

**STATE BOARD OF EDUCATION
STATE OF GEORGIA**

ELAINE DAY,	:	
	:	
Appellant,	:	
	:	
v.	:	CASE NO. 2010-68
	:	
BRANTLEY COUNTY BOARD OF EDUCATION,	:	DECISION
	:	
Appellee.	:	

This is an appeal by Elaine Day from a decision of the Brantley County Board of Education (“Local Board”) finding that Appellant was not entitled to receive creditable experience for her prior employment as a registered nurse pursuant to her annual employment contracts. Appellant asserts on appeal that the Local Board erred because pursuant to Rule 160-5-2-.05(4)(a)(6) she is entitled to creditable experience for the nine (9) years she was employed by the Local Board. Alternatively, Appellant contends that she is entitled to three (3) years of creditable experience under Rule 160-5-2-.05(4)(b) and/or 160-5-2-.05(4)(c)(2)(iii). For the reasons set forth below, the decision of the Local Board is sustained.

I. BACKGROUND

Prior to this appeal, Appellant brought suit in the Superior Court of Brantley County against the Local Board contending that for nine (9) school years the Local Board underpaid her by failing to credit her for her prior experience as a registered nurse. The Superior Court dismissed the action. On appeal to the Georgia Court of Appeals, the Georgia Court of Appeals found that Appellant failed to exhaust her administrative remedies as required by O.C.G.A. § 20-2-1160(a). See Day v. Brantley County Sch. Dist., 298 Ga. App. 717 (2009).

Appellant then requested a hearing before the Local Board. In lieu of an evidentiary hearing, the parties entered into a Joint Stipulation of Facts and presented oral argument to the Local Board. According to the stipulations, Appellant was employed as a teacher with the Local Board beginning in the 1998-1999 school year through the 2006-2007 school year. Appellant entered into successive employment contracts for a teacher position for these nine (9) school years. Throughout her employment, Appellant was assigned to teach healthcare science. According to the stipulated facts, prior to her employment with the Local Board, Appellant was employed for twelve (12) years as a licensed registered nurse. At the time Appellant was hired, the Local Board did not award Appellant any creditable experience. Thus, Appellant began her employment at Salary Step E. If Appellant had been awarded twelve (12) years of creditable experience she would have started at Salary Step L1.

After considering the evidence and oral argument, the Local Board denied Appellant's request for creditable experience. Appellant has appealed the decision of the Local Board to the State Board of Education ("State Board").

II. ERRORS ASSERTED ON APPEAL

The State Board is authorized under Georgia law to establish the requirements for the salary scheduled for certified personnel. O.C.G.A. § 20-2-212. Pursuant to this authority, the State Board has implemented Ga. Rules & Regs. 160-5-2-.05. The purpose of this Rule is to establish guidelines for approved experience for advancement of the state salary schedule. The Local Board is "responsible for verifying and evaluating satisfactory experience for placement of certified employees on the state salary schedule." Ga. Rules & Regs. 160-5-2-.05(3)(a). "Should questions regarding verification arise, the educator shall be required to submit additional records to the [Local Board]." *Id.*

As an initial matter, this Board concludes that the verifying and evaluating process contemplated by this Rule of an educator's experience should have occurred at the time of her hiring in 1998, not over ten (10) years later. Furthermore, Appellant has failed to provide any evidence showing that the Local Board failed to properly evaluate her experience at the time of her hiring. Specifically, the record is devoid of any evidence showing what information Appellant provided to the Local Board for evaluation. The record is further devoid of any evidence showing whether the Local Board engaged, did not engage or erroneously engaged, in a process to verify and evaluate her experience. Thus, this Board concludes that the proper time for an educator to challenge creditable experience is at the time of hiring under his or her initial employment contract. Thus, this appeal is not timely before this Board. Even assuming this appeal was timely before this Board, for the reasons set forth below, the decision of the Local Board is sustained.

A. Creditable experience under Ga. Rules & Regs. 160-5-2-.05(4)(a)(6).

Appellant first contends that she is entitled to twelve (12) years of creditable experience pursuant to Ga. Rules & Regs. 160-5-2-.05(4)(a)(6). Ga. Rules & Regs. 160-5-2-.05(4)(a) states in pertinent part:

Under any of the following conditions, each LUA shall recognize experience in a professional position for which a state-issued certificate or a state/national license is required. (In all conditions listed, the individual held a valid, in-field state education certificate or state/national professional license related to the field of employment and was under contract during the period in which the experience was earned.)

Ga. Rules & Regs. 160-5-2-.05(4)(a).

Ga. Rules & Regs. 160-5-2-.05(4)(a) further states in pertinent part:

Serving in a professional full-time position in a clinical situation or in any special education center, including speech, reading, hearing, and psychological education centers.

Ga. Rules & Regs. 160-5-2-.05(4)(a)(6).

