

VI.D.

CONNECTICUT STATE BOARD OF EDUCATION
Hartford

TO BE PROPOSED:

April 6, 2015

RESOLVED, That the State Board of Education, pursuant to Section 4-176 of the Connecticut General Statutes and Section 10-4-11 et seq. of the Regulations of Connecticut State Agencies, adopts the proposed Final Decision and Order in the Petition for Declaratory Ruling No. 14-1, filed by Dr. Joseph Johnson, and directs the Interim Commissioner to take necessary action.

Approved by a vote of _____ this sixth day of April, Two Thousand Fifteen.

Signed: _____
Dr. Dianna R. Wentzell, Secretary

**CONNECTICUT STATE BOARD OF EDUCATION
Hartford**

TO: State Board of Education

FROM: Dr. Dianna R. Wentzell, Interim Commissioner of Education

DATE: April 6, 2015

SUBJECT: Proposed Final Decision re: Dr. Joseph Johnson – Petition for Declaratory Ruling No. 14-1

Executive Summary

Introduction

On July 24, 2014, Dr. Joseph Johnson (Petitioner) petitioned the State Board of Education (SBE) for a declaratory ruling concerning the State Department of Education's (SDE's) interpretation of Section 10-145d-574(c) of the Connecticut Regulations of State Agencies (Regulations). In this petition, Petitioner maintained that the SDE has failed to correctly interpret Section 10-145d-574(c) of the Connecticut Regulations of State Agencies (Regulations).

The Regulation provides that an applicant for an intermediate administrator certificate (092) is eligible if the applicant has:

. . . completed 50 school months of successful teaching or service, which shall have been in the public schools or in approved nonpublic schools or nonpublic schools approved by the appropriate governing body in another state in a position or positions requiring certification in the state where employed, or in a position or positions which would have required certification had the service been in Connecticut public schools

Petitioner applied for the 092 Certificate and provided evidence of his service as an administrator in the District of Columbia Public Schools (DCPS). Such positions held by the Petitioner required certification under the law of the District of Columbia. However, the Petitioner did not hold such certification. Therefore, the DCPS employed the Petitioner in violation of this requirement. After verifying that the service was not in compliance with the laws of the District of Columbia, the SDE determined that the Petitioner was not eligible for the 092 Certificate. Petitioner requested that the Bureau Chief of Teacher Certification reconsider this decision and submitted additional documentation in support of his claim. The Bureau Chief determined that the Petitioner did not meet the regulatory requirement.

The SBE granted the request for a declaratory ruling at its meeting on September 3, 2014, and it authorized the Commissioner to appoint an impartial hearing officer to preside over the hearing. The Commissioner appointed an impartial hearing officer.

Pursuant to Section 4-176 of the Connecticut General Statutes (“C.G.S.”), the Hearing Officer has issued a proposed final decision regarding the Petition for Declaratory Ruling, which is attached hereto.

The following additional documents are included as attachments: (1) Proposed Final Decision and Order (January 28, 2015), (2) Respondent’s Post Hearing Brief (January 9, 2015), (3) Petitioners’ Post Hearing Brief (January 9, 2015), (4) Petitioner’s Exceptions and Post Hearing Reply Brief (February 20, 2015).

Background

C.G.S. Section 4-176 authorizes the SBE, in its discretion, to issue declaratory rulings as to the applicability of any statutory provision or of any regulation or order of the agency. At its meeting on September 3, 2014, the SBE exercised its discretion to issue a declaratory ruling and authorized the appointment of an impartial Hearing Officer to preside over the case, which was heard on November 21, 2014.

On January 29, 2015, the Hearing Officer issued her decision. In this proposed decision, the Hearing Officer determined that the Petitioner has not yet satisfied the requirement of 50 school months of successful teaching or service, in accordance with the Section 10-145d-574(c) of the Regulations.

Section 4-179 of the C.G.S. provides that “[w]hen, in an agency proceeding, a majority of the members of the agency who are to render the final decision have not heard the matter or read the record, the decision, if adverse to a party, shall not be rendered until a proposed final decision is served upon the parties, and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the members of the agency who are to render the final decision.”

Petitioner wishes to be afforded the opportunity to present briefs and oral argument to the SBE members at the April 6, 2015, SBE meeting. The Petitioner shall present his exceptions to the proposed ruling, and the Respondent shall be afforded the opportunity to present arguments in rebuttal.

Pursuant to Section 4-180(a) of the C.G.S., the SBE must render a final decision no later than 90 days following the filing of briefs, which were filed on January 9, 2015.

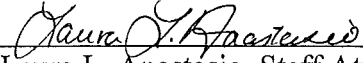
Recommendation

I recommend that the SBE adopt the Proposed Final Decision.

Follow-up

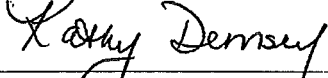
I will notify the parties of the SBE’s decision.

Prepared by:



Laura L. Anastasio, Staff Attorney
Division of Legal and Governmental Affairs

Reviewed by:



Kathy Demsey
Acting Legal Director

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January 28, 2015

Final Decision and Order
Declaratory Relief Case No. 14-1

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

DR. JOSEPH JOHNSON	:	PETITION FOR
Petitioner	:	DECLARATORY RULING
vs.	:	
STEFAN PRYOR	:	
CONNECTICUT DEPARTMENT	:	
OF EDUCATION	:	CASE NO. 14-1
Respondents	:	

Appearing on behalf of the Petitioner	Attorney Corey J. Brinson Law Office Corey J. Brinson 750 Main Street, Suite 902 Hartford, CT 06103
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Appearing on behalf of the Department	Attorney Louis B. Todisco Division of Legal and Governmental Affairs Department of Education 165 Capitol Avenue Hartford, CT 06106
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Appearing before	Attorney Ann F. Bird
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**PROPOSED
FINAL DECISION AND ORDER**

INTRODUCTION

This is a Request for Declaratory Relief submitted to the State of Connecticut Board of Education by Dr. Joseph Johnson (Petitioner) pursuant to Connecticut General Statutes (C.G.S.) Section 4-176 and Regulations of Connecticut State Agencies (R.C.S.A) Section 10-4-21. The Petitioner challenges the determination of the Connecticut Department of Education that he has not satisfied the experience requirement for issuance of an Initial educator certificate for Intermediate Administrator or Supervisor.

On September 3, 2014, the State of Connecticut Board of Education exercised its discretion to issue a declaratory ruling and authorized appointment of this Impartial Hearing Officer to hear the case. An evidentiary hearing was conducted on November 21, 2014.

January 28, 2015

Final Decision and Order
Declaratory Relief Case No. 14-1

After considering the evidence, the law and the arguments of the parties, I conclude that the Petitioner has not met the experience requirement of R.C.S.A. Section 10-145d-574(c).

PROCEDURAL HISTORY

The Petitioner submitted a request to the State of Connecticut Department of Education (Department) to issue a declaratory ruling (Petition) concerning his application for certification on July 25, 2014. On September 3, 2014, the State of Connecticut Board of Education (Board) agreed to rule on the Petition, and authorized the Commissioner of Education to appoint a hearing officer to conduct a hearing consistent with the Uniform Administrative Procedure Act, C.G.S. Sections 4-175 et seq and R.C.S.A. Sections 10-4-11 et seq.

This Impartial Hearing Officer was appointed, and an evidentiary hearing was conducted on November 21, 2014. Attorney Corey J. Brinson appeared on behalf of the Petitioner and Attorney Louis B. Todisco of the Department's Division of Legal and Governmental Affairs appeared on behalf of the Respondents. Hearing Officer Exhibits 1 and 2 were entered in the record, as were Petitioner's Exhibits P-A through P-L and P-N and the Department's Exhibits R-1 through R-12.

The Petitioner, Dr. Joseph Johnson, and the Department's Bureau Chief for Educator Preparation and Certification, Nancy Pugliese, testified at the hearing.

