substitute certificate is authorized to serve as an athletic coach in the district in which he or she is employed for a designated sports season, provided that:

1. The district chief school administrator demonstrates to the county superintendent that:
 - i. The vacant coaching position had been advertised; and
 - ii. There was no qualified applicant based on the written standards of the district board of education;
2. The district chief school administrator will provide a letter to the county superintendent attesting to the prospective employee's knowledge and experience in the sport in which he or she will coach; and
3. Approval of the county superintendent shall be obtained prior to such employment by the district board of education. The 20-day limitation noted in N.J.A.C. 6:11-4.4(i) shall not apply to such coaching situations.

seeking an equivalency “of the requirement that currently exists which permits substitutes (certified) to replace academic classroom teachers.”

The Commissioner granted the equivalency on January 9, 1998 for a period of three years and indicated that the Guttenberg Board could submit a request for continuation of the equivalency at the end of that period.

A notice of appeal challenging the equivalency was filed with the State Board on February 4, 1998. Appellants are the Guttenberg Education Association and an individual resident and taxpayer from Guttenberg. Appellants challenged the legality of the Guttenberg Board’s proposal to assign individuals possessing only county substitute certificates to deliver world language instruction and to subcontract with Berlitz to engage the services of such individuals.³

On August 14, 1998, counsel for the appellants submitted a proposed settlement to the State Board.⁴ The proposed settlement stated that the equivalency granted by the Commissioner was moot because the Guttenberg Board “presently is not employing any person with a county substitute certificate to teach any foreign or world languages courses as allowed by the Commissioner’s grant of the appealed from equivalency.” The proposed settlement indicated that litigation would be premature and preserved the

³ We note that the question of whether the Board could properly subcontract with a private vendor to provide instructional services was raised by this appeal only to the extent that the Board’s application for an equivalency indicated that the individuals to be provided to the district by Berlitz would not possess standard instructional certification. We further note that the specific issue of the legality of providing foreign language instruction by subcontracting with a private vendor for instructional services was directly challenged by a petition of appeal which appellants had filed with the Commissioner of Education on November 13, 1997. Appellants indicate in their brief that this petition is still pending.

⁴ The settlement agreement had been executed by Berlitz International, Inc. and a Deputy Attorney General representing Commissioner Klagholz, as well as by the appellants and the Guttenberg Board.

appellant's right to reinstate the appeal in the event the Guttenberg Board determined to "use the equivalency."

Inasmuch as the Commissioner had granted the equivalency for a three-year period and had indicated that it could be continued beyond that period, and given our understanding that certification requirements would not be waived by the Commissioner under the equivalency and waiver process adopted by the State Board, N.J.A.C. 6:3A-1.1 et seq., our Legal Committee found that it could not recommend the settlement for approval by the State Board without resolving whether the equivalency at issue authorized the Board to set aside certification requirements that would otherwise apply. Accordingly, the Committee requested the parties to brief this question.

Counsel for the Guttenberg Board advised us by letter dated November 17, 1998 that the Board was not filing a brief on this question because "this matter is no longer an issue in the Guttenberg School District." Both the counsel for appellants and a Deputy Attorney General representing Commissioner Klagholz filed briefs on the issue.

We have reviewed the arguments of counsel. We have carefully considered those arguments in the context of the framework established by the education statutes which assure the provision of an adequate education to New Jersey's children by both the State and local systems. On this basis, we have concluded that the responsibility of the State Board of Education for the general supervision of public education, N.J.S.A. 18A:4-10, and for the enforcement of the education laws of this state, N.J.S.A. 18A:4-15, preclude us from permitting the Commissioner to exercise the authority we have delegated to him by the adoption of N.J.A.C. 6:3A-1.1 et seq. to set aside certification requirements that would otherwise apply. In that the equivalency granted

by the Commissioner in this case would have such an effect, we conclude that it is invalid.

The Commissioner in this instance indicated that he was granting the Board an equivalency to N.J.A.C. 6:29-3.3(c). That regulatory provision authorizes the holder of a county substitute certificate to serve as an athletic coach in the district in which he or she is employed when there is no “qualified and certified” applicant. As clarified by the Deputy Attorney General, “the Commissioner intended [by issuing this equivalency] to extend the service period of persons with county substitute certificates and foreign language expertise to encompass an entire school year.” Commissioner’s Brief, at 5. Thus, she argues, the Commissioner did not set aside certification requirements in this case. The Deputy Attorney General further argues that the grant was justified because it was “not granted to any particular individual, but rather was granted to meet the school district’s need to develop a world language program.” Id. at 6.

