

IN THE MATTER OF PROCEDURES FOR :
THE RESCISSION OF EIGHTY-FIVE : STATE BOARD OF EDUCATION
COUNTY SUBSTITUTE CERTIFICATES : DECISION
ISSUED PURSUANT TO N.J.A.C. 6:11-4.5. :

Resolution adopted by the State Board of Examiners, February 26, 2004

This matter is before the State Board of Education by virtue of a resolution adopted by the State Board of Examiners on February 26, 2004. In that resolution, the State Board of Examiners recognized that it did not have the jurisdiction to rescind county substitute certificates that had been issued by county superintendents of schools pursuant to N.J.A.C. 6:11-4.5.¹ When it adopted the resolution, the Board of Examiners was confronting situations involving eighty-five individuals who had been issued county substitute certificates but about whom there were serious concerns regarding whether they should be permitted to be employed in school settings. Given these circumstances and the need to protect the school children of New Jersey from individuals who should not be in the classroom, the Board of Examiners resolved to transfer the matters in

¹ We note that the regulatory provision pertaining to short-term substitutes was revised recently when the State Board of Education adopted N.J.A.C. 6A:9-6.5 on December 17, 2003 with an effective date of January 20, 2004. The revised regulation clarifies the character of the county substitute certificate by designating it as a credential rather than a certificate and expressly providing for the rescission of county substitute credentials by the county superintendent. In addition, the revised regulation differs from N.J.A.C. 6:11-4.5 by allowing an individual possessing a county substitute credential to serve as a short-term substitute in any county in the state and requiring that a candidate submit a criminal history qualification letter from the Department of Education before the county superintendent can issue a county substitute credential.

question to the State Board of Education “to determine the proper procedure for reviewing matters that concern county substitute certificate holders.” Resolution, slip op. at 1.

As set forth in the State Board of Education’s decision in In the Matter of the Issuance of a County Substitute Certificate to Karen Gaba, decided by the State Board of Education, November 3, 1999, it is the character of the county substitute certificate that determines the nature of any proceedings necessary to resolve matters involving individuals who apply for that certificate or to whom it has been issued. In Gaba, the State Board stressed that a county substitute certificate issued pursuant to N.J.A.C. 6:11-4.5 is issued by a county superintendent rather than by the Board of Examiners and is not a teaching certificate.

The State Board’s conclusion in Gaba that the county substitute certificate is not a teaching certificate flowed from its analysis in cases it had previously decided that involved questions relating to the character of employment as a daily substitute. In Rumson-Fair Haven Education Association and New Jersey Education Association v. Board of Education of the Rumson-Fair Haven Regional School District, decided by the State Board of Education, August 5, 1987, aff’d, Docket #A-291-87T8 (App. Div. 1988), the State Board considered the question of whether permanent substitutes employed on an annual basis by a district board pursuant to contract but who were assigned on a daily basis were “teaching staff members” within the meaning of N.J.S.A. 18A:1-1 so as to be entitled to receive the minimum salary that the education statutes guaranteed to teaching staff members. In determining that the permanent substitutes were not “teaching staff members,” the State Board emphasized that substitutes filling short-term

assignments are not responsible for providing instructional services on a regular basis to an assigned group of students and are not responsible for lesson plans in any curriculum area, homework, testing, or grading. In short, the State Board concluded that short-term substitutes are not teaching staff members because they do not have full responsibility for instructing a class of pupils for a designated course of study for credit and do not fill teaching assignments. Hence, the State Board found that employment as a substitute teacher filling short-term assignments is not of such character as to require an individual to hold a valid standard, provisional, or emergency certificate issued by the Board of Examiners in order to be qualified.

The Appellate Division affirmed the State Board's determination that short-term substitutes are not teaching staff members. In doing so, the Court pointed out that N.J.A.C. 6:11-4.5 allowed individuals with only 60 college credits to substitute teach in assignments lasting no more than 20 days. That being the case, the Appellate Division agreed with the reasoning of the State Board that short-term substitutes are not required to have the "level and kind of certificate defined in N.J.S.A. 18A:1-1 and thus are not teaching staff members." Rumson-Fair Haven, supra, slip op. at 8.

As the State Board of Examiners recognized in its resolution, we reiterated the holdings of Rumson-Fair Haven and Gaba in our more recent decisions in In the Matter of the Denial of the Issuance of a County Substitute Certificate to Travis Hanks, decided by the State Board of Education, July 2, 2003, and In the Matter of the Revocation of the County Substitute Certificate of Jeffrey Weingarten, decided by the State Board of Education, October 1, 2003. As summarized in those decisions:

N.J.S.A. 18A:6-38 provides that:

[the State Board of Examiners] shall issue appropriate certificates to teach or to administer, direct or supervise the teaching, instruction or educational guidance of, or to render or administer, direct or supervise the rendering of nursing service to pupils in public schools operated by boards of education and such other certificates as it shall be authorized to issue by law based upon certified scholastic records or upon examinations, or both, and may revoke the same under rules and regulations prescribed by the state board.

It has long been established that employment as a substitute teacher is not of such character as to require that an individual possess a valid standard, provisional or emergency certificate appropriate to a specific assignment and issued by the State Board of Examiners in order to be qualified. Thus, as we have repeatedly emphasized, a county substitute certificate is not a teaching certificate. Rather, a county substitute certificate is a credential that authorizes an individual who has completed 60 semester hour credits at an accredited college to serve as a day-to-day substitute for a maximum of twenty consecutive days in the same assignment in one school. N.J.A.C. 6:11-4.5. The county substitute certificate is issued only for a three-year period and is valid only in the county where it is issued. Id. Because the county substitute certificate is not a teaching certificate, individuals employed under this credential are not teaching staff members within the meaning of N.J.S.A. 18A:1-1, and the credential is issued by the County Superintendent rather than by the State Board of Examiners. That being the case, it is the County Superintendent and not the State Board of Examiners that has the authority to invalidate a county substitute certificate.

Weingarten, supra, slip op. at 2-3 (citations omitted).

However, although the authority to issue and to invalidate a county substitute certificate lies in the first instance with the county superintendent, it is the Commissioner who, with the approval of the State Board of Education, appoints the county superintendents, N.J.S.A. 18A:7-1, and, under the statutory framework, it is the Commissioner to whom the county superintendents are responsible with respect to the

performance of their duties. N.J.S.A. 18A:7-2, -3, -4, and -8. See also N.J.S.A. 18A:4-29 (commissioner shall instruct county superintendents as to the performance of their duties). Further, it is the Commissioner who is the chief executive and administrative officer of the Department of Education and it is he who has general charge and supervision of the work of the Department as well as the authority to assign duties to employees of the Department. N.J.S.A. 18A:4-22. That being the case, we find that the proper course to follow with respect to the eighty-five matters within the scope of the resolution adopted by the Board of Examiners is to refer those matters to the Commissioner so that he may determine the appropriate procedures for resolving them.

In doing so, we completely agree with the Board of Examiners as to the importance of protecting the school children of New Jersey by insuring that individuals who should not be in the classroom are precluded from being employed in school settings, and we believe that this objective will best be accomplished by entrusting the Commissioner with the matters in question.

May 5, 2004

Date of mailing _____