ISSUE

The Hearing Officer and the parties agreed upon the following statement of the issue to be decided in this matter as follows:

Has the Petitioner met the requirement of 50 [school] months of successful teaching or service, in accordance with the Connecticut State Regulations of Administrative Agencies, Section 10-145d-574(c)?

(Transcript, p. 4 (T p. ___))

FINDINGS OF FACT

The Petitioner and his family moved from Washington D.C. to New Haven Connecticut, his hometown, in 2011. (T p. 25)

The Petitioner, having secured a position as an assistant principal in the New Haven Public Schools, applied to the Department for the appropriate professional certificate. (T p. 26; Exhibit P-I)

The Petitioner has a Ph.D. and a Masters Degree in Educational Psychology and a Bachelor of Science Degree in Special Education. (Exhibit P-K)

At the time of his application for certification in Connecticut, the Petitioner had more than fifty school months of experience as a teacher and an administrator in an approved charter school and in the public schools of Washington D.C. Specifically, he worked as an elementary special education teacher in a charter school in Washington D.C. for approximately ten school months between August 2000 and June 2001. (Exhibit P-D) He also worked in the Washington D.C. public schools as an elementary school teacher for eighteen months between February 2005 and August 2006, and then as a middle school administrator¹ for 39 months from April 2008 to July 2011. (Exhibit P-E)

Each of these positions in the Washington D.C. charter school and in the Washington D.C. public schools required certification under the law of Washington D.C. (Exhibits P-E and P-D)

During the time of his work in Washington D.C., the Petitioner held only two certificates: one was to work as special education teacher in Grades K through 12, effective from March 16, 2006 through March 15, 2011 (Exhibit R-11) and the second to work in Administrative Services, effective from April 4, 2011 through April 3, 2015. (Exhibit R-12)

Accordingly, much of the Petitioner's work in Washington D.C. was served while he did not have the certification required under the law of Washington D.C. The Petitioner testified that during the time he worked without the appropriate certification, he had not completed the requirements for the certification. (T p. 25)

The Department of Education's Bureau of Educator Preparation and Certification (Bureau) is the agency charged with ensuring that teachers, administrators and special service providers working in Connecticut's public schools have been issued an appropriate certificate of qualification. (T p. 47)

As an educator new to Connecticut and hired to work as an assistant principal in a public school, the Petitioner applied to the Bureau for an Initial certificate in the area of Intermediate Administration or Supervision. (Exhibit R-1)

Section 10-145d-574 of the Regulations of Connecticut State Agencies (Section 574) sets forth the professional training, experience and assessment requirements for issuance of the Initial certificate in Intermediate Administration or Supervision.

Consistent with its long time interpretation of Section 574, the Bureau credited the Petitioner with three school months of service for his work as an assistant principal in the Washington D.C. public schools while he was certified to work as an assistant principal under the law of Washington D.C. The Bureau did not credit the Petitioner for his remaining service as an administrator because, although that position required certification², the Petitioner did not have the required certification. (T p. 60; Exhibit P-A)

¹ This service included work as an assistant principal and as a special education coordinator. (T p. 22-23)

² Although the Petitioner testified that his work as a special education coordinator in the

In addition, the Bureau credited the Petitioner with ten school months of service for his work as a special education teacher in the charter school in Washington D.C. because although he did not have certification for that position, the position did not require certification under the law of Washington D.C. but would require certification under Connecticut law. (T pp. 64-65; Exhibit P-A)

The Bureau did not credit the Petitioner for his other teaching and administrative experience in positions that required certification in Washington D.C., but were performed without certification. (Exhibit P-A)

In total, the Bureau credited the Petitioner with thirteen school months of experience for work performed as a teacher and administrator in Washington D.C. public schools and an approved nonpublic charter school in Washington D.C. (T pp. 65-66; Exhibit P-A)

As a result, the Petitioner did not receive the requested certificate and was forced to resign from his position with the New Haven Public Schools. He suffered financial loss and damage to his reputation as a consequence. (T pp. 30-31)

The Bureau has been consistent in its interpretation of Section 574 to credit only experience obtained under an appropriate certificate when a certificate is required for the position, since at least 2003 when the current Bureau Chief Nancy Pugliese was appointed. (T p. 80; Exhibits R-6, R-7, R-8 and R-9)

CONCLUSIONS OF LAW

1. The Board may, in its discretion, issue declaratory rulings as to the application of any of its statutes, regulations or orders. C.G.S. Section 4-176. If the Board exercises its discretion to issue a declaratory ruling, it may conduct a hearing in accordance with the Uniform Administrative Procedure Act, C.G.S. Sections 4-175 et seq. and the R.C.S.A. Sections 10-4-11 et seq.
2. The Board may appoint a hearing officer to conduct a hearing if it deems a hearing to be necessary or helpful. R.C.S.A. Section 10-4-22.
3. The Board's authority is limited to that specifically granted by statute. Pereira v. State Board of Education, 304 Conn. 1, 42-43 (2012). The Board does not have inherent power to make the law or impose obligations beyond those expressly grounded in statute. Id.

Washington D.C. public schools did not require certification (T pp. 22-23), the more reliable Statement of Professional Experience from the Washington D.C. public schools indicates that certification was required. (Exhibit P-E) The Petitioner never informed the Bureau of his claim that certification was not required for that position. (T p. 40)

4. The same well established legal principals of statutory construction govern the interpretation of both statutes and agency regulations. Day v. City of Middletown, 59 Conn.App. 816, 821 (2000).
5. The meaning of a statute or regulation shall, in the first instance, be ascertained from the text of the statute or regulation itself and its relationship to other statutes and regulations. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extra textual evidence of the meaning of the statute shall not be considered. C.G.S. Section 1-2z.
6. Statutory and regulatory terminology is presumed to retain the same meaning throughout the entire statutory or regulatory scheme. See Stamford Ridgeway Associates v. Board of Representatives, 214 Conn. 407, 432 (1990).
7. The legislature is always presumed to have created a harmonious and consistent body of law. Board of Education of Town of Hamden v. State Board of Education, 278 Conn. 326, 333 (2006). Accordingly, in determining the meaning of a statute or regulation, one must look “not only at the provision at issue, but also to the broader statutory scheme to ensure the coherency of” the construction of the statute. Id. In addition, the “General Assembly is always presumed to know all the existing statutes and the effect that its action or non-action will have upon any one of them.” Id. at 333-334. See also Hatt v. Burlington Coat Factory, 263 Conn 279, 310 (2003).
8. In construing statutes and regulations, common sense must predominate, and a reasonable and rational interpretation must prevail. Rocco v. Garrison, 268 Conn. 541, 550 (2004). Thus, even where some conflict appears in the language, statutes and regulations must be interpreted so as to make one consistent body of law that makes sense as a whole. Starks v. University of Connecticut, 270 Conn. 1, 31 (2004); Diamond v. Marcinek, 226 Conn. 737, 746 (1993); State v. Burney, 189 Conn. 321, 327 (1983); Atwood v. Regional School District No. 15, 169 Conn. 613, 621-22 (1975).
9. When an agency has interpreted statutes and regulations consistently over a long period of time and the legislature has taken no action to alter that interpretation, the agency’s interpretation is presumed to be valid. Phelps Dodge Copper Products Co. v. Groppo, 204 Conn. 122, 134 (1987); Ralston Purina Co. v. Board of Tax Review, 203 Conn. 425, 439 (1987); Shell Oil Co. v. Ricciuti, 147 Conn. 277, 285, 160 A.2d 257 (1960).
10. Connecticut law insists that professional educators working in public schools have the appropriate certification for their position at all times:
 - (a) No teacher, supervisor, administrator, special service staff member or school superintendent . . . shall be employed in any of the schools of any local or regional board of education unless such person possesses an appropriate state certificate, nor shall any such person be entitled to any salary unless such person can produce such certificate dated previous to or the first day of employment

C.G.S. Section 10-145(a).

11. The Board is responsible to issue such certificates of qualification to teach, to administer, to supervise or to serve in other positions requiring certification in the public schools of Connecticut. C.G.S. Section 10-145a(a).