Appellant contends that she is entitled to creditable experience because her nursing experience constitutes “a clinical situation” as defined in Ga. Rules & Regs. 160-5-2-.05(4)(a)(6). The Local Board contends that “clinical situation” under this provision does not mean a medical clinical situation. The Local Board further asserts that all of the subsections of Ga. Rules & Regs. 160-5-2-.05(4)(a) pertain to educationally-related experience, and therefore, this section is intended to refer to educational clinical situations. The Local Board asserts that according to Merriam-Webster the definition of “clinic” is “a group meeting devoted to the analysis and solution of concrete problems or the acquiring of specific skills or knowledge.” <http://www.merriam-webster.com/dictionary/clinic>.

This Board agrees with the Local Board. Each condition allowing for creditable experience under Ga. Rules & Regs. 160-5-2-.05(4)(a) require a professional license and experience within the educational field. The phrase “clinical situation” is contained in the provision pertaining educational centers, such as speech, reading, hearing and psychological. Thus, clinical in this provision means clinics in the context of the educational field. Thus, this Board affirms the decision of the Local Board on this issue.

B. Creditable experience under Ga. Rules & Regs. 160-5-2-.05(4)(b)(9).

Appellant alternatively contends that she is entitled to three (3) years of creditable experience under Rule 160-5-2-.05(4)(b)(9). Ga. Rules & Regs. 160-5-2-.05(4)(b) states in pertinent part:

Under any of the following conditions, each LUA shall recognize experience in a professional position for which a certificate or state /national license is not required, provided that the individual held a degree from a regionally accredited college/university when the experience was earned.

Ga. Rules & Regs. 160-5-2-.05(4)(b).

Ga. Rules & Regs. 160-5-2-.05(4)(b) further states in pertinent part:

Serving in a full-time, professional position in private industry that is job related to the position the individual is entering in the local unit of administration. In this case, a maximum of three years' credit shall be granted for experience earned after July 1, 1995, and the individual shall be placed on Years of Creditable Experience 3, Salary Step 1.

Ga. Rules & Regs. 160-5-2-.05(4)(b)(9).

This Board agrees with Appellant that this provision may possibly apply to her experience.¹ However, based upon the record, this Board finds that Appellant has not sufficiently proven that her prior employment position after July 1, 1995, was a professional position in private industry. The only evidence in the record is Appellant's resume which does not provide sufficient evidence supporting Appellant's contention. More importantly, the record is devoid of any evidence showing that Appellant's prior experience is job-related to the position for which she was hired. While the record shows that Appellant was hired for the position of a health science teacher, the record is devoid of any evidence showing the job duties for this position and Appellant's prior experience which Appellant contends is related to the duties of a health science teacher. Thus, this Board affirms the Local Board's decision on this issue.

C. Creditable experience under Ga. Rules & Regs. 160-5-2-.05(4)(c)(2)(i).

Appellant alternatively contends that she is entitled to three (3) years of creditable experience under Rule 160-5-2-.05(4)(b)(9). Ga. Rules & Regs. 160-5-2-.05(4)(c) states in pertinent part:

Under any of the following limited conditions, each LUA shall recognize experience for which a degree is not required.

Ga. Rules & Regs. 160-5-2-.05(4)(c).

Ga. Rules & Regs. 160-5-2-.05(4)(c)(2)(i) further states in pertinent part:

A maximum of three years' work experience in specific vocational fields is acceptable for salary purposes provided that it is beyond the first two years of work experience required for certification purposes (content of the teaching field); i.e., to receive three years' experience credit, the individual must have a minimum of five years' work experience.

Ga. Rules & Regs. 160-5-2-.05(4)(c)(2)(i).

¹ The Local Board contends that Ga. Rules & Regs. 160-5-2-.05(4)(b)(9) only applies to prior employment positions for which a "certificate or . . . license is not required" and excludes prior employment positions for which a certificate or license is required. This Board disagrees. To interpret this provision to apply to individuals who held a position that did not require a certificate or license and to exclude individuals who held a position that required a certificate or license would exclude presumably a more qualified individual, i.e., one with a certificate or license.

Appellant asserts that her experience constitutes vocational experience under this provision. Vocational education is education in agriculture, trades and industries. O.C.G.A. § 20-4-1. Merriam-Webster defines “vocational” as “of, relating to, or undergoing training in a skill or trade to be pursued as a career.” <http://www.merriam-webster.com/dictionary/vocational>. However, the record is devoid of any evidence showing that Appellant’s prior experience was in a vocational field. To the contrary, Appellant contends above she was employed in professional positions. Thus, the record does not support Appellant’s assertion that she meets the requirements under Ga. Rules & Regs. 160-5-2-.05(4)(c)(2)(i). This Board sustains the Local Board’s decision on this issue.

III. CONCLUSION

Based upon the reasons set forth above, it is the opinion of the State Board of Education that the evidence supports the decision of the Local Board and it is, therefore, SUSTAINED.

This _____ day of June 2010.

WILLIAM BRADLEY BRYANT
VICE CHAIRMAN FOR APPEALS