

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

<b>SHIRLEY K. CURL</b>	:	
	:	
v.	:	<b>TTA No. 01-04a</b>
	:	
<b>SOLANCO SCHOOL DISTRICT</b>	:	
	:	
Appellee	:	

**OPINION AND ORDER**

Shirley K. Curl (“Dr. Curl”) appeals to the Secretary of Education from the decision of the Solanco School District (the “District”) dismissing her from the position of Director of Instructional Services.

**FINDINGS OF FACT**

1. The District employed Dr. Curl in the position of Director of Instructional Services from March 22, 1994 until December 19, 2003. Joint Exhibits 1, 21, 22.
2. At all times relevant to this appeal, Dr. Curl held a Pennsylvania educator certification known as a Letter of Eligibility. Dr. Curl did not hold any other Pennsylvania educator certifications at any time while employed by the District. Joint Exhibit 2; N.T. 245-246.
3. No certifications issued in Pennsylvania correspond specifically to a position titled Director of Instructional Services. N.T.<sup>1</sup> 22-34, 326.
4. Throughout Dr. Curl’s employment with the District, an Assistant Superintendent had general oversight responsibilities for the Kindergarten through 12<sup>th</sup> grade instructional

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<sup>1</sup> “N.T.” refers to the Notes of Testimony recorded at the hearing before the Solanco School District Board of School Directors on March 22, 2005.

program, educational assessments, federal programs, continuing professional development, and teacher mentoring programs. District Exhibits 8, 12; N.T.177-180, 184-185, 202-204.

5. As Director of Instructional Services, Dr. Curl's primary responsibility was in the area of special education. N.T. 281, 332-333. Her responsibilities in that capacity included making recommendations for hiring all special education personnel, evaluating and directing professional employees within the special education department, developing the District's special education budget, addressing discipline issues with special education students, and meeting with parents and staff regarding special education issues. N.T. 204, 247, 275, 319, 320-322; District Exhibits 12, 16-18, 20.

6. Dr. Curl prepared the District's annual Special Education Plans indicating on those plans that she was the District's "Special Education Director/Coordinator." N.T. 204, 291; District Exhibits 13-15.

7. On the form known as "PDE 5016" each Pennsylvania school district must complete a "Certified Personnel Record" on which the school district lists an assignment code for the position held by each certificated employee. On the PDE 5016 forms submitted annually to the Department for the years 1996 through 2003, the District filled in the assignment code for Dr. Curl's position as "9215" which was the assignment code for "Supervisor of Special Education." N.T. 30-31, 34, 97; District Exhibit 3.

8. In November 2003, the District received a Data Exception Report from the Department of Education indicating, *inter alia*, that the certification of Dr. Curl should be reviewed. N.T. 206-207; District Exhibit 23.

9. By letter dated November 24, 2003, District Superintendent Jon Rednak sent a written request for an advisory opinion to the Department "[i]n an effort to determine whether

Dr. Curl possesses the necessary Pennsylvania certificate for her position.” N.T. 206-209, 281, 284-285; Joint Exhibit 16.

10. Superintendent Rednak gave Dr. Curl the opportunity to revise his request to the Department regarding her certification. He shared with her both the Department’s Data Exception Report and his letter requesting the Department’s opinion on the matter. Dr. Curl made no revisions to the content of the letter. N.T. 206-209, 281, 284-285.

11. By letter dated November 26, 2003, Anne Shuster, an employee of the Department’s Bureau of Teacher Certification and Preparation, advised Superintendent Rednak that Dr. Curl “must hold the Supervisor of Special Education certification” to serve as the District’s Director of Instructional Services N.T. 27-31; Joint Exhibit 17.

12. In early December 2003, Superintendent Rednak met with Dr. Curl on at least two occasions regarding her certification. N.T. 210-211, 216-217, 254.

13. As a result of Dr. Curl’s certification deficiencies, Superintendent Rednak suspended her with pay on or about December 10, 2003 and recommended that her employment be terminated. N.T. 215-216; Joint Exhibit 20.

14. At a meeting held on December 19, 2003, the District’s Board of School Directors voted unanimously to remove Dr. Curl from employment. N.T. 220-221; Joint Exhibit 22.

15. On or about August 27, 2004, the Pennsylvania Department of Auditor General released an audit report prepared in the course of a mandatory District audit. The report indicated *inter alia* that the District had employed Dr. Curl “in the position of director of instructional services for the school years 2003-04, 2002-03 and 2001-02” and that position “required a Supervisor of Special Education certificate.” N.T. 92-93, 221-224; District Exhibit 4, 24; Joint Exhibit 26.

16. One of the functions of the Bureau of Teacher Certification and Preparation is to conduct reviews of the Department of Auditor General's school audit findings to verify their accuracy. The Bureau reviewed the school audit findings in this case and subsequently issued a citation imposing a \$10,898.62 subsidy forfeiture for certification irregularities with regard to four individuals, one of which was Dr. Curl. N.T. 92-93, 97-98, 223; District Exhibits 6, 7.

17. Dr. Curl's job duties regarding gifted education, curriculum implementation, staff development, Instructional Support Teams, Child and Adolescent Service System Programs, and teacher orientation were related to her responsibilities with regard to the District's special education program. N.T. 273-276, 293-294, 308, 313, 314; Joint Exhibit 3; District Exhibit 14.