12. The Board is also responsible to promulgate regulations and qualifications for the issuance of certificates of qualification to teach, to provide special services and to administer and supervise in the public schools. C.G.S. Section 145d(a).

13. The Board's Bureau is responsible to ensure that all educators employed in positions requiring certification in Connecticut are appropriately certified for their position. C.G.S. Section 10-145a(a). (T p. 47)

14. Appropriate certification of qualification is required for any person in the employ of a Connecticut public school system who:

- (a) Is not directly supervised in the delivery of instructional services by a certified professional employee in a position requiring certification; or
- (b) Is responsible for planning of the instructional program for a student; or,
- (c) Evaluates student progress; or
- (d) Does not receive specific directions from their supervising teacher or administrator that constitute a lesson plan for each lesson.

R.C.S.A. Section 10-145d-401(b).

15. The regulatory scheme for certification of educators has three tiers, each with increasingly arduous training; experience and assessment requirements for qualification. These are the Initial, Provisional and Professional tiers. An inexperienced educator, for instance will first serve under an "Initial" certificate in his or her area. Next, and after completing further training, experience and/or assessment requirements specific to his or her area, the educator will serve under a Provisional certificate for a period of time. Finally, the accomplished educator will complete yet more requirements to achieve a Professional certificate in his or her area. R.C.S.A. Sections 10-145d-409 through 417. (T p. 51-52)

16. The Board's Bureau issues certification for each tier in each of a myriad of various areas of teaching, administration and special services, including different grade levels (preschool, elementary, middle school), different content areas (special education, foreign language, science), and different types of administration and supervision (department chairperson, intermediate, superintendent). Individual regulations express the requirements of training, experience and assessment for each of these certification tiers and areas. See R.C.S.A. Sections 10-145d-429 through 607.

17. The experience required for issuance of the Initial certificate for Administration or Supervision is as follows:

B. Intermediate Administration or Supervision
§ 10-145d-574. Initial educator certificate requirements

To receive an initial educator certificate for intermediate administrator or supervisor an applicant shall present evidence of meeting the following requirements, in addition to meeting the assessment requirements, as appropriate:

(c) Has completed 50 school months of successful teaching or service, which shall have been in public schools or in approved nonpublic schools or nonpublic schools approved by the appropriate governing body in another state in a position or positions requiring certification in the state where employed, or in a position or positions which would have required certification had the service been in Connecticut public schools, or in a state education agency as a professional or managerial staff member. . . .

R.C.S.A. Section 10-145d-574.

DISCUSSION

As discussed in more detail below, the Bureau's interpretation of Section 574 is the most reasonable one that harmonizes the regulation and others like it with the fundamental statutory demand of C.G.S. Section 10-145(a) (Certification Statute), that teachers, special service providers and administrators serving in Connecticut's public schools may only work - and may only be paid - under the qualification of an appropriate certification for their position. The Certification Statute expresses Connecticut's axiomatic goal that its public schools be staffed with educators who meet rigorous professional competency standards. This principal necessarily informs all of the certification regulations promulgated under authority of the certification statutes. See Board of Education of Town of Hamden v. State Board of Education, 278 Conn. 326, 333 (2006); Hatt v. Burlington Coat Factory, 263 Conn. 279, 310 (2003); Rocco v. Garrison, 268 Conn. 541, 550 (2004); Diamond v. Marcinek, 226 Conn. 737, 746 (1993); State v. Burney, 189 Conn. 321, 327 (1983); Atwood v. Regional School District No. 15, 169 Conn. 613, 621-22 (1975).

A careful review of the language of Section 574 is instructive in this regard. Significantly, nothing in the language of Section 574 itself draws any distinction between professional experience garnered in Connecticut public schools and experience garnered in the public schools of other jurisdictions for the purpose of meeting the regulation's experience requirement. Accordingly, the plain language of the regulation directs that Connecticut service and service in other jurisdictions should be treated equally.

Yet, the Certification Statute strictly requires that an educator may be permitted to work in, and paid by, public schools in Connecticut *only* if he or she has met the requirements of, and

actually holds, the appropriate certificate. C.G.S. Section 10-145(a). Accordingly any Connecticut applicant for certification under Section 574 will have professional experience in Connecticut working under an appropriate certificate. If educators from other jurisdictions were not held to the same standard of qualification, the result would be both nonsensical and inequitable.

Such an interpretation would irrationally credit the experience of educators who worked in positions for which they were not qualified under the law of another jurisdiction. Such a result would surely undermine the fundamental objective of the entire certification scheme, to ensure that Connecticut's educators are qualified for their positions. It would also hold Connecticut educators to higher standards than educators from other jurisdictions, a result that is not supported by the language of Section 574 and is not equitable to Connecticut educators.

The Bureau's interpretation is also the only one that provides consistency in the treatment of professional experience for the purposes of the entire regulatory scheme. This is so because although many of the certification regulations that express qualifications for the various certificates offered by the Bureau include experience requirements, they do not consistently use the same language to describe the required experience. Sometimes, they do not even suggest that the experience must be in a position requiring certification or that would require certification in Connecticut.

For instance, the experience required for the Initial certificate for the administrative position of Department Chairperson states as follows:

Has completed 30 school months of successful teaching experience in a public, approved nonpublic school or nonpublic school approved by the appropriate governing body in another state. . . .

R.C.S.A. Section 10-145d-579(d).

The experience required for the Provisional certificate for an Elementary teacher states:

Has completed, within 10 years prior to application, at least 30 school months of successful teaching in a subject area or field appropriate to the subject area or field for which the provisional educator certificate is sought, in a public, approved nonpublic school or nonpublic school approved by the appropriate governing body in another state. . . .

R.C.S.A. Section 10-145d-437(c).

Read in isolation, it would appear that an educator could obtain a Provisional certificate for Elementary teaching or an Initial certificate for Department Chairperson based on public school service as a teacher in or outside of Connecticut in a position that does not require certification, such as tutoring under the direct supervision of a certified teacher, substitute

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Declaratory Relief Case No. 14-1

teaching or teaching drivers' education under a license issued by the Department of Motor Vehicles. See R.C.S.A. Section 10-145d-4-1(b).

Yet the statutory scheme as a whole makes clear that the experience requirements are designed to ensure that Connecticut's public schools are staffed with educators who meet minimum qualification as reflected, in part, by successful professional experience. Surely, the law contemplates that in order to be credited for certification purposes under these regulations, the experience must be in teaching, special services or administration or supervision – the very work that may only be performed under a certification in Connecticut public schools. C.G.S. Section 10-145(a). Otherwise, the experience would have little or no bearing on an educator's qualification to serve in a position requiring certification in Connecticut.

The Department urges construction of the term "successful" as used in Section 574 to include the concept that creditable experience must be in compliance with the certification law of the applicable jurisdiction. Unfortunately, the regulatory definition does not include this concept. The regulations define "successful teaching or service" to mean:

[S]uccessful full time professional educational experience or its equivalent, as determined by the employing agent, as a teacher, administrator or special service staff member.

R.C.S.A. Section 10-145f-400(ggg).

The Petitioner argues that the language of Section 574 focuses on the position in which experience is garnered and not the characteristics of the applicant for certification. From this he proposes that a reading of Section 574 also should not focus on the characteristics of the applicant, but only on the characteristics of the position. This construction, however, does not address the fact that some regulations make no reference that the position of experience must require certification or would require certification in Connecticut. Yet surely, experience of a type that can be credited for the Department Chairperson or Elementary teacher should also be credited for the purpose of an Initial certificate in Intermediate Administration or Supervision.

Additionally, the language of Section 574 does not support the Petitioner's proposed construction. Section 574 contains many references to the necessary characteristics of the applicant. Subsection (a) and (b), for instance describe the successful applicant's academic degrees. Even subsection (c) describes the applicant as a person with the required experience.

It is also noteworthy that according to the uncontradicted testimony, the Bureau has interpreted Section 574 to require that creditable experience be in a position that requires certification or would require certification in Connecticut and must be performed under an appropriate certification if one is required, since at least 2003. The fact that this interpretation has been in effect for a long time without being overturned or altered by the General Assembly affords the Bureau's interpretation a significant degree of legitimacy.

