

IN THE MATTER OF THE EQUIVALENCY :
GRANTED TO THE BOARD OF EDUCATION : STATE BOARD OF EDUCATION
OF THE BOROUGH OF FRANKLIN, : DECISION
SUSSEX COUNTY. :

Equivalency granted by the Commissioner of Education,
December 19, 2003

For the Appellant, Zazzali, Fagella, Nowak, Kleinbaum & Friedman (Kathleen
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For the Respondent Board of Education of the Borough of Franklin, Scarinci
& Hollenbeck, LLC (Richard M. Salsberg, Esq., of Counsel)

For the Respondent Commissioner of Education, Patricia O'Neill, Deputy
Attorney General (Peter C. Harvey, Attorney General of New Jersey)

This appeal was filed with the State Board of Education by the Franklin Education Association (hereinafter "Association") from the grant of an equivalency to the Board of Education of the Borough of Franklin (hereinafter "Board") by the Commissioner of Education on December 19, 2003 pursuant to N.J.A.C. 6A:5-1.1 et seq.¹ Specifically, the Board had applied for an equivalency from N.J.A.C. 6:3-4.3, "Evaluation of tenured teaching staff members," so as to:

¹ N.J.A.C. 6A:5-1.1 provides, in pertinent part, that:

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

Regulatory flexibility may be granted as a waiver to a specific rule or as an equivalency 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 a case-by-case basis, approve a waiver or an equivalency to a specific rule.

establish an authentic assessment program that encourages professional development through self-assessment for tenured teachers. Teachers will establish a multiple-year PIP [professional improvement plan] and implement these PIPs into their classroom teaching experiences. The administration will review the activities periodically throughout the year in lieu of a formal full period observation. Every three or four years teachers will receive a formal full period observation as stated in N.J.A.C. 6:3-4.3(h)6. The time saved from full observations will permit the newly emphasized professional practice model similar to that of Charlotte Danielson's work to flourish. Also, the self-evaluation should prove more beneficial for individual teachers to grow professionally and take instructional risks. Note: Twenty-five to thirty percent of the tenured faculty will be observed as required in N.J.A.C. 6:3-4.3(h)6 each year so that 100% of the tenured faculty will be formally observed in the classroom once every three to four years. All non-tenured teachers will undergo a rigorous number of formal classroom observations per N.J.A.C.

The Board explained that an equivalency was necessary in order to:

promote an evaluation based on professional development rather than one that emphasizes quality assurance/compliance that often stymies the collegial relationship needed for taking educational risks and professional growth. The professional development model is quite different from the quality assurance model that focuses on supervisor evaluation of classroom practice during a formal observation. This professional improvement model encourages teachers to take risks and self evaluate in an honest collegial manner. Time, energy and other resources both from the teacher and the supervisor should be dedicated to this professional improvement plan and implementation. Improved instruction and student learning should develop from this activity. Teachers will receive formal observations once every three or four years as required annually in N.J.A.C. 6:3-4.3(h)6.

The Association argues that the equivalency granted by the Commissioner conflicts with the spirit and intent of statutes and regulations governing education in violation of N.J.A.C. 6A:5-1.3. The Board and the Deputy Attorneys General representing the Commissioner counter that the Commissioner acted within his authority in granting the equivalency at issue.

After a careful review of the record, we invalidate the equivalency.

N.J.A.C. 6A:5-1.3 provides, in pertinent part, that:

(a) An equivalency or waiver to a specific rule must meet the following criteria:

1. The spirit and intent of New Jersey Statutes Title 18A, applicable Federal laws and regulations, and the New Jersey Administrative Code Title 6 are served by granting the equivalency or waiver.

i. Certification requirements of N.J.S.A. 18A:26-2 shall not be violated;

2. The provision of a thorough and efficient education to the students in the district is not compromised as a result of the equivalency or waiver....

