

**IN THE OFFICE OF THE SECRETARY OF EDUCATION  
COMMONWEALTH OF PENNSYLVANIA**

<b>Shirley K. Curl,</b> <b>Appellant</b>	:	
	:	
<b>v.</b>	:	<b>Teacher Tenure Appeal</b>
	:	<b>No. 01-04</b>
	:	
<b>Solanco School District,</b> <b>Appellee</b>	:	

**OPINION AND ORDER**

Dr. Shirley K. Curl (“Dr. Curl” or “Appellant”) appeals to the Secretary of Education (“Secretary”) from the decision of the Board of School Directors of the Solanco School District to terminate her employment without conducting a pre-termination hearing. Dr. Curl challenges the validity of her termination and also claims that she was denied due process by the District due to the fact that it did not hold a hearing prior to terminating her from employment.

**FINDINGS OF FACT**

1. Prior to her dismissal in December 2003, Dr. Curl was employed by the Solanco School District (“District”) as its Director of Instructional Services. Petition of Appeal ¶B1 and Answer ¶B1.
2. By letter dated November 24, 2003, District Superintendent Jon Rednak asked the Department of Education’s Bureau of Teacher Certification and Preparation (“Bureau”) whether Dr. Curl had the appropriate certification to continue working as its Director of Instructional Services. Brief of Appellant p. 4; District’s Memorandum of Law Exhibit F.
3. By letter dated November 26, 2003, the Bureau responded to the District’s inquiries. The Bureau replied that, based upon the

documents submitted by the District, the individual in the position of Director of Instructional Services "must hold the Supervisor of Special Education certification." Brief of Appellant p. 4; District's Memorandum of Law Exhibit G.

4. Dr. Curl did not hold Supervisor of Special Education certification at the time her employment with the District was terminated. Petition of Appeal ¶B5 and Answer ¶B5, ¶B6.
5. On or about December 10, 2003, Superintendent Rednak suspended Dr. Curl from employment with the District on the basis that she was not appropriately certified for the Director of Instructional Services position she held. Petition of Appeal ¶B7 and Answer ¶B7.
6. On or about December 10, 2003, Superintendent Rednak advised Dr. Curl that he was recommending to the District's Board of School Directors that Dr. Curl's employment with the District be terminated.
7. At a public school board meeting held on December 19, 2003, the District's Board of School Directors voted to terminate Dr. Curl's employment by a unanimous vote of 8 to 0. Petition of Appeal ¶B12 and Answer ¶B12.
8. On or about January 9, 2004, Dr. Curl filed an appeal of her termination pursuant to 24 P.S. §11-1131, and also an appeal from the denial of a pre-termination hearing under 22 Pa. Code §351.5(a).
9. On or about January 29, 2004, the District filed an Answer and Motion to Quash Dr. Curl's Appeal. The District asserts Dr. Curl was not entitled to a notice of charges and a hearing at the time her employment with the District was terminated.

## **DISCUSSION**

In its Answer and Motion to Quash, the District argues that Dr. Curl, lacking the proper certification, was not protected by the Teacher Tenure provisions of the Public School Code at the time the District terminated her employment. Article XI of the Public School Code affords a wide array of procedural and substantive rights, including the right to appeal a dismissal by a Board of School Directors to the Secretary of Education. 24 P.S. §11-1131. The right to appeal, however, extends only to “professional employees.”

Pursuant to the Commonwealth Court cases interpreting Article XI, an employee of a public school district is not considered a “professional employee” unless that person is appropriately certified for his or her position. For example, in *School District of Philadelphia v. Brockington*, 98 Pa. Commw. 534, 511 A.2d 944 (1986), *appeal denied*, 514 Pa. 644, 523 A.2d 1132 (1987), the court upheld the School District of Philadelphia’s decision to remove an educator from her position as a supervisor with the school district without affording her the protections provided in Article XI because it was discovered, as it was in the instant case, that the educator did not have the appropriate certification for her position. The court affirmed the conclusion of the school district that, because the educator did not hold the appropriate certification for her position, she was not a “professional employee” under the Public School Code. *Id.* In *Brockington*, the court found that an educator did not obtain the status of “professional employee” in her position as a supervisor simply by virtue of the fact that she was employed as a supervisor prior to her removal from that position. According to the court, certification in the position from which the educator was removed (i.e. supervisor’s certification) would have been required as well for the educator to be deemed a “professional employee.” Essentially, the court stated that employment as a supervisor AND certification as a

supervisor were prerequisites for an educator to be a "professional employee" in a supervisor's position "entitl[ing] an employee to the Code's full protection upon removal from a position for which the requisite certification is lacking." *Id.* at 537.