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Phelps Dodge Copper Products Co. v. Groppo, 204 Conn. 122, 134 (1987); Ralston Purina Co. v. Board of Tax Review, 203 Conn. 425, 439 (1987); Shell Oil Co. v. Ricciuti, 147 Conn. 277, 285 (1960).

Taking all of these considerations together inexorably produces the conclusion that the most reasonable view of Section 574 interprets that, in order to be credited, experience in a position requiring certification in Connecticut or in another jurisdiction must be served under the appropriate certificate if one is available.

ORDER

For the reasons outlined above, it is hereby ordered:

The Petitioner has not yet satisfied the requirement of 50 school months of successful teaching or service, in accordance with the Connecticut State Regulations of Administrative Agencies, Section 10-145d-574(c).



Ann F. Bird
Impartial Hearing Officer

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CONNECTICUT STATE DEPARTMENT OF EDUCATION

DR. JOSEPH JOHNSON : REQUEST FOR DECLARATORY
 : RULING
VS. :
 : CASE NO. 14-1
STEFAN PRYOR :
STATE OF CONNECTICUT :
DEPARTMENT OF EDUCATION : JANUARY 9, 2015
..... :

**DEPARTMENT OF EDUCATION’S BRIEF IN OPPOSITION TO
DR. JOSEPH JOHNSON’S REQUESTED DECLARATORY RULING**

I. Statement of the Case

This is a Request For a Declaratory Ruling filed by Dr. Joseph Johnson (“Petitioner” or “Dr. Johnson”) pursuant to Connecticut General Statutes (C.G.S.) §4-176 and Connecticut State Board of Education (“Board”) regulation §10-4-21. Petitioner challenges the determination of the Connecticut State Department of Education (CSDE) that Petitioner did not fulfill the experience requirements for the attainment of an initial educator certificate for intermediate administrator or supervisor. (Hearing Officer (H.O.) Exhibit (Ex.) 1, Request For Declaratory Ruling). At its meeting on September 3, 2014, the Board agreed to rule on this request, and a hearing was held before Hearing Officer Ann F. Bird on November 21, 2014. (H.O. Ex. 2, Notice of Hearing).

The sole issue presented for decision in this matter is as follows:

Has the Petitioner met the requirement of 50 school months of successful teaching or service, in accordance with the Connecticut State Regulations of Administrative Agencies, §10-145d-574, subpart C?

(Transcript (“Tr.”), p. 4).

II. Position of the Connecticut Department of Education

The Petitioner's requested ruling should be denied. The Petitioner has not met the requirement of completion of 50 school months of successful teaching or service in accordance with §10-145d-574(c). An applicant can acquire the 50 school months of successful teaching or service: (a) in a public school, if the applicant maintains the required professional certification; (b) in an approved nonpublic school in positions requiring certification in the state where the nonpublic school is located or in positions which would have required certification if the position had been in a Connecticut public school; or (c) in a State education agency as a professional or managerial staff member. (Reg. of Conn. State Agencies (R.C.S.A.) §10-145d-574(c); Tr. pp. 12-13, 60, 80). Here, the Petitioner is only able to demonstrate 13 months of experience which can be credited toward the 50 month requirement: three (3) months service in a public school under a valid certificate and 10 months service in an approved non-public school. (*See, e.g.*, Department ("Dept.") Ex. 3). Consequently, Petitioner has not met the requirement in §10-145d-574(c) that he have 50 school months of successful teaching or service.

III. Facts

Petitioner has applied to the CSDE for an initial educator certificate for intermediate administrator or supervisor, commonly referred to as an 092 certificate. (See Dept. Exs. 1, 2, 3; Tr., p. 11). Applications for professional certifications are processed by the CSDE Bureau of Educator Standards and Certification (BESC). The Bureau Chief of the BESC is Nancy Pugliese. Ms. Pugliese has been employed with the CDSE since 1988 and has been the Bureau Chief of the BESC since 2003. (Tr. p. 45-46). Ms. Pugliese holds both a Master's

Degree in Management and a Juris Doctorate (law degree) from Willamette University. (Tr. p. 45-46).

The BESC has three general responsibilities: (1) ensuring that all Connecticut educators are certified in accordance with the statutes and regulations; (2) approval of all educator preparation programs in Connecticut; and (3) administration of the Teacher Education and Mentoring (TEAM) program. (Tr. pp. 47-51).

With respect to certification of education professionals, Ms. Pugliese testified that Connecticut has approximately 80,000 persons who hold educational certificates and approximately 45,000 to 50,000 are actively employed in school systems. (Tr. p. 47). Connecticut has three levels of teacher certification: initial, provisional, and professional. (Tr. pp. 51-53). The professional level, the highest level, is a five year certificate which can be renewed if the teacher provides successful service. (Tr. p. 52-53). The BESC determines whether individuals who wish to be teachers have met the statutory and regulatory requirements for each level of certification on an individual basis. (Tr. p. 53).

Connecticut also requires certification for administrators. An administrator's 092 certificate is an advanced certificate (Tr. p. 54) for management personnel and is

required for a person employed by a board of education who is designated by the employing agent or board of education as: deputy superintendent, assistant superintendent, principal, assistant principal, curriculum coordinator, supervisor of instruction or any person who has the primary responsibility for directing or coordinating or managing certified staff and resources, or any person responsible for summative evaluation of certified staff. . . .

R.S.C.A. §10-145d-572(a). There are three levels of certificates for administrators as for teachers: initial, provisional, and professional. (Tr. p. 55).

Consistent with the importance of the functions fulfilled by a person who holds an 092 certificate, §10-145d-574(c) contains an experience requirement. An applicant for an 092 certificate must present evidence that he or she:

(c) Has completed 50 school months of successful teaching or service, which shall have been in public schools or in approved nonpublic schools or nonpublic schools approved by the appropriate governing body in another state in a position or positions requiring certification in the state where employed, or in a position or positions which would have required certification had the service been in Connecticut public schools, or in a state education agency as a professional or managerial staff member. . . .

Applying section 10-145d-574(c), the BESC determined that Dr. Johnson had not met the 50 school months of successful teaching or service requirement. (Tr. p. 57. See Dept. Ex. 3, May 9, 2012 letter from Nancy Pugliese to Joseph Johnson).

In support of his application, Dr. Johnson submitted evidence of teaching and other service in both public and private schools in Washington, D.C. on ED 126 forms. (Dept. Exs. 4, 5). Dr. Johnson was an elementary school teacher from February, 2005 to August, 2006 and a middle school principal from April, 2008 to July, 2011. (Dept. Ex. 4). This ED 126 form provides that Certification Endorsement is required for both of these positions. Department Exhibit 4 which reports both teaching and service as a principal in Washington D.C. public schools, is signed by Regina Youngblood, the Deputy Chief of the D.C. Public Schools. (Dept. Ex. 4; Tr. p.35). (Dept. Ex. 4). Dr. Johnson agrees that, according to the District of Columbia Public Schools, certification is required for these positions. (Tr. pp. 35-36).¹

¹ Dr. Johnson's testimony suggests that for a portion of the April, 2008 to July, 2011 period he was a special education coordinator, a position for which certification was not necessary, and was then promoted to assistant principal. (Tr. pp. 22-24). However, Dr. Johnson acknowledges that he never submitted to the BESC any information that certification was not required for the position of special education coordinator (Tr. p.40) and he did not contest the correctness of this ED 126 form in the Request For a Declaratory Ruling. The best evidence in this case is the ED 126 form signed by the Deputy Chief which says that Dr. Johnson held positions

Dr. Johnson also submitted evidence of professional certification in support of his application, specifically, two District of Columbia certificates from the Office of the State Superintendent of Education. These are a certificate for special education valid from March 16, 2006 to March 15, 2011, and a certificate for school administrator valid from April 4, 2011 through April 3, 2015. (Dept. Exs. 3, 11, 12: Tr. pp. 37-38). Dr. Johnson testified that these are the only professional certifications he has held during his career. (Tr. pp.37-38).

