

IN THE MATTER OF THE WAIVER :
GRANTED TO THE BOARD OF : STATE BOARD OF EDUCATION
EDUCATION OF THE TOWNSHIP OF : DECISION
MIDDLETOWN, MONMOUTH COUNTY. :

Waiver granted by the Commissioner of Education, October 8, 1999

For the Appellant, Balk, Oxfeld, Mandell & Cohen (Sanford R.
Oxfeld, Esq., of Counsel)

For the Respondent, Kenney & Gross (Malachi J. Kenney, Esq., of
Counsel)

This appeal was filed by the Middletown Education Association (hereinafter “appellant”) from the grant of a waiver to the Board of Education of the Township of Middletown (hereinafter “Board”) by the Commissioner of Education pursuant to N.J.A.C. 6:3A-1.1 et seq.¹ Specifically, the Board had applied for a waiver from N.J.A.C. 11-4.5(c) so as to employ individuals possessing a certificate of eligibility with advanced standing to serve as a substitute teacher for up to sixty days in the same assignment. The Board indicated in its waiver application that it was seeking to employ

¹ N.J.A.C. 6:3A-1.1 provides, in pertinent part, that:

The purpose of this chapter is to provide regulatory flexibility for school districts to meet the requirements of rules contained in the New Jersey Administrative Code Title 6....

Regulatory flexibility may be granted as a waiver to a specific rule so that school districts can provide effective and efficient educational programs. The Commissioner, with authority delegated by the State Board, may on

such individuals as substitutes without initiating the process of securing provisional certification since that process “requires time and paperwork on the part of the district and the certification office at the state level.”

N.J.A.C. 11-4.5 provides in pertinent part that:

- (a) Persons who do not hold a standard instructional certificate issued by the State Board of Examiners but who can present a minimum of 60 semester-hour credits completed in an accredited college, may be granted a county substitute certificate for day-to-day substitute teaching in the county which grants the certificate.
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- (c) The certificate will be issued for a three-year period, but the holder may serve for no more than 20 consecutive days in the same position in one school district during the school year....

N.J.A.C. 6:11-4.4 provides that:

- (a) A certificate of eligibility is a permanent certificate that may be issued to persons who meet academic degree and examination requirements for provisional employment. Holders of certificates of eligibility shall not assume responsibility for a job assignment until they have been issued provisional certificates.
- (b) A certificate of eligibility with advanced standing is a permanent certificate issued to candidates for standard certificates who have completed certain requirements of a State-approved district training or residency program through advance completion of an approved college preparation program.

The regulations further provide that in order for a candidate to be eligible for the standard certificate in instructional fields, except vocational areas, the candidate must possess a provisional certificate. N.J.A.C. 6:11-5.2(a). In order to be eligible for the provisional certificate, the candidate must obtain and accept an offer of employment in a

a case-by-case basis, approve a waiver or an equivalency to a specific rule.

position that requires instructional certification. N.J.A.C. 6:11-5.1(a)(4). A candidate who completes the requirements set forth in the regulations shall be issued a certificate of eligibility, which permits him or her to seek provisional employment requiring instructional certification. N.J.A.C. 6:11-5.1(b).

Certificates of eligibility shall be issued to all candidates who hold a bachelor's degree, have completed at least 30 credits in a coherent major appropriate to a given instructional field, and have passed the applicable State test. N.J.A.C. 6:11-5.1. In contrast, certificates of eligibility with advanced standing shall be issued to those persons who meet the test requirement and who have completed one of the programs of teacher preparation specified in the regulations. N.J.A.C. 6:11-5.1(c).

The appellant contends that the Board's waiver application misconstrued the regulation from which a waiver was sought and that the Commissioner's grant of a waiver was improper under the State Board's recent decision in Guttenberg Education Association v. Leo Klagholz, Commissioner of Education, and Board of Education of the Borough of Guttenberg, decided by the State Board of Education, March 3, 1999.

We agree. As set forth above, under the applicable regulations, an individual who holds a certificate of eligibility must possess a provisional certificate in order to serve in an assignment requiring instructional certification. Issuing a waiver from the rule that limits the service of individuals possessing a county substitute certificate issued by a county superintendent does nothing to alter the character of an assignment that requires instructional certification in order to be qualified to serve in that assignment. Nor can it authorize an individual to serve under a certificate of eligibility for any length of time without also possessing a provisional certificate.

Hence, waiving the requirement that an individual's service as a daily substitute under a county substitute certificate must be limited to twenty days in a given assignment constitutes a waiver of the certification rules which would otherwise apply. Guttenberg, supra. In this respect, we again stress that county substitute certificates are not teaching certificates. Guttenberg, supra, slip op. at 5. Accordingly, as detailed in our decision in Guttenberg, such a waiver cannot properly be granted.

Moreover, sustaining the Commissioner's grant of this waiver would sanction a waiver of N.J.A.C. 6:11-5.1 so as to permit holders of certificates of eligibility to fill assignments requiring instructional certification for up to 60 days without possessing the attending provisional certificate. This would also constitute a waiver of the certification rules. Again, such a waiver cannot properly be granted. Guttenberg, supra.

We 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. [Hence], 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.

Guttenberg, supra, slip op. at 7.

Consequently, we did not contemplate that the Commissioner would exercise the authority we had delegated to him in N.J.A.C. 6:3A-1.1 et seq. to grant waivers or equivalencies like the one involved herein. Therefore, by our decision, we invalidate the waiver granted by the Commissioner in this case.

May 3, 2000

Date of mailing _____