

The State of New Hampshire

Supreme Court

No. 98-094 *Appeal of Leslie Higgins*

TO THE CLERK OF NH PERSONNEL APPEALS BOARD
#97-0-5

*I hereby certify that the Supreme Court has issued the following order
in the above-entitled action:*

*October 23, 1998. Appeal from administrative agency is declined.
See Rule 10(1).*

Broderick, J., did not participate.

November 19, 1998

Attest: *Carol A. Belmain*
Carol A. Belmain, Deputy Clerk

FILED
NOV 19 1998
NH SUPREME COURT

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 98-094, Appeal of Leslie Higgins, the court upon October 23, 1998, made the following order:

Appeal from administrative agency is declined. See Rule 10(1).

Broderick, J., did not participate.

Distribution:

NH Personnel Appeals Board 97-0-5
Michael C. Reynolds, Esquire
Attorney General
Donna K. Nadeau, Supreme Court
File

Howard J. Zibel,
Clerk

98-094-001

State of New Hampshire



PERSONNEL APPEALS BOARD
25 Capitol Street
Concord, New Hampshire 03301
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APPEAL OF LESLIE HIGGINS

Department of Education

Response to Appellant's Motion for Reconsideration and State's Objection

Docket #97-O-5

Monday, January 12, 1998

By letter dated November 19, 1997, SEA Field Representative filed a Motion for Reconsideration of the Board's October 29, 1997, decision denying her request for certification for the classification of Education Consultant I. Personnel Director Lamberton filed an Objection to that Motion by letter dated November 24, 1997.

A properly filed Motion for Rehearing must set forth fully every ground upon which it is alleged that the decision complained of was unlawful or unreasonable, or must present additional facts that were not available at the original hearing. In support of her motion, the appellant reiterated her original argument that the Director's interpretation of the minimum requirements listed in the class specification was incorrect, and she alleged that by concurring with the Director's interpretation, the Board acted unreasonably. She argued that the Director's interpretation of the qualifications had the potential for creating age discrimination. The appellant also argued that the phrase "relevant experience with disadvantaged or homeless education" is not "a defined term," that the evidence submitted by Ms. Higgins did establish that more than two years of her experience was "relevant," that the Board's reference to a "special focus on either disadvantaged or homeless education" misstated the requirements of the class specification, and that even though there had been no objection to the matter being heard on offers of proof, the appellant was now entitled to "an evidentiary hearing." Finally, the appellant argued that the Board's decision did not specifically address Ms. Higgins' Title I argument, and therefore failed to satisfy the requirements of RSA 541-A.

In her objection, the Director argued that RSA 21-I:43 gave the director of personnel sole authority to adopt and interpret rules related to certification, that the director has sole authority to determine what qualifications shall be required of all applicants for a position, and that Ms. Higgins' application was subject to the same standard of review as all other applications for the classification of Education Consultant I. She argued that Ms. Higgins' had been denied none of her due process rights, since she had the opportunity to submit documentary evidence and/or offers of proof to support her claims of having the appropriate experience for the position. The Director specifically noted that the class specification did not call for two years of experience teaching disadvantaged students, but to two years of relevant experience with disadvantaged or homeless education. With respect to the remaining issues, the Director argued that the appellant had offered neither evidence nor argument to support her allegations.

Having considered the Motion and Objection in conjunction with the Board's decision in this matter, the Board voted unanimously to deny the Motion for Reconsideration and to affirm its decision that Ms. Higgins does not possess the education or experience necessary to meet the minimum qualifications for certification as an Education Consultant I.

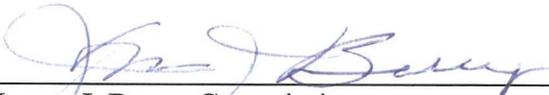
The New Hampshire Personnel Appeals Board



Lisa A. Rule, Acting Chairperson



Robert J. Johnson, Commissioner



James J. Barry, Commissioner

cc: Virginia A. Lamberton, Director of Personnel, 25 Capitol St., Concord, NH 03301
Susan Auerbach, Human Resource Administrator, Dept. of Education, 101
Pleasant St., Concord, NH 03301
Jean Chellis, Field Representative, State Employees' Association, PO Box 3303,
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State of New Hampshire



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Appeal of Leslie Higgins

Docket #97-O-5

Department of Education

October 29, 1997

The New Hampshire Personnel Appeals Board (Rule, Johnson and Barry) met on Wednesday, September 10, 1997, under the authority of RSA 21-I:58, to hear the appeal of Leslie Higgins, an employee of the New Hampshire Department of Education. Ms. Higgins, who was represented at the hearing by SEA Field Representative Jean Chellis, was appealing the Personnel Director's decision denying her certification for the position of Education Consultant I. Virginia A. Lamberton appeared on behalf of the Division of Personnel. The appeal was heard on offers of proof by the representatives of the parties.¹

The record in this matter consists of the audio tape recording of the hearing, pleadings submitted by the parties prior to the hearing, and documents admitted into evidence at the hearing. Those documents were admitted as follows:

State's Exhibits

1. Supplemental Job Description for Position #19170
2. Ms. Higgins' application for position #19170
3. Ms. Higgins' Resume
4. Ms. Higgins Transcripts

¹ In keeping with its usual practice, the Board received documentary evidence as well as hearing the parties' oral arguments and offers of proof. Had the Board then determined that it had insufficient evidence upon which to decide the appeal, it would have directed the parties to produce additional evidence, up to and including the testimony of witnesses.