Dr. Johnson did not maintain a professional certificate to teach elementary school, and he did not receive credit for purposes of the 50 school month requirement for his teaching in elementary school from February, 2005 to August, 2006. As explained by Ms. Pugliese, an individual is required to hold a grade appropriate and subject appropriate certificate for teaching service in order for it to be credited. Dr. Johnson did not submit a certificate from the District of Columbia school system documenting that he was certified as an elementary teacher; the certificate that was submitted showed that he was certified to teach special education. Consequently, Dr. Johnson lacked the required certification to cover this teaching. (Tr. p. 59). Dr. Johnson did not contend either in the Request for a Declaratory Ruling or at the hearing that the certificate he submitted should be accepted for this service.

With respect to Dr. Johnson's position as an elementary school principal from April 2008 through July 2011, three months, April, 2011 through July, 2011, were covered under a valid certificate. (Dept. Exs. 3, 12). Therefore, Dr. Johnson was credited with three months of successful teaching service for purposes of the 50 school months of service requirement. (Dept. Ex. 3: Tr. p. 60).

for which certification was required between April, 2008 and July, 2011. Dr. Johnson agrees that it is the District of Columbia Public Schools position that certification is required for these positions. (Tr. pp.35-36).

Dr. Johnson also submitted an ED 126 form signed by Specialized Education of D.C., reporting that he served as a special education teacher from August, 2000 through June, 2001. (Dept. Ex. 5). As this teaching was in an approved nonpublic school, in a position which would have required certification if in a Connecticut public school, Dr. Johnson was not required to hold certification, and the entire 10 months was credited toward the 50 school months of service requirement². Therefore, adding the three months service under his administrator's certificate, and the 10 months teaching service in a non-public school, a total of 13 months successful teaching or other service was credited to Dr. Johnson by the BESC toward meeting the requirement of 50 school months of successful teaching or service. (Dept. Ex. 3: Tr. pp.65-66).

The Department submitted testimony at the hearing to establish that (a) the BESC has consistently interpreted §10-145d-574(c) to require certification for teaching or service in a public school to be credited for purposes of the experience requirement, and (b) the requirements of §10-145d-574(c) were applied to Dr. Johnson in the same manner as they have been applied to other applicants for professional certification. Ms. Pugliese testified that the regulation has been in effect since July 1, 1995, and "is applied to anyone, who comes in and applies for administration, again, to be fair and make sure that we're not discriminating or providing preferential treatment." (Tr. p. 70). Ms. Pugliese testified that the same standards are applied to out of state applicants as to applicants from Connecticut. (Tr. pp. 62-63). Ms. Pugliese's testimony on this point was neither contradicted nor questioned at the hearing.

² Ms. Pugliese testified at the hearing that: "We did some research and went online, and we determined, I believe, that this was a non-public school, and therefore, we did document him with ten months of service at the school." (Tr. P. 64). Dr. Johnson confirmed that this school was a charter school and that certification was not required. (Tr. p. 19).

The Department also introduced several exhibits as examples to establish that this regulation has been applied in the same manner to other applicants. Each of these exhibits confirm that this regulation has been applied consistently in the manner in which it has been applied to Dr. Johnson; that is, where an applicant relies on teaching or service in a public school to meet the 50 school month requirement, the service must have been under an appropriate certification or it is not accepted for purposes of the 50 school month requirement in §10-145d-574(c).

This is clear, first, from Exhibit 6, an e-mail message chain between a BESC consultant and an applicant for an 092, Intermediate Administrator Certificate. These messages reveal an issue as to whether certain experience in New Jersey proffered by an applicant should be credited for purposes of this individual's application, the same issue presented by this Declaratory Ruling request. The Department's e-mail message dated December 2, 2008 states:

In order for the New Jersey experience to count, it must either be in a New Jersey school under appropriate certification, or an approved non-public school in a position where certification was not required, though certification would have been required had it been in a public school. For this reason, you must document that you either held the appropriate certificate or other authorization from September 2002 to June 2003 or that this was not required. In either case, you may wish to submit a letter from appropriate officials at the New Jersey Department of Education as verification.

(Dept. Ex. 6, p.3; Tr. p.73).

Department Exhibit 7 is to the same effect. This exhibit is an October 22, 2014 credential letter sent to another applicant regarding her application for a 092 Intermediate Administrator Certificate. (Tr. p.74). In this credential letter, the BESC informs the applicant that certain "experience cannot be accepted toward the 50 school months required for

administration certification as you were not properly certified for this position: Bloomfield 9/13 through 6/14.” This is the same issue as presented by this case, except involving experience in a Connecticut public school.

Exhibit 8 arises in a different context but confirms consistent application of this regulatory requirement. In this July 20, 2005 e-mail message to BESC staff, Ms. Pugliese notes a situation where individuals from Massachusetts may be seeking certification in Connecticut. In this e-mail message Ms. Pugliese writes:

Also, please be aware that we will not be recognizing public school service that was not completed under a valid MA certificate for purposes of certifying an individual at the initial or provisional level. Therefore, please let callers know that MA state law requires that any service for a MA board of education must be under an appropriate MA certificate. Without holding an active certificate throughout their tenure of service, we can not recognize that service.

(Dept. Ex. 8). Ms. Pugliese testified that the service of the Massachusetts teachers would not be accepted for teacher certification or for an administrator certification, because the service required a certificate, but the person did not have a certificate. (Tr. p. 78).

Exhibit 9 is an e-mail chain containing e-mail messages from August 22, 2011 through September 7, 2011 between a BESC consultant and an applicant for an 092 certificate. The principle that when an applicant is relying on experience in a public school, only experience under a valid certificate can be recognized was applied. (Tr. pp.78-79).

Ms. Pugliese testified, generally, that the requirement that an individual have 50 school months of successful teaching or service has been governed by the same principle as long as she has served as the Bureau Chief of the BESC, i.e., since 2003, and before. (Tr. pp. 70, 79-80). As noted above, this regulation has been in effect since 1995. There was no

evidence presented to contradict this testimony. Ms. Pugliese then testified again as to the principles that are followed under the regulation, stating:

For the determining whether a person has achieved 50 school months of successful service, we look at the service in three different locations. One is a public school that we require be under an appropriate certificate, one is a non-public school, in which either a certificate was required by the State, or, if it wasn't, it was in a position that would have required certification, had it been in the State of Connecticut, and the third location is a State agency in Connecticut or another state.

(Tr. p. 80)

IV. Argument

The Hearing Officer should not grant the declaratory ruling sought by Dr. Johnson. The Connecticut State Department of Education, through the Bureau of Educator Standards and Certification, correctly applied its regulation to Dr. Johnson's application and correctly determined that Dr. Johnson had not met the requirement of completion of 50 school months of successful teaching or service. The 092 certificate allows the holder to serve in any administrative position in a school system except for superintendent. R.S.C.A. §10-145d-574(c). The requirements for the issuance of this certificate are, accordingly, stringent. Here, Dr. Johnson failed to meet the experience requirement set forth by the regulation. Moreover, while the regulation was properly applied, to the extent that there is a question as to the interpretation of this regulation, the Hearing Officer should defer to the long-standing interpretation and application of this regulation by the BESC.

A. The Regulation was Properly Applied to Dr. Johnson's Application

It is clear that under the applicable portion of §10-145d-574(c) (quoted above) an individual may meet the requirement of completion of 50 school months of successful teaching or service in one of three ways: (1) through teaching or service in a public school,

provided that the service is covered by an appropriate certification; (2) through teaching or service in an approved nonpublic school, if the position required certification in the state where employed or would have required certification if the position had been in a Connecticut public school; or (3) in a state education agency as a professional or managerial staff member (not applicable here). It is also clear that the BESC then properly applied the provisions of §10-145d-574 (c) in this matter.

