

BRENDA MCALLISTER,

Appellant

v.

PRINCE GEORGE'S COUNTY BOARD  
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 11-27

### OPINION

#### INTRODUCTION

The Appellant, a teacher in the Prince George's County Public School System (PGCPS), appealed the non-renewal of her employment with the school system. The Prince George's County Board of Education (local board) filed a Motion for Summary Affirmance maintaining that its decision was not arbitrary, unreasonable or illegal. The Appellant filed an Opposition to the Motion, and the local board filed a Reply.

#### FACTUAL BACKGROUND

Appellant began her employment with PGCPS as a classroom teacher on August 14, 2006 under a provisional contract. Under COMAR 13A.07.02.01C, a provisional contract for conditional or resident teacher certificate holders is a one year contract that expires on June 30<sup>th</sup> at the end of each school year. *Id.*

At the time of hire, the Appellant had a conditional teaching certificate that was due to expire on July 1, 2008.<sup>1</sup> The school system provided Appellant with information regarding the requirements to obtain a professional certificate. (Appeal, Attach. E-6). On August 6, 2006, Appellant signed a Letter of Understanding acknowledging that she needed the PRAXIS and special education coursework in order to get her professional certificate. (Motion, Attach. 2). The Letter of Understanding advised the Appellant that "[c]ontinued employment with PGCPS is contingent, in part, upon completion of certification renewal requirements." (*Id.*).

Appellant's provisional contract with PGCPS automatically expired on June 30, 2007. Although no new contract was executed, Appellant continued to teach for the 2007-2008 school year.

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<sup>1</sup>A conditional certificate is issued for a period of two years and is renewable for one two-year term if certain requirements are met. COMAR 13A.12.01.08.

In March 2008, PGCPs advised the Appellant that she had still not completed the certification requirements as she still needed 12 credit hours and to pass the PRAXIS. (Motion, Attach 4). The letter advised that “[f]ailure to satisfy the renewal requirements by [June 30, 2008] shall be cause for a teacher to be released.” (*Id.*)

Thereafter, Appellant met the requirements for a second conditional certificate, which was effective July 1, 2008 through June 30, 2010. (Attach. to Appeal, 7/2/08 Email from Appellant to Gwynn; Motion, Attach 5). Appellant continued working for PGCPs for the 2008-2009 school year, but signed no contract, provisional or otherwise.<sup>2</sup>

On September 17, 2008, the PGCPs advised Appellant that her 2<sup>nd</sup> conditional certificate was due to expire in June 2010 and that she needed to pass the Praxis II and complete 21 credit hours by June 1, 2009 or she could be released from her position. (Motion, Attach 5).

On May 21, 2009, the local board chair and the local superintendent issued a memorandum informing PGCPs employees of an impending reduction-in-force to address a budget deficit for fiscal year 2010. The memo advised that measures to eliminate the budget deficit included the termination of conditional teachers not meeting certification requirements by June 2009. (Attach. to Appeal).

On May 28, 2009, Ms. Christine B. Knighton, then Chief Human Resources Officer, notified the Appellant that her provisional teaching contract would not be renewed for the 2009-2010 school year. Ms. Knighton advised that the Appellant could reapply for positions for which she was qualified if she completed the requirements. (Motion, Attach. 6).

By letter dated July 13, 2009, Robert J. Gaskin, Supervisor of Teacher Staffing and Certification, notified the Appellant that her provisional contract had expired on June 30, 2009 and was not being renewed. (Motion, Ex, 7). The July 13 letter reiterated that if the Appellant were to complete the requirements necessary for a professional certificate, she could reapply with PGCPs for a position. (*Id.*)

The Appellant appealed the decision not to renew her contract to the local superintendent and local board. Both upheld the non-renewal. This appeal followed.

On July 1, 2010, Appellant received her professional teaching certificate which is valid through June 30, 2015. (Attach. to Appeal, Teaching Certificate).

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<sup>2</sup>Appellant participated in the PGCPs Teacher Certification Program which permitted her to register for courses leading towards a Standard Professional Certificate at various colleges with tuition assistance being provided through the school system. Her letter of Billing Authorization for the program expired on June 30, 2009. (Attach. To Appeal).