N.J.A.C. 6:3-4.3, which establishes “the minimum requirements for the evaluation of tenured teaching staff members,” requires that “[e]very district board of education shall adopt policies and procedures requiring the annual evaluation of all tenured teaching staff members by appropriately certified personnel.” The regulation defines “appropriately certified personnel” as “personnel qualified to perform duties of supervision which includes the superintendent, assistant superintendent, principals, vice-principals, and supervisors of instruction who hold the appropriate certificate and who are designated by the board to supervise instruction.” It indicates that the purpose of the annual evaluation is to:

1. Promote professional excellence and improve the skills of teaching staff members;
2. Improve pupil learning and growth; and
3. Provide a basis for the review of performance of tenured teaching staff members.

The regulation requires that an annual conference be held between the supervisor and the evaluated teaching staff member to review the staff member’s performance based upon his job description. The conference is required to include a performance review,

review of the staff member's progress toward the objectives of the individual professional improvement plan developed at the previous annual conference, review of available indicators of pupil progress and growth toward the program objectives, and review of the annual written performance report prepared “by a certified supervisor who has participated in the evaluation of the teaching staff member...” The report is required to include performance areas of strength, areas needing improvement, an individual professional improvement plan developed by the supervisor and the evaluated staff member, a summary of available indicators of pupil progress and growth and a statement of how these indicators relate to the effectiveness of the overall program and the performance of the individual teaching staff member, and provisions for performance data which have not been included in the report.

N.J.A.C. 6A:5-1.2 defines an equivalency as “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.” We are unable to conclude that the equivalency granted in this instance provides an equivalent degree of evaluation and oversight comparable to or as effective as that prescribed by N.J.A.C. 6:3-4.3. We reiterate in that regard that the regulation envisions a comprehensive process in which tenured teaching staff members are evaluated on an annual basis by staff members qualified to perform the duties of supervision. The process includes a detailed written report by the supervisor and a summary conference between the supervisor and the staff member. By significantly curtailing the role of qualified supervisors in the evaluation process, and relying chiefly on self-evaluation, the process proposed by the Board provides no assurance that it will effectuate the stated purpose of N.J.A.C. 6:3-4.3 to

improve the skills of teaching staff members and promote professional excellence and to improve pupil learning and growth.

Under these circumstances, we find that the equivalency at issue constitutes a waiver of the certification requirements and compromises the district's ability to provide a thorough and efficient education. As embodied in N.J.S.A. 18A:6-38, which provides the State Board of Examiners with the authority to issue certificates for the supervision of instruction, and our certification regulations, it is critical to the education process that teaching staff members be evaluated by individuals who are qualified to supervise the work of instructional personnel by virtue of the certification they possess. In this respect, we stress that in order to be qualified to provide continuing direction to school staff and to guide their work, an individual must possess certification which qualifies him or her to supervise and evaluate staff. N.J.A.C. 6A:9-12.3. In order to obtain such certification, school administrators and principals must successfully complete prescribed studies at the graduate level in leadership and human resource management, N.J.A.C. 6A:9-12.4; N.J.A.C. 6A:9-12.5, and supervisors must successfully complete graduate level studies in staff supervision, N.J.A.C. 6A:9-12.6. Limiting the role in the evaluation process entrusted by N.J.A.C. 6:3-4.3 to personnel qualified to perform the duties of supervision constitutes a waiver of our certification rules. Such a waiver, as set forth in In the Matter of the Waiver Granted to the Board of Education of the Township of Middletown, decided by the State Board of Education, May 3, 2000, is detrimental to the educational process and compromises the district's constitutional obligation to provide its students with a thorough and efficient education. As we stressed in Middletown, supra, slip op. at 4, quoting 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, slip op. at 7:

...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....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.

Therefore, we invalidate the equivalency that was granted by the Commissioner. Given our determination, we direct the Commissioner to notify all other districts which have been granted equivalencies or waivers which impact the evaluation of tenured teaching staff members and, in accordance with the dictates of our decision today, conduct a review of those waivers and equivalencies in order to ensure that they do not similarly compromise a district's ability to provide a thorough and efficient education. In the event that the Commissioner, upon review, finds it necessary to modify or rescind any such equivalencies or waivers, we direct that his action be applied prospectively. Similarly, we direct that our decision with regard to the equivalency at issue in this matter be prospective in nature.

Attorney exceptions are noted.

May 4, 2005

Date of mailing _____