Under the regulation, teaching or service in a Connecticut public school must be covered by a valid certification to be counted toward the 50 school month requirement. It is important to note that the regulation specifically requires an applicant to have “completed 50 school months of *successful* teaching or service” (emphasis added). Serving in a position without the requisite certification is not, and cannot be, “successful teaching or service” for purposes of meeting the 50 school month requirement. Professional certification denotes demonstrated competence for the position in question. It is illogical to claim that successful service can occur when the required qualification does not exist.

In fact, there can be no “teaching or service” in Connecticut at all without proper certification. Connecticut General Statutes §10-145(a) requires any person employed as a teacher or administrator in a Connecticut public school to hold an appropriate certificate. This statute mandates in unambiguous terms that: “No teacher, supervisor, administrator, special service staff member or superintendent . . . shall be employed in any of the schools of any local or regional board of education unless such person possesses an appropriate state certificate, nor shall any such person be entitled to any salary unless such person can produce such certificate dated previous to the first day of employment” Therefore, any applicant from Connecticut seeking an 092 certificate would necessarily have held a professional

certificate for any teaching or service in a public school. Credit could never be given for teaching or service in a Connecticut public school where the teaching or service is not under a certification, because the certification is a requirement for employment.

Thus, the requirement that an applicant hold an appropriate certification in order to claim teaching or service in a Connecticut public school for purposes of the 50 school month successful teaching or service requirement is essentially embodied in the regulation by operation of the statute, C.G.S. 10-145(a).

Given the statutory requirement that a teacher or administrator and certain other employees in Connecticut public schools must be certified to have public school teaching or service accepted for purposes of §10-145d-574(c), the regulation cannot reasonably be interpreted otherwise for an applicant, such as Dr. Johnson, seeking to meet this requirement through teaching or other service in a public school in another state.

While the mandate of C.G.S. §10-154(a) alone compels that the regulation be applied as it was here, the regulatory scheme further supports this conclusion. The 092 certificate authorizes a person to hold the highest positions in a school system, including deputy superintendent, assistant superintendent, principal, assistant principal, curriculum coordinator, and supervisor of instruction. R.C.S.A. §10-145d-572(a). The holder of such a certificate may have “primary responsibility for directing or coordinating or managing certified staff and resources,” or be “responsible for summative evaluation of certified staff.” Id. Given the responsibilities of the holder of an 092 certificate, it defies common sense to think that the terms of this regulation would allow an applicant to fulfill the experience requirement through teaching or service in a position for which the applicant does not hold the necessary professional qualification.

This text of the balance of §10-145d-574 supports this reading of the statute. The requirements of the regulation for the issuance of the 092 certificate are stringent. To obtain the 092 certificate, an individual must: hold a master's degree from an approved institution; have completed 18 semester hours of graduate credit in addition to the master's degree; present the recommendation of an approved institution where the applicant has completed a planned program of preparation for administrative and supervisory personnel which states that the applicant is personally and professionally qualified to serve as a public school administrator or supervisor; have completed graduate study in several specific areas; and completed a course in special education. R.C.S.A. §10-145d-574 (a), (b), (d), (e), (f). It is absurd to think that, given these stringent requirements in subsections (a), (b), (d), (e), and (f), that subsection (c) would be interpreted to allow a person to meet the experience requirement based on service in a position for which he lacked the legal qualifications.

Dr. Johnson's arguments on the interpretation of the regulation miss the mark. Dr. Johnson argues that because the positions that he held in Washington would have required certification had the service been in Connecticut public schools he should receive credit for this service on that basis, despite the lack of the required certification. Dr. Johnson's Request for Declaratory Ruling states: "The issue does not turn on whether or not he [Dr. Johnson] was actually certified in Washington D.C. That analysis is inapposite to the plain reading of the regulation. The only issue is whether Dr. Johnson's relevant 65 months of administrative and teaching experience would have required certification in Connecticut." (H.O. Ex. 1, Request for Declaratory Ruling, p. 5). This is an unreasonable and unwarranted interpretation and is not in accord with the language, much less the spirit, of the regulation. The language in §10-145d-574(c) which states "or in a position or positions which would

have required certification had the service been in Connecticut public schools” does not have the sweeping effect suggested by Dr. Johnson. Rather, this language follows the references to nonpublic schools in the regulation and clearly is meant to identify positions in nonpublic schools which may be credited to satisfy the 50 school months of successful teaching or service requirement, even though certification for these positions is not required because they are in nonpublic schools. Said differently, this language means only that service in nonpublic schools may be recognized to fulfill the experience requirement if the position would require certification if the service had been in Connecticut public schools.

This interpretation is supported by the testimony of Ms. Pugliese at the hearing. With respect to service in nonpublic schools, Ms. Pugliese testified:

Under the non-public school, there's two options available. It is a position or positions requiring certification in the state where employed, is A, Subsection A under non-public, or B is non-public in a position or positions, which would have required certification had the service been in Connecticut public schools.

* * *

It was determined years ago that there should be a pathway for people to come in and transfer over from the non-public setting to the public setting, but that we would only accept service if it was in a position where we actually certify people.

If it's in a position that doesn't require certification, we don't recognize that service.

(Tr. p. 88-89).

The intent of this language is to provide a pathway to certification for persons with nonpublic school experience; and the sweeping effect of this language advanced by Dr. Johnson is simply wrong.

Given the requirements of this regulation, it is clear that Dr. Johnson has not completed 50 months of successful school service. Dr. Johnson has submitted service both in public schools and a nonpublic school to satisfy the 50 school months of successful teaching or service requirement. The service in a nonpublic school was at the High Road Academy in Washington, D.C. where Dr. Johnson worked as a special education teacher. Applying the portion of the regulation which refers to service in nonpublic schools, the BESC determined that this was a nonpublic school and Dr. Johnson was not required to hold a certification. Consequently, the entire 10 months of this experience was considered toward the 50 school months of service requirement. (Dept. Ex. 3; Tr. p. 64). This was in accord with the portion of the regulation which allows teaching or service “in approved nonpublic schools . . . in a position or positions which would have required certification had the service been in Connecticut public schools” as discussed above. This position would have required certification in Connecticut public schools. See Conn. Gen. Stat. §10-145(a), discussed above which requires a state certificate for all teacher. (Tr. p. 52)

Dr. Johnson also submitted teaching or service in public schools to satisfy the completion of the 50 school months of successful teaching or service requirement. This information appears in Department Exhibit 4 and Petitioner Exhibit E. These exhibits are both the same ED 126 form signed by Regina Youngblood, Deputy Chief, D.C. Public Schools, and submitted by Dr. Johnson in connection with his application. The teaching or service reported on this form includes teaching as an elementary school teacher from February, 2005 to August, 2006, and service as a middle school principal from April, 2008 to July, 2011. This ED 126 form contains a column where the submitting school district can

indicate whether “Certification Endorsement” is required for the position. The answer given is “Yes” for each position: teacher and middle school principal. (Dept. Ex. 4; Pet. Ex. E).

However, except for a three month period, Dr. Johnson lacked the legally required professional certifications for these positions. As explained by Ms. Pugliese at the hearing, an individual is required to hold a grade appropriate and subject appropriate certificate for teaching service in order for it to be credited. However, Dr. Johnson was not able to produce a certificate or license from the District of Columbia school system documenting that he was certified as an elementary teacher; the certificate that was submitted showed that he was certified to teach special education. Consequently, Dr. Johnson lacked the required certification to cover this teaching. (Tr. p. 59). As noted above, Dr. Johnson has not argued in his Request for a Declaratory Ruling or at the hearing that any certificate he may have held covered this teaching position.

With respect to Dr. Johnson’s service as a principal, or otherwise, between April 2008 and July 2011, Dr. Johnson did not hold an appropriate certificate until April 2011. (Dept. Ex. 12). Therefore, he was credited with three months of completed school service for the period of April 2011 through July 2011 (Dept. Ex. 3; Tr. p. 60). The balance of the time for which Dr. Johnson served as a principal was not covered by his certificate. (Dept. Exs. 3, 12; Tr. p. 60)

The BESC properly applied the terms of §10-145d-574(c) in determining that Dr. Johnson was entitled only to three months credit for his service in Washington D.C. public schools for purposes of the 50 school months of successful teaching or service.