4. Ms. Higgins' transcripts
5. Memorandum from Susan Auerbach to Ms. Higgins
6. Letter from Ms. Higgins to Virginia Lamberton
7. Letter from Virginia Lamberton to Ms. Higgins

Appellant's Exhibits

- A. Education Consultant I Classification Last Revised 1/30/97
- B. Education Consultant I Classification Last Revised 12/15/77
- C. Education Consultant I Supplemental Job Description for Position #19170 Last Amended November, 1996
- D. February 26, 1996 Memorandum from Susan Auerbach to Leslie Higgins regarding Education Consultant I application, Position #13298
- E. Notre Dame College transcripts for Leslie Higgins (with certification of additional educational credits earned)
- F. Two pages from Manual on Title I of the Elementary and Secondary Education Act of 1965
- G. Copy of Ms. Higgins' application for Education Consultant I

Ms. Lamberton argued that the appellant lacked both the education and experience for certification for the position of "Education Consultant I - Compensatory Education/Homeless." Ms. Lamberton argued that in order to be certified as meeting the minimum educational requirements, an applicant needed to possess a Master's degree, with an emphasis on early childhood development, special education, family and consumer sciences, public education policy or a related field, plus fifteen additional hours of approved graduate study in education or its equivalent. Ms. Lamberton argued that since the original class specification was drafted, the requirement for "additional" graduate level credits meant credits earned after the date on which the Master's degree was conferred. Ms. Lamberton reviewed the appellant's transcripts, noting that she had only earned three of the required fifteen additional hours of approved graduate credit after the date on which her Master's degree had been conferred.

Ms. Lamberton also argued that the appellant lacked the necessary experience for certification. She reviewed the specification, noting that the position required an applicant to have four years of experience in the field of education, two years of which must have been relevant experience with disadvantaged or homeless education. She argued that at a maximum, Ms. Higgins had ten months of qualifying experience with disadvantaged or homeless education programs.

Ms. Chellis argued that when Susan Auerbach, H. R. Administrator for the Department of Education, notified Ms. Higgins of her non-certification in February, 1996, the only reason cited was lack of experience, not lack of education. She argued that it should not matter when the additional graduate credit hours were earned, and that the specification made no reference to graduate credits earned after graduation from a Master's program. Ms. Chellis also argued that the appellant believed she had at least four years of experience dealing with disadvantaged and homeless education since many of her students had been Title I students.

Although there is some merit to the appellant's complaint about the wording of the class specification, the Board is persuaded that the additional credit hours must be earned after completion of the Master's program. The Director made an uncontroverted offer of proof that certification for Education Consultants for at least the last ten years has consistently required an applicant to have earned the additional graduate credits after completion of the Master's program. That interpretation is also internally consistent, otherwise the specification would simply call for a total number of approved graduate level credit hours and possession of a Master's degree. That is not the requirement and, as such, the Board found that Ms. Higgins did not possess the requisite educational background for certification as an Education Consultant I.

With respect to the appellant's experience, the Board found that Ms. Higgins did not possess the required two years of experience in the field of education relevant to disadvantaged or homeless education. Ms. Higgins' asserted that she worked with a, "large number of disadvantaged children," at Allenstown Elementary School as a fourth grade teacher, worked with special education students, "Many from disadvantaged homes, at Pine Haven Boys Center and worked as "Case manager for special needs students in my classroom." However, the experience she described

was that of an elementary school teacher with no special focus on either disadvantaged or homeless education. Accordingly, the Board found that the appellant did not possess the requisite experience to meet the minimum qualifications for certification as an Education Consultant I.

On the evidence, oral argument and offers of proof, the Board voted unanimously to deny Ms. Higgins' appeal. In so doing, the Board voted to affirm the Director's decision finding that the appellant did not meet the minimum qualifications for certification as an Education Consultant I for Compensatory Education/Homeless programming.

THE PERSONNEL APPEALS BOARD



Lisa A. Rule, Acting Chair



Robert J. Johnson, Commissioner



James J. Barry, Commissioner

cc: Virginia A. Lamberton, Director of Personnel, 25 Capitol St., Concord, NH 03301
Jean Chellis, SEA Field Representative, PO Box 3303, Concord, NH 03302-3303
Susan Auerbach, H.R. Administrator, Dept. of Education, 101 Pleasant St.,
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