Further illustrating that appropriate certification in one's position is the *sine qua non* of the professional employee classification under the School Code, *Occhipinti v. Board of School Directors of Old Forge School District*, 76 Pa. Commw. 526, 464 A.2d 631 (1983), held that an educator, whose certification has lapsed, is no longer considered a "professional employee" in a position he or she holds at the moment the certification lapses. In *Occhipinti*, the court explained that the School Code could not classify a person as a professional employee subsequent to the date on which her certificate lapsed, "since she lacked the certificate which is, by statute, *fundamental to classification as a professional employee* (emphasis supplied)" under Article XI of the Public School Code. *Id.* at 632. Following this precedent, there are several prior rulings by the Secretary of Education opining that an educator whose certification has expired by its own terms ceases to be a professional employee at the time the certificate expires. See, *Shaffer v. Riverview Intermediate Unit*, TTA No. 6-97; *Gorman v. Board of School Directors of East Allegheny School District*, TTA 4-96; *Moiles v. Marple Newton School District*, TTA No. 1-00.

The Secretary of Education lacks jurisdiction to hear appeals taken by employees who have not proven that they were professional employees at the time of their separation from employment. *McCracken v. Central Susquehanna Intermediate Unit*, 34 Pa. Commw. 148, 382 A.2d 1293, (1978); *Fiorenza v. Board of School Directors of Chichester School District*, 28 Pa. Commw. 134, 367 A.2d 808, (1977). In the instant matter, the record is devoid of competent evidence to prove that Dr. Curl was a professional employee when she was dismissed as the District's Director of Instructional Services. Hence, Dr. Curl's appeal is outside the limited jurisdiction of the Secretary.

In the proceeding before the Secretary's appointed Hearing Officer, Dr. Curl had the opportunity to submit proof that she was, indeed, a professional employee when she was terminated from employment with the District. However, Dr. Curl did not take advantage of that opportunity by failing to adhere to the procedures required under the State Board of Education Regulations to appropriately introduce evidence in a Teacher Tenure Appeal. The regulations state that, if a party intends to submit evidence for consideration by the Secretary in a Teacher Tenure Appeal, a written notice of these intentions "shall be delivered to the Secretary and opposing counsel at least 14 days before the hearing." 22 Pa. Code § 351.8. The appellant did not comply with this section. Instead, she made an untimely attempt to submit testimony on the day of the hearing and to introduce additional documents into evidence after the record in this matter had been closed. On both occasions, Dr. Curl provided no prior notice to the Secretary or opposing counsel. The Hearing Officer used his discretion appropriately in refusing to allow these documents and testimony on the grounds that the appellant did not adhere to the regulatory requirements of 22 Pa. Code 351.8. *See, Dohanic v. Department of Education*, 111 Pa. Commw. 192; 533 A.2d 812 (1987) and *Keating v. Board of School Directors of the Riverside School District*, 99 Pa. Commw. 337; 513 A.2d 547 (1986).

Based upon the evidentiary record, it has not been established that Dr. Curl was appropriately certified for her position with the District at the time of her termination or that she was entitled to the procedural protections of Article XI of the Public School Code afforded to professional employees. Her appeal, therefore, is not properly within the jurisdiction of the Secretary. Accordingly, we enter the following:

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	:	
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<b>Appellee</b>	:	

**ORDER**

The appeal of Shirley K. Curl from her termination as Director of Instructional Services for the Solanco School District is dismissed for lack of jurisdiction.

\_\_\_\_\_/s/  
Vicki L. Phillips  
Secretary of Education

Dated: May 5, 2004