Section 10-145d-574(c) was properly applied to Mr. Johnson, and the declaratory ruling sought by Mr. Johnson should be denied.

B. If There is a Question as to the Proper Interpretation of this Regulation the Hearing Officer Should Defer to the CSDE's Interpretation

The Department's position is that this regulation, §10-145d-574(c), was properly applied, and the decision was clearly correct, for the reasons set forth in the preceding section. Consequently, the Hearing Officer does not need to reach the issue of deference.

However, if the Hearing Officer believes that the regulation is ambiguous, and susceptible to different interpretations, the Hearing Officer should defer to the interpretation advanced here by the CDSE, the agency charged with enforcement of the regulation.³

The law is clear that the factual and discretionary determinations of an agency are to be accorded considerable weight by the courts. See Longly v. State Employees Retirement Commission, 284 Conn. 149, 163 (2007) (citing cases). With respect to the interpretation of statutes:

Although, the interpretation of statutes is ultimately a question of law . . . it is the well established practice of this court to accord great deference to the construction given [a] statute by the agency charged with its enforcement. . . . Conclusions of law reached by the administrative agency must stand if the court determines that they resulted from a correct application of the law to the facts found and could reasonably and logically follow from such facts. . . .

FairwindCT, Inc. v. Connecticut Citing Council, 313 Conn 669, 679 (2014), citing Wheelabrator Lisbon, Inc. v. Department of Public Utility Control, 283 Conn. 672, 691 (2007) (internal quotation marks omitted). Even if a case presents a pure question of law, and thus invokes a broader standard of review, deference should be accorded to an agency's formally articulated interpretation of a statute if the interpretation is both time tested and reasonable. Longly v. State Employees Retirement Commission, supra at 166. The principle

³ The issue of deference generally arises when a court is reviewing the decision of an administrative agency. However, as the Hearing officer is sitting as an Impartial Hearing Board in this case, the Hearing Officer's function is analogous to that of a judge in the superior court, and the CSDE is addressing the issue of deference here as it would to a court.

that courts will accord great deference to the construction of a statute by the agency charged with its enforcement “applies with even greater force to an agency’s interpretation of its own duly adopted regulations.” Griffin Hospital v. Commission on Hospital and Health Care, 200 Conn. 489, 496-97 (1986).

The determination by the BESC that Dr. Johnson has not completed 50 school months of teaching or other service as required by §10-145d-574(c) is an agency factual and discretionary determination. The BESC is determining whether a particular applicant has met the requirements for the issuance of a professional certificate. This involves reviewing the information presented to determine the facts and then the application of the law to the facts. This is clearly the type of factual and discretionary determination which should be accorded great weight. Also, the BESC is the arm of the CSDE which is responsible for the certification of all Connecticut teachers, administrators, and others working in public education. There are approximately 80,000 persons with certifications in Connecticut and 45,000 to 55,000 are actively employed in school systems. (Tr. p. 47). The BESC has the responsibility to administer the certification process correctly, to ensure that only qualified persons are awarded certification.⁴ It is also responsible for administering the law fairly so that individuals who rely on teaching or other service in Connecticut are treated the same as applicants who rely on service from outside of Connecticut. The task of ensuring that a large number of applications are processed correctly and fairly is an exacting task and the BESC’s established principles should be respected if they are reasonable as is clearly the case here.

⁴ The fact that Dr. Johnson may have a strong academic record and may appear personally qualified is not the issue in this case. The BESC must apply the same rules to all applicants. Requiring that service in a public school be done pursuant to a valid certificate helps ensure that persons who obtain the administrator certificate are competent.

The conclusions reached in this matter by the BESC resulted from a correct application of the law to the facts and reasonably and logically followed from the facts. They should stand. See FairwindCT, Inc. supra.

Even if this matter presented a pure question of law, the Hearing Officer should give deference to the CDSE's interpretation of the regulation. While this interpretation has not been set forth in prior contested cases or declaratory ruling proceedings, it has been formally articulated in many administrative matters including the matters cited in this proceeding. The situation here is similar to that in Longely v. State Employees Retirement Commission where the Commission argued that it has applied the formula in question when calculating the benefits of thousands of retirees. 284 Conn. at 166. Here it is uncontradicted that in processing applications the BESC has interpreted this regulation in the same manner since prior to 2003, and likely back to at least 1995. (Tr. p. 70, 79-80).

To summarize, the CDSE's position is that irrespective to whether the CESC's decision is entitled to deference, the decision was correct and the question presented should be answered no. If the Hearing officer determines that it is necessary to resort to deference to decide this matter, the decision of the BESC is a factual or discretionary determination and is entitled to great weight under applicable precedent. Finally, even if this matter is deemed to present a pure question of law, deference should be accorded to the CSDE, BESC's long standing interpretation of the regulation.

V. Conclusion

For the reasons set forth above, the Hearing Officer should determine that the Petitioner has not met the requirement of 50 school months of successful teaching or service,

in accordance with the Connecticut State Regulation of Administrative Agencies, §10-145d-574(c), and answer the question presented for decision as “no.”

The Hearing Officer may wish to know that Dr. Johnson is not forever barred from obtaining an 092 certificate. As stated by Ms. Pugliese at the hearing:

They're just not eligible at the date that they're applying. We've not denied their application. They're just not eligible. They have, then, once they reached the 50-month service time, they will become eligible to get the 092 certification.

(Tr. p. 76).

CONNECTICUT STATE DEPARTMENT OF
EDUCATION

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CERTIFICATION OF SERVICE

This is to certify that this CSDE brief was e-mailed to Attorney Corey J. Brinson and Hearing Officer Ann F. Bird this 9th day of January, 2015.

By *Louis B. Todisco*
Louis B. Todisco, Staff Attorney

3

DR. JOSEPH JOHNSON

CASE NO. 14-1

vs.

STEFAN PRYOR

STATE OF CONNECTICUT

DEPARTMENT OF EDUCATION

January 09, 2015

REQUEST FOR DECLARATORY RULING: POST-HEARING BRIEF

The Petitioner, Dr. Joseph Johnson, through his undersigned legal counsel, pursuant to the hearing officer's orders, provides this post-hearing brief. As argued more fully below, and as shown by the evidence adduced from the hearing on November 21, 2014, the hearing officer should issue a declaratory ruling—concerning the interpretation of Conn. Agencies Regs. § 10-145(c)-574 (2014)—that Dr. Joseph Johnson's professional work experiences has satisfied the 50-months of service rule as required in said regulations.

I. There is No Issue Dr. Johnson Has Completed 50 Months of Legitimate Service

Based on the Dr. Joseph Johnson's testimony, there is no issue that he has completed 50 months of successful teaching or administering. Indeed, even Nancy Pugliese, who is the Chief of Bureau Educators Standards and Certification for the State Department of Education, has no concern that Dr. Johnson has completed 50 months of service. See Transcript Pg. 91, 4-21. So the question is whether the clause—in a position or positions which would have required certification had the service been in Connecticut public schools applies to Dr. Johnson. See Conn. Agencies Regs. § 10-145(d)-574 (2014).¹

¹ Conn. Agencies Regs. § 10-145(c)-574 (2014) "Has completed 50 school months of successful teaching or service, which shall have been in public schools or in approved nonpublic schools or nonpublic schools

I. Any Ambiguities in the Regulation Should Be Made In Favor of Dr. Johnson

Dr. Johnson meets the requirements of Conn. Agencies Regs. § 10-145d(c)-574. Specifically, he has obtained 50 months of successful teaching and service in Connecticut and Washington D.C. If he had held these same teaching and administrative positions in Connecticut—as these teaching and administrative positions required certification in Connecticut—then he meets the plain language of the regulation.

