

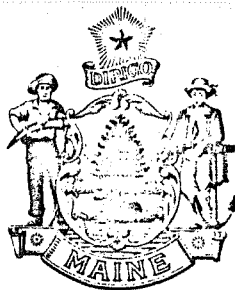
MAINE STATE LEGISLATURE

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AUGUSTA, MAINE 04333

May 30, 1979

Honorable Bonnie Post
House of Representatives
State House
Augusta, Maine 04333

Re: Regulations of the State Board of Education Regarding
Teachers Certificates

Dear Representative Post:

In your letter of April 30, 1979, you posed four questions regarding the State Board of Education's regulations dealing with the certification of teachers of trainable, mentally retarded children.

Your first question is whether "page 31-D(1)¹ Term: renewal Basic Certificate or any other section of the current regulations prohibit the Department of Education from accepting credits for a renewal that were taken before the life of a current certificate for trainable, mentally retarded children." Your second question is whether "page 31-D(1)¹ or any other section of the current regulations allow the Department to refuse to accept credits for a renewal that was taken before the life of a current certificate for trainable, mentally retarded children." In answering these two questions, it is essential to analyze the relevant provisions of the regulations to determine the authority of the Department of Educational and Cultural Services to issue teacher certificates.

Pursuant to 20 M.R.S.A. §59, the "State Board of Education shall, in accordance with such rules and regulations as it may prescribe, authorize the Commissioner of Educational and Cultural Services to certify . . . teachers and other professional personnel for service in any public school in the state . . . " The regulations referred to in your letter of April 30 have been codified under the Administrative Procedures Act and are included in Chapter 115 of the Department of Educational and Cultural Services' rules and regulations.¹ In particular, the regulations on page 31-D(1), referred to in your letter, are now contained in Chapter 115.3(A)(10). Sub-paragraph 10 was adopted by the State Board in 1973 to authorize the Commissioner to issue basic certificates to teachers of trainable, mentally retarded children when those teachers

¹05-071 CMR 115.3(A)(10)

are not graduates of a four-year baccalaureate program or are not otherwise qualified to hold a provisional, elementary or secondary teaching certificate. The requirement for the renewal of a basic certificate is set forth in Chapter 115.3(A)(10)(c):

"This certificate is issued for a two-year term. It may be renewed for successive two-year terms upon completion of six hours of approved study for each renewal; or for graduates of an approved two-year teacher associates program, matriculation in an approved program leading to a baccalaureate degree shall be considered 'approved study'."

It appears that the intent of paragraph (c) above is to require that a teacher, applying to renew his basic certificate, shall have completed during the lifetime of his existing certificate six hours of approved study. Although paragraph (c) does not specifically state that the study must have been completed during the lifetime of the existing certificate, the Board of Education established that standard in Chapter 115.2(B)(2).

Pursuant to Chapter 115.2(B)(2), which deals with the general regulations and policies governing the certification process, an applicant for the renewal of a current certificate shall "file, if needed for renewal, official transcripts of additional approved study completed during the life of the current certificate." (Emphasis supplied). A review of other teaching certificates, which require additional course completion before they may be renewed, have language which is similar, if not identical, to that found in Chapter 115.3(A)(10)(c). Therefore, it is apparent that the State Board intended that whenever an applicant is required to complete additional approved study before his certificate may be renewed, the applicant shall have completed that study during the life of the current certificate.

The Commissioner may only recognize credits for renewal of a provisional certificate in accordance with the authority delegated to him by the State Board of Education. There is nothing in the regulations which authorizes him to waive the basic requirements set forth in Chapter 115.3(A)(10)(c) regarding the renewal of the certificate for a teacher of trainable, mentally retarded children. See Ditullio v. State Board of Examiners of Psychologists, Me. 387 A.2d 757, 758. It is thus the opinion of this office that the Commissioner of the Department of Educational and Cultural Services may only consider those courses which were completed during the lifetime of an applicant's current certificate in acting upon the applicant's request for a renewal of that certificate.

The third question you raised is whether "page 5, section 5,² or any other section of the regulations prohibit the Department from accepting credits for reinstatement of the lapsed certificate for trainable, mentally retarded children which were taken more than two, but less than five years from the time of application for reinstatement." Finally, your fourth question inquires as to whether "page 5, section 5,² or any other section of the regulations allow the Department to refuse to accept credits for reinstatement of a lapsed certificate for trainable, mentally retarded children which were taken more than two, but less than five years from the time of application for reinstatement."

²05-071 CMR 115.2(E)(1)

The regulation adopted by the State Board of Education relative to the reinstatement of lapsed certificates is set forth in Chapter 115.2(E)(1):

"Teachers covered by the grandfather clause which provides that they 'may continue to be certified under the regulations in effect at the time of the initial certification' may reinstate lapsed certificates with, in general, six hours of approved additional study. This study must have been completed within five years of the time of application for reinstatement. Three hours of related study would serve to reinstate a certificate for one year."

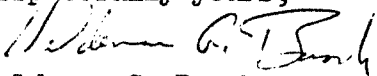
When Chapter 115.2(E)(1) was adopted by the State Board of Education in 1963, the Commissioner could only issue certificates for minimum periods of five years.

In 1973, the State Board authorized the Department to issue basic certificates for teachers of trainable, mentally retarded children when those teachers did not possess the minimum requirements for a provisional certificate. The basic certificate was to be issued for two-year terms while the provisional certificates would continue to be issued for five-year terms. The State Board did not amend Chapter 115.2(E)(1) in 1973 to deal with the new two-year certificates. Although it appears that the language of sub-paragraph (1) would allow a teacher, whose provisional certificate has lapsed, to use in his application for reinstatement credits earned during the five-year period immediately prior to that application, it is important to note that this period coincides with the five-year period for which a provisional certificate is issued.

Although, there is some question as to the effect which Chapter 115.2(E)(1) has on a lapsed, two-year certificate, it is the opinion of this office that teachers, who are covered by the grandfather clause and who held a basic, two-year certificate, are entitled to be reinstated to that basic certificate should the certificate lapse. Accordingly, the applicant must have completed the necessary six hours of approved additional study within two years immediately prior to the application for reinstatement rather than the five years set forth in Chapter 115.2(E)(1). It would appear to be the intent of the State Board that an applicant not be able to have courses which he completed more than two years ago be considered in his application for reinstatement of his lapsed basic, two-year certificate when it adopted Chapter 115.3(A)(10). In other words, a lapsed certificate may be reinstated if the applicant has taken the requisite number of courses during a specified number of years prior to his application being filed; i.e. within five years for a provisional certificate and within two years for a basic certificate.

I trust the above is dispositive of the questions which you have raised. I have attached a copy of the regulations in the A.P.A. form as they are currently on file at the Secretary of State's Office for your information.

Respectfully yours,


Waldemar G. Buschmann
Assistant Attorney General

WGB:lm
Attachment