

STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: KATHRYN M. SHAFFER, )      REPORT OF SPECIAL MASTER  
  )      CASE NO. 1986-30  
  )      Petitioner

ORDER

THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and the report of the Special Master, a copy of which is attached hereto, and after a vote in open meeting.

DETERMINES AND ORDERS, that the Findings of Fact and Conclusions of Law of the Special Master are made the Findings of Fact and Conclusions of Law of the State Board of Education and by reference are incorporated herein, end

DETERMINES AND ORDERS, that the request of the Petitioner be denied.

Mrs. Jasper was not present.

This 11th day of September. 1986.

LARRY A. FOSTER, SR.  
Vice Chairman for Appeals

STATE BOARD OF EDUCATION  
STATE OF GEORGIA

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	:	REPORT OF SPECIAL MASTER
	:	
Petitioner	:	CASE NO. 1986-30

PART I  
SUMMARY

This is a report on the exceptions tiled by Kathryn N. Shaffer (hereinafter "Petitioner") from a decision of the State Department of Education (hereinafter "Department") not to retroactively certify her at the T-5 level so that she could receive retroactive pay for the 1984-85 school year. Petitioner contends she is entitled to retroactive certification at the T-5 level because at the time she was denied certification in 1984 she had met all requirements for certification. The Department contends the Petitioner did not meet all the requirements for certification at the T—5 level in 1984 and, even if she did, she cannot be retroactively reimbursed for 1984 because of State Board of Education policy. The Special Master recommends the Petitioner’s request be denied.

PART II  
FACTUAL BACKGROUND

In April, 1984, petitioner submitted the initial components of an application for certification. Because all of the required information was not included, the application package was returned to Petitioner. On July 26, 1984, petitioner resubmitted her application. This time she included the information which she was told was missing from the previous package. The

package submitted on July 26, 1984, contained, as did the package submitted in April, 1984, a form filled out by the Assistant to the Registrar, Michigan State University. The form was filled out in pertinent part as follows:

Part C No recommendation is being submitted for the applicant from this institution because:  
Student did not complete an [sic) teacher training program at Michigan State University)  
She did receive her Master's degree on 9-2-77 from Michigan St. Univ. in the College of Education. Her major was Classroom Teach. Exper.

“Teacher Certification in Georgia: Requirements and Regulations for the Certification of Teachers and School Personnel” (hereinafter “Teacher Certification Manual”) provides as follows:

The T-5 Certificate may be issued to the applicant who as eligible for a T-4 in the same field and who meets the following requirements.

... B. Has the recommendation for professional certification from the responsible official of the institution verifying that the applicant has completed successfully the NCATE program in the specific field for which certification is requested.

Based upon the above requirement and the college recommendation form sent by Michigan State University, the Department determined that Petitioner was not eligible for a professional master's level certificate (T-5) but was eligible for a bachelor's degree level certificate and provisional certification at the master's degree level.

By letter dated August 2, 1984, petitioner was apparently sent a T-4 certificate. That letter also notified her she was eligible for a provisional five-year (BT-5) certificate in elementary, early childhood education, and mental retardation, if requested by an employing Georgia Superintendent, and informed her to write if she had questions which could not be answered by her own local board.

As was suggested by the letter, Petitioner requested assistance from the personnel department of her employer. The individual assisting Petitioner in the personnel department discussed the situation with the Department and was told to apply for the provisional certificate,

but was not told that the reason Petitioner failed to qualify for the T-5 was because the College Recommendation for Certification Form did not carry the appropriate recommendation. Additionally, Petitioner did not write to the Department and question her certification.

Subsequently, Petitioner's employer submitted a request for a BT-5 certificate. The BT-5 certificate was issued September 29, 1984, along with a letter stating Petitioner would have to earn 15 quarter hours in acceptable graduate credit to qualify for a T-5 and would need a minimum of 10 quarter hours to renew her BT-5 certificate. Pursuant to these directions, she began taking courses she thought would enable her to obtain the T-5.

In September of 1985, Petitioner contacted the Department regarding the certification renewal requirements for the BT-5 certificate. At that time, Petitioner learned that if the College Recommendation for Certification Form had been filled out differently by Michigan State University, she would have qualified for a T-5 certificate for the 1984-85 school year.

Petitioner then submitted a new application with the College Recommendation for Certification Form filled out as follows:

*Part A Professional Recommendation: On 9-2-77 the applicant completed an approved preparation program at the Master's degree level(s) and is hereby recommended for professional certification in the field(s) of Elementary Grades (1-8)*

Based upon this recommendation, the Department issued a T-5 certificate to Petitioner on December 6, 1985. The T-5 was issued with a retroactive validity date of July 1, 1985 based upon the following provisions in the Teacher Certification Manual:

2. For certification by approved programs, certificates will be valid from the date the institution certifies on the transcript that all degree requirements are completed. ...

7. certificates may not be dated back beyond the beginning of the fiscal year in which they are issued.