The hearing officer should reject the State Department of Education, Bureau of Educator and Certification's reading that the above-referenced regulation only applies to "individuals in a state education agency or regional education service center who serve in an administrative capacity as it related to education."²

However, that interpretation is misplaced and ignores the plain language of the regulation. The agency's interpretation is inconsistent with the plain meaning of the regulation and it is arbitrarily applied in these circumstances. The agency does not have the final say concerning its regulations. Courts in Connecticut have the final say concerning an agency's interpretation of a regulation. See e.g., Sarrazin v. Coastal, Inc., 311 Conn. 581, 611 (2014)(declining to afford deference to the Connecticut Department of Labor's interpretation of its own regulation invoking the exercise of plenary review over questions of statutory or

approved by the appropriate governing body in another state in a position or positions requiring certification in the state where employed, or in a position or positions which would have required certification had the service been in Connecticut public schools, or in a state education agency as a professional or managerial staff member." Consideration may be given toward partial fulfillment of the requirements of this subsection to applicants who have completed, as part of a planned program of preparation, a one-year period of internship in areas of school administration and supervision under the supervision of the recommending institution;

² See Letter of N. Pugliese dated May 09, 2012.

regulatory interpretation if an agency's interpretation has not been formally articulated and time-tested by the agency or previously considered by the courts). But before we even get to a court's interpretation, the analysis conducted to date by the Department of Education has been weak at best.

The major arbiter of whether Dr. Johnson is eligible for certification thus far is Nancy Pugliese, who was the Department of Education's only witness at the November 21, 2014, hearing. See Transcript Pg. 82, 5-6. She testified that she is a law school graduate; however, she is not a member of the Connecticut bar nor is she an attorney who provides legal advice and does legal analyst. See Transcript Pg. 81, 14-23. Ms. Pugliese did not confer with any legal authority within her department concerning the regulation and how it applies to Dr. Johnson. See Transcript Pg. 82, 19-23. Yes, an agency has deference to interpret its regulation, but that should not stand unanalyzed or unchallenged especially when no attorney for the agency has even attempted to determine whether the regulations apply to Dr. Johnson in these circumstances.

In fact, the State's own certification form, State's Exhibit #4, is inconsistent with the State's interpretation of the regulation. That form does not ask whether or not the petitioner, Dr. Johnson, held a certification for the position—it only concerns itself with whether a certification was required for the position. The State's own form it uses for certification is consistent with the petitioner's interpretation of the regulation (and the person from the State Department of Education who drafted the form.) And the form does not ask whether the applicant was certified; rather, it asks whether the position required certification. Here the state continues to follow the applicant rather than the position. The proper question is whether the position required

certification; not whether the applicant was actually certified. Mr. Pugliese tries to rectify this by saying that the regulation has too many comas and that it could cause confusion. See Transcript Pg. 92, 1-24. More importantly, she admitted that the State Department of Education has done nothing to modify the statute, so that it means whatever interpretation she wants it to mean. See Transcript Pg. 93, 1-12. So here, with these admissions, the petitioner should have the benefit of the plain meaning of the regulation. If the state wants it to mean something else it can modify the regulation and add or omit the necessary commas as explained by Ms. Pugliese that there is a process to modify the regulation. But the way the regulation is written in its current format, Dr. Johnson should have the benefit of the plain meaning of the statute.

II.

WHEREFORE, the Petitioner respectfully requests that the State of Connecticut, Department of Education, certify that Dr. Joseph Johnson has completed 50 school months of successful teaching or service... in a position or positions which would have required certification had the service been in Connecticut public schools therefore satisfying the 50-month of eligibility rule for certification for an Intermediate Administrator Certificate in Connecticut. See Conn. Agencies Regs. § 10-145(d)-574 (2014).³

THE PETITIONER,

³ Conn. Agencies Regs. § 10-145(c)-574 (2014) Has completed 50 school months of successful teaching or service, which shall have been in public schools or in approved nonpublic schools or nonpublic schools approved by the appropriate governing body in another state in a position or positions requiring certification in the state where employed, or in a position or positions which would have required certification had the service been in Connecticut public schools, or in a state education agency as a professional or managerial staff member. Consideration may be given toward partial fulfillment of the requirements of this subsection to applicants who have completed, as part of a planned program of preparation, a one-year period of internship in areas of school administration and supervision under the supervision of the recommending institution;

JOSEPH JOHNSON

BY _____ /s/
Corey J. Brinson, Esq.
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CERTIFICATION

THIS IS TO CERTIFY that a copy of the foregoing has been e-mailed, this 9th day of
January, 2015, to:

Louis Todisco
Attorney
Department of Education
165 Capitol Avenue
Hartford, CT 06106-1630

_____/s/
Corey J. Brinson

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DR. JOSEPH JOHNSON

CASE NO. 14-1

v.

STEFAN PRYOR

STATE OF CONNECTICUT

DEPARTMENT OF EDUCATION :

February 20, 2015

**PETITIONER'S EXCEPTION TO PROPOSED FINAL DECISION AND ORDER AND
REQUEST FOR ORAL ARGUMENT**

Pursuant to Conn. Gen. Stat. 4-179, the Petitioner, Dr. Joseph Johnson, through his undersigned legal counsel, respectfully takes exception to the Impartial Hearing Officer's Proposed Final Decision dated January 29, 2015. As explained more fully below, the State Board of Education should not adopt the Impartial Hearing Officer's proposed final decision—concerning the interpretation of Conn. Agencies Regs. § 10-145(c)-574 (2014);—specifically, that Dr. Joseph Johnson has not satisfied the 50-months-of-service rule as required in said regulations.

I. The Impartial Hearing Officer's Ruling Ignores the Plain Language of the Regulation to Effect a Rule Unsupported by the Law and Therefore It Should Not Be Adopted By The Board.

The Impartial Hearing Officer's analysis concerning what is "reasonable" is purely subjective and unsupported by the plain language of the regulation. Moreover, crediting Dr. Johnson's out-of-state service could be considered "reasonable" whether or not he held a certification because he had the experience consistent with the language of the regulation in question and it is the necessary result of writing a broad, catch-all regulation provision to deal with 50 state certification rules.

The Impartial Hearing Officer's reliance on Conn. Gen. Stat. § 10-145(a) is misplaced. That Certification statute concerns the applicant's experience and certifications. On the other hand, Conn. Agencies Regs. § 10-145(c)-574 (2014), which is at issue here, concerns out-of-state positions because likely it could not account for the different certification requirements of 50 states; and so, the regulation is reasonable—as written—because it looks at whether or not a position would have required certification in Connecticut—not whether the applicant actually held the certification. By using a “what if the position was in Connecticut” approach is reasonable. There is a concern that such an interpretation would “irrationally credit the experience of educators who worked in positions for which they were not qualified under the law of another jurisdiction.” Hearing Officer Ruling Pg.8. Again, because the certification rules and regulations would be different in all 50 states, and because in some states a certification may simply mean completing an application without the same rigors of qualifications as Connecticut, there is no way for Connecticut to cement in writing what out-of-state certifications to accept or reject. As a result, lawmakers chose to look at the out-of state position to see whether or not the same position would have required certification in Connecticut. The regulation does not ask that the application must have held certification in the position. This language was not adopted and it could have been if that was the intent of the regulation. Rather, the language was selected to look at the position and not to look at the applicant so that the out-of-state applicants seeking certification would have been on the same playing field as if they were in state.

This decision to use a broad approach to analyzing out-of-state applicants created a loophole where someone could not be certified in an out-of-state position and yet still be eligible for certification in Connecticut. This is a reasonable interpretation and a balancing act

considering the state's inability to discern and analyze all 50 state certification requirements. This is the law in Connecticut. It should be honored. And Dr. Johnson should not be penalized because a regulation was adopted for a one-size-fits-all circumstance and then analyzed so that it discredits his experiences in positions that would have required certification in Connecticut.

For these reasons, the Petitioner, Dr. Joseph Johnson respectfully takes exception to the Impartial Hearing Officer's ruling dated January 29, 2015 and request oral argument before the Connecticut State Board of Education.

THE PETITIONER,
JOSEPH JOHNSON

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CERTIFICATION

THIS IS TO CERTIFY that a copy of the foregoing has been e-mailed, this 20th day of
February, 2015, to:

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