## STANDARD OF REVIEW

COMAR 13A.07.02.01C sets forth the terms of the Provisional Contract and provides in pertinent part:

The term of this contract shall extend from the date of its signing until the thirtieth day of June next succeeding said date of signing, and this contract shall automatically terminate and expire on the thirtieth day of June next succeeding the date of its signing.

Because this contract exists for only one year, the only basis for reversal of the local board's decision not to enter into a new contract is if the decision were made for illegal or constitutionally discriminatory reasons. *See Bd. of Regents v. Roth*, 408 U.S. 564, 578-79 (1972)(finding absent a constitutional violation, there is no other process due a non-tenured teacher).

## ANALYSIS

Appellant maintains that the local board was precluded from terminating her based on the automatic termination clause contained in the provisional contract because her provisional contract expired on June 30, 2007 and she did not execute written contracts for the 2007-2008 and the 2008-2009 school years. She further maintains that the school system's continued employment of her for an additional two years without a written contract created an implied employment contract that entitled her remain employed so long as she continued to maintain a valid conditional certificate.

Given the facts of this case, the only type of teaching contract that could be implied here was a provisional contract. As a matter of law, that is the only type of contract the Appellant was eligible for because she held only a conditional teaching certificate. Provisional contracts are in effect for one year only. Therefore, even though PGCPS employed the Appellant for the 2007-2008 and 2008-2009 school years, Appellant could not have had any expectation of continued employment beyond a one year term.

The teacher certification process is separate from the teacher contract period. Issuance of a certificate does not extend a teaching contract. The fact that Appellant's 2<sup>nd</sup> conditional certification did not expire until June 2010 did not require the school system to employ her until that time. Indeed non-renewal of Appellant's employment was a real possibility given that PGCPS advised her in September 2008 that she needed to complete her certification requirements by June 1, 2009 or risk being released from her position. (Motion, Attach. 5). Although the Appellant claims she was told by PGCPS Human Resources Department during the 2007-2008 school year that her employment would continue so long as she held a valid conditional certificate, there is no evidence of such a representation. Moreover, the September 2008 letter put the Appellant on notice that this was not the case.

In addition, during the 2008-2009 school year, PGCPs faced budget challenges that made a reduction-in-force/layoff scenario a real possibility. (Motion, Attach. 1). The school system was forced to make difficult choices about the retention of employees, with its goal being to retain as many fully certified and tenured teachers as possible. (*Id.*). The school system made the decision not to renew conditionally certified teachers who would not be able to convert to a standard professional certificate as of July 1, 2009. (*Id.*). Unfortunately, the Appellant had not fulfilled the certification requirements to convert to a professional certificate by the deadline.


Appellant argues that her employment should be reinstated because PGCPs has continued to employ some conditionally certified teachers. The record, however, contains no evidence regarding those teachers and the circumstances of their employment and certification. Moreover, that information is immaterial given that, as stated above, the Appellant could have no expectation of employment with PGCPs beyond the one year period.

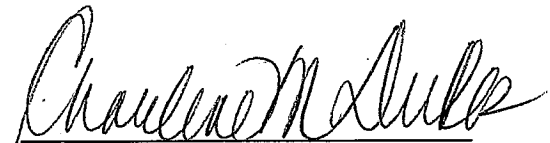
Appellant asserts that the local board violated the reduction-in-force provisions of the school system's Negotiated Agreement with the Prince George's Educators' Association when it terminated her solely because she held a conditional teaching certificate without regard to her subject field assignment in special education and her seniority ranking. This appeal is not the appropriate venue for an allegation of a violation of the negotiated agreement. Such issues are subject to arbitration under the provisions of the agreement. (Negotiated Agreement, §4.12).

Finally, the Appellant takes issue with many of the factual findings in the local board's Order. We have reviewed those claims and find either no merit to them or that they are not material factual disputes affecting the outcome of the case. We have set forth the material factual findings in this Opinion based on our review of the record.

#### CONCLUSION

For the reasons stated above, we affirm the local board's decision.

  
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May 24, 2011