Petitioner then requested that the validity date of the '12-5 be made retroactive to July 1, 1984. Her request was denied because of the above provision, which prohibits dating certificates beyond the beginning of the fiscal year in which they are issued. Petitioner requested a hearing concerning the denial of her request, and the hearing was held on May 21, 1986. At the hearing, Petitioner contended she was qualified at the time of the initial application, and the Department should have notified her that the College Recommendation for Certification Form was insufficient to qualify her for the certificate she requested instead of simply telling her she needed to take additional courses.

The Department contended that Petitioner should have noted that Michigan State University did not provide any recommendation when she received the application package back from the Department, and that, because Petitioner did not have a college recommendation, she was not eligible based on the paperwork submitted in 1984.

The Department's hearing officer ruled that the Department had acted in accordance with the policies and procedures of the State Board of Education in denying Petitioner's request to issue a T-5 certificate retroactively to 1984. petitioner appeals that decision to the State Board of Education based upon her contention that the Department should have informed her of the reason she was not given a T-5 certificate, and the information provided by Michigan State University was sufficient to meet the requirement of a recommendation from the college.

### **PART III**

### **DISCUSSION**

This case comes before the State Board of Education as a case of original jurisdiction based upon the State Board of Education's authority to provide, by regulation, for certifying professional personnel. (O.C.G.A. §20-2-200, effective July 1, 1986, former authority provided under O.C.G.A. §20-2-282).

Petitioner contends she is entitled to have her T-5 certificate made retroactive based upon the Department's failure to give her notice of the requirements for the recommendation and based upon her contention that the form filled out by Michigan State University met the criteria and entitled her to a T-5 Certificate an 1984.

The Special Master finds no legal or policy requirement that Petitioner was entitled to an automatic notice as to why she was unqualified for the T-5 certificate. It would have been reasonable for the Department to provide notice to Petitioner that the reason she did not get the T-5 certificate was the lack of a recommendation. Petitioner, however, could have written the Department and requested why she did not receive the T-5 certificate. While the Department should have informed her during the phone conversations, the Department is within its authority to require written requests. The Department processes numerous requests for certification. Requiring written communication is reasonable in order to insure accuracy of the information given out by Department employees and to provide for methods of verifying the information given out. Although the circumstances in this instance are unfortunate, it does not appear the Department as required to provide the reason an individual does not qualify for a certificate absent a written request for that information. While there is no specific requirement that the Department provide the reasons why an individual does not qualify for a certificate upon written request, it would appear that reasonable requests would have to be fulfilled.

The information provided by Michigan State University an 1984 did not provide the required information necessary for the T-5 certificate. While Petitioner had actually met all the educational requirements necessary for the T-5 certificate, the Department did not have the information necessary to verify that fact. The statement made by Michigan State University was not a recommendation for professional certification from the responsible official of Michigan State University that the Petitioner had completed successfully an NCATE approved program in the specific field for which Petitioner requested certification. The statement specifically was that Applicant did not complete an [approved] teacher training program at Michigan State University.

It went further and provided that Petitioner had received her Master's degree in the College of Education with a major of Classroom Teaching Experience. En light of the statement that Petitioner had not completed an [approved] teacher training program, the fact that Petitioner had received her Master's degree in the College of Education with a major of Classroom Teaching Experience does not necessarily mean she completed an approved program. Also, the statement did not provide a recommendation for the field in which the Petitioner should have been certified. Thus, the Department did not actually have the information necessary to certify Petitioner at the T-5 level.

Because the Department made the certification of Petitioner retroactive to July 1, 1985, upon the correction of the recommendation form, does not mean that Petitioner is entitled to retroactive certification back to 1984. The policies of the State Board of Education specifically provide for making the certificate dates retroactive to the date the institution certifies that degree requirements are completed but not beyond the beginning of the fiscal year in which the certificate is issued. Thus, in making the certificate retroactive to July 1, 1985, the Department was complying with State Board of Education Policy.

If the State Board of Education agrees with the Special Master, that Petitioner was not entitled to a retroactive T-5 certificate, the issue of whether the policy prohibiting retroactive reimbursement beyond the beginning of the fiscal year is applicable against Petitioner need not be addressed. If, however, the State Board of Education decides Petitioner is entitled to a retroactive T—5 certificate, then the State Board needs to consider whether granting Petitioner retroactive pay would violate Article 3, section 6, Paragraph 6 of the Constitution of the State of Georgia, which prohibits the grant of a gratuity. It is the Special Master's understanding that the State Auditor generally accepts payments made for services rendered for prior fiscal years based upon the gratuities provision in the Constitution. Should the State Board of Education determine Petitioner is entitled to retroactive certification, any reimbursement should be made subject to the approval of the Attorney General that such reimbursement constitutes a legal expenditure. The

State Auditor would not consider the advice of the Special Plaster as being sufficient to avoid an exception and would probably require the Attorney General's opinion. Thus, such an opinion should be obtained in advance of any reimbursement.

**PART IV**

**DECISION**

Based on the foregoing discussion, the record presented and the briefs and arguments of the Petitioner and the Department, the Special Plaster is of the opinion the request of Petitioner should be denied. In the event the State Board of Education should desire to grant the request of Petitioner the Special Master is of the opinion any reimbursement should be withheld subject to the approval of the Attorney General that such reimbursement would be a legal expenditure.

L. O. BUCKLAND  
Special Master