### **PROCEDURAL HISTORY**

On two separate occasions, Dr. Shirley K. Curl brought an appeal to the Secretary of Education (the "Secretary") challenging her removal from employment as the Director of Instructional Services for the Solanco School District (the "District"). The Secretary dismissed Dr. Curl's first appeal on jurisdictional grounds. However, in *Curl v Solanco School District*, 1173 C.D. 2004 [Opinion not reported], the Commonwealth Court vacated the Secretary's order and remanded this matter for further proceedings. Upon receipt of the court's decision and in compliance therewith, the Secretary remanded the case to the Solanco Board of School Directors (the "School Board") for an initial hearing. Following a full evidentiary hearing, the School Board affirmed Dr. Curl's termination.

Dr. Curl now takes a second appeal to the Secretary pursuant to 24 P.S. § 11-1131. The Secretary is required to review this matter *de novo*, or independent of the School Board's decision. *Belasco v. Board of Public Education of School District of Pittsburgh*, 510 Pa. 504, 515, 510 A.2d 340, 343 (1986). In *Belasco*, the Pennsylvania Supreme Court held that, in a

Teacher Tenure Appeal, the Secretary must conduct a neutral and impartial analysis by giving no deference to the findings below. *Id.* at 514, 510 A.2d at 342. The Secretary must make his own findings of fact based on his view of the credibility of the witnesses, the weight of the evidence, and the inferences to be drawn therefrom. *Id.* at 513, 510 A.2d at 342; *Forest Area School District v. Shoup*, 153 Pa. Commw. 423, 427, 621 A.2d 1121, 1124 (1993).

### **DISCUSSION**

In this appeal, Dr. Curl does not dispute that she had considerable special education-related duties as the District's Director of Instructional Services. The parties are in agreement that Dr. Curl made recommendations for hiring all special education personnel, evaluated and directed professional employees within the special education department, developed the District's special education budget, addressed disciplinary matters with special education students, and met with parents and staff regarding special education issues. N.T. 319-322; District Exhibits 16-18. The specific duties listed in Dr. Curl's job description were as follows:

1. Special Education
  - a. Collaborates with building principals in the placement of students in the district special education classes.
  - b. Is responsible for the processing of the students into the [special education] program
  - c. Monitors the progress of the special education students
  - d. Serves as a resource to the special education teachers and students and teachers of mainstreamed students.
  - e. Serves as the district representatives on the multi-disciplinary team (MTD).
  - f. Directs and supports preventive programs for use with at risk students.
  - g. Provides inservice programs for teachers and administrators as needed.
2. Performs other related duties as assigned by the Superintendent.

Joint Exhibit 3.

Dr. Curl's argument is not that her special education-related job duties were insignificant, but she maintains that her responsibilities were not exclusively related to special education. Dr.

Curl argues that “her duties entailed a broad range of responsibilities not specifically devoted to special education.” Appellant’s Brief p. 8. Dr. Curl testified that she had job duties in areas, which she claims are unrelated to special education, such as gifted education, English as a Second Language (“ESL”) instruction, Student Assistance Programs, Instructional Support Teams, Child and Adolescent Service System Programs (“CASSP”), curriculum implementation, staff development, and teacher orientation. N.T. 263-277.

Initially, we note that the evidentiary record does not support a conclusion that the majority of these areas referenced by Dr. Curl were unrelated to special education. Dr. Curl’s characterization of gifted education, for example, as a “Non-Special Education” area (N.T. 263) is unsupported by the record. To the contrary, documentary evidence submitted by the District indicates that gifted education and special education were treated as related areas of instruction during the time Dr. Curl was employed by the District. For instance, Dr. Curl’s job description stated that “The Director of Instructional Services shall be responsible for all matters pertaining to special education (including gifted) and students in at-risk programs.” Joint Exhibit 3; N.T. 263, 293-294. Similarly, the District’s Special Education Plan for school year 1999-2000, prepared by Dr. Curl, listed 456 students in one category entitled “Total Unduplicated Number of Students Receiving Special Education Services (Including Gifted).” District Exhibit 14. It can be gleaned from these documents that special education was considered by the District as an area of instruction which encompassed gifted education within the District’s educational program.

Consistent with the District’s treatment of gifted education and special education as a single category, the Public School Code defines gifted students and student’s “eligible” for services under the Individuals with Disabilities Improvement Act collectively as “children with exceptionalities” 24 P.S. 13-1371. Section 13-1371 states that “[t]he term ‘children with

exceptionalities’ shall mean children of school age who have a disability or who are gifted and who, by reason thereof, need specially designed instruction.” Given the lack of support in both the facts and the law for Dr. Curl’s conclusion that gifted education is not special education, we find that Dr. Curl’s responsibilities with regard to gifted education should be treated for purposes of this appeal as special education-related job duties.<sup>2</sup>

Like her work in the field of gifted education, Dr. Curl’s responsibilities regarding curriculum implementation, staff development, Instructional Support Teams, CASSP, and teacher orientation were also integrally related to her supervisory role over the District’s special education program. Dr. Curl testified that she helped implement a language arts curriculum for special education and regular education students and provided continuing education to special education and regular