

STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: LAWRENCE E. CARWILE,)
)
Petitioner) **CASE NO. 1989-27**

ORDER

THE STATE BOARD OF EDUCATION, after due consideration of the record submitted, the recommendation of the Special Master, and after a vote in open meeting,

DETERMINES AND ORDERS, that the State Board of Education adopt the Special Master's findings of fact, conclusions of law, and the recommendation, and hereby grants Petitioner's request. Mr. Owens, Mr. Smith Mr. Carrell, Mr. Foster, Mrs. Baranco, Mr. Taylor, Mr. Sears and Mr. Abrams voted to grant the request. Mr. Lathem and Mrs. Cantrell voted to deny the request.

This 14th day of December, 1989.

John M. TAYLOR
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: LAWRENCE E. CARWILE,

Petitioner

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CASE NO. 1989-27

**RECOMMENDATION OF
SPECIAL MASTER**

PART I

SUMMARY

This is a petition by Lawrence E. Carwile ("Petitioner") for an exemption from the Teacher Performance Assessment Instrument ("TPAI") requirements and the grant of a Georgia teaching certificate. Alternatively, Petitioner requests two additional TPAI evaluations. Petitioner received six TPAI evaluations and was unable to obtain mastery of three competencies. He claims exemption from the TPAI requirements because he transferred from Virginia with a valid teaching certificate. The Georgia Department of Education has ruled that Petitioner is subject to the TPAI requirements and has recommended that Petitioner not be granted another evaluation because the evaluations were conducted according to established procedures and there are no mitigating circumstances. The special Master recommends approval of Petitioner's request for an exemption from the TPAI requirements.

Effective on April 24, 1989, the General Assembly passed an amendment to O.C.G.A. § 20-2-210, which is the code section that authorizes the TPAI. The amendment provided for an exemption from the TPAI requirements.

PART III

DISCUSSION

Petitioner contends that he is exempt from the TPAI requirements under the provisions of the amendment to O.C.G.A. § 20-2-200. He also contends that the TPAI is a subjective, arbitrary evaluation instrument that violates his federal and state due process rights. Finally, he contends that the regulations governing the TPAI are unenforceable because of the decision in Kitchens v. State Department of Education, _Ga. App. __S.E.2d_(1989)

The amended section of O.C.G.A. § 20-2-200(b) (2) provides:

Before granting a renewable certificate to an applicant, the state board is authorized to require the applicant to demonstrate satisfactory proficiency on a test of oral and written communication skills and an assessment to demonstrate satisfactory on-the-job performance appropriate to the applicant's field of certification; provided, however, any applicant seeking certification in this state who qualifies for a professional teaching certificate at the baccalaureate degree level or higher and who has held a professional teaching certificate in and who has satisfactorily taught on a full-time basis in the regionally accredited public or private schools of this state or another state for at least five years shall be exempt from the requirement of an assessment to demonstrate satisfactory on-the-job performance as required in this subsection. Any teacher who qualifies for the exemption granted under this paragraph shall receive a nonrenewable certificate valid for a maximum of three years until such time as said teacher has twice demonstrated satisfactory performance on the evaluation required pursuant to Code Section 20-2-210, at which time said teacher will be eligible to receive a renewable certificate. This exemption shall in no way affect other certification requirements of this article or the annual performance evaluation required pursuant to Code Section 20-2-210.

The State Superintendent issued an administrative procedure on June 21, 1989, that interpreted the language “qualifies for a professional teaching certificate at the baccalaureate degree level or higher”. He interpreted the language to mean that an applicant for an exemption had to qualify for a “professional Georgia teaching certificate”. The administrative procedure also provided that the exemption was only available for teachers who sought initial certification in Georgia after July 1, 1989, or for teachers whose “nonrenewable professional teaching certificate expired in August 1990 or 1991.” The procedure further stated that the exemption “will not apply to teachers holding nonrenewable professional certificates that expire in August 1989.”

*. The annual evaluations under O.C.G.A. § 20-2-210 do not go into effect until July 1, 1990.

Petitioner qualified for a professional teaching certificate at the baccalaureate degree level, held a professional teaching certificate, and taught on a full-time basis in another state for at least five years. He, therefore, maintains that he qualifies for the exemption from the TPAI requirements that the General Assembly instituted in the 1989 session.

The Department of Education claims that the exemption is not retroactive; since Petitioner had been identified as being subject to the TPAI requirements in 1986, he is still subject to the requirements. Additionally, the Department of Education maintains that Petitioner has never “qualified for a professional teaching certificate” in the State of Georgia and, therefore, cannot obtain two annual evaluations, which the Department claims is one of the requirements for exemption. The Department’s Certification Appeals Hearing Officer agreed with the Department’s position.

While the interpretations placed upon a statute by a governmental department are to be given great weight, the position taken in this matter is untenable. The position incorrectly establishes the criteria for an exemption as including the requirement for two annual evaluations.

O.C.G.A. § 20-2-200(b) (2), as amended, creates only three conditions for granting the exemption: (1) qualification for a professional teaching certificate at the baccalaureate degree level or higher; (2) the holding of a professional teaching certificate issued by another state or Georgia, and (3) teaching for five or more years in Georgia or another state. These are the same conditions identified by the State Superintendent in the administrative procedure issued June 21, 1989. Once these conditions have been met, then the exemption is applicable. It is only after the exemption goes into effect that a teacher is granted a nonrenewable certificate valid for a maximum of three years. During the three-year period, the teacher then has to obtain two satisfactory annual evaluations.

The argument advanced by the Department would completely eliminate the exemption. In essence, the argument says that a teacher who has already obtained a professional teaching certificate can qualify for an exemption from the TPAI requirements in order to obtain a professional teaching certificate. The reasoning is completely circular, and contrary to the plain language of the statute.

Petitioner in this case has met the three requirements for obtaining an exemption from the TPAI evaluations. He has met the educational requirements to qualify for a professional teaching certificate at the baccalaureate degree level or higher, he has held a professional teaching certificate from another state, and he has taught for more than five years in another state. He, therefore, should be granted the exemption and a three-year nonrenewable teaching certificate, and given the opportunity to pass two annual evaluations.

PART IV
RECOMMENDATION

The Special Master recommends that Petitioner be granted a three-year nonrenewable teaching certificate because he has qualified for the exemption from meeting the TPAI requirements.

This 4th day of December, 1989.

L. O. Buckland
Special Master