The Deputy Attorney General’s characterization misconstrues the equivalency. This equivalency expressly authorizes the district to engage an individual possessing only a county substitute certificate to provide instructional services beyond the twenty days permitted by N.J.A.C. 6:11-4.5(c). In point of fact, it was for this purpose that the district sought the equivalency. Since a county substitute certificate is not a teaching certificate and does not constitute appropriate certification issued by the State Board of Examiners pursuant to N.J.S.A. 18A:6-38, the equivalency granted by the Commissioner operates to set aside the certification requirements for service as a foreign language teacher specified by N.J.A.C. 6:11-6.3(a)(9). See N.J.A.C. 6:11-6.1 (each teaching endorsement is required for corresponding teaching assignment). The

fact that the equivalency authorizes any individual holding a county substitute certificate to provide such instructional services, rather than waiving certification requirements with respect to a particular individual, does not alter the fact that the applicable certification requirements were waived by the grant of this equivalency. Compare N.J.A.C. 6:11-4.5 (Individual with 60 semester-hours from an accredited college may obtain county substitute certificate issued by county superintendent authorizing day-to-day substitute teaching in the county which grants the certificate) with N.J.A.C. 6:11-3.11 (applicants for teaching certificate, except vocational, must possess baccalaureate degree from accredited institution of higher learning) and N.J.A.C. 6:11-3.1 et seq. (teacher preparation programs, substitution of alternate education, and qualifications for issuance of standard certifications).

In this respect, we stress that because there is no “appropriate” certification required for service as an athletic coach, athletic coaches are not teaching staff members within the meaning of N.J.S.A. 18A:1-1. Hence, an individual cannot achieve tenure under N.J.S.A. 18A:28-5 by virtue of service in that capacity. In contrast, as reflected by N.J.A.C. 6:11-6.3(a)(9), employment as a foreign language teacher is of such character that the qualifications for such service require appropriate certification. Hence, foreign language teachers are teaching staff members as defined by N.J.S.A. 18A:1-1 and may achieve tenure pursuant to N.J.S.A. 18A:28-5 on the basis of their service in such assignments. See, e.g., Spiewak v. Board of Educ. of Rutherford, 90 N.J. 63 (1982).

Nor can Guttenberg’s need to develop a world language program justify using the equivalency and waiver process provided by N.J.A.C. 6:3A-1.1 et seq. to set aside

certification requirements. Rather, as reflected by N.J.A.C. 6:11-4.3, the regulatory process provides the proper course to be followed in the event that teacher shortages develop in a particular subject area. In this respect, we emphasize that in contrast to the discretion afforded by N.J.A.C. 6:3A-1.1 et seq., alternative methods provided in the certification rules were carefully designed to assure the integrity of the standards embodied in those rules. N.J.A.C. 6:11-3.23 through N.J.A.C. 6:11-30 (substitution of alternative education and/or experience for required preparation).

We again stress that certification requirements establish the threshold qualifications for teaching staff members employed in the public school system throughout the state. N.J.S.A. 18A:1-1; N.J.S.A. 18A:26-2. As such, and under the current statutory framework embodied in Title 18A, the certification process is critical to assuring the provision of a thorough and efficient education. As the Deputy Attorney General recognized in her brief, an equivalency or waiver cannot properly be granted under N.J.A.C. 6:3A-1.1 et seq. when the provision of a thorough and efficient education might be compromised. Commissioner's Brief, at 4. Since certification requirements are at the core of the current structure governing the delivery of all education programs under our jurisdiction, setting aside the standards embodied in our certification rules necessarily risks such a compromise.

It was not our intention to create such a risk when we adopted N.J.A.C. 6:3A-1.1 et seq. Hence, we did not contemplate that the Commissioner would exercise the authority we delegated to grant equivalencies like the one involved herein. Therefore, by our decision today, we invalidate the equivalency granted by the Commissioner in

this case. Given our determination, we need not pass upon the validity of the settlement proposal submitted to us by the parties.

March 3, 1999

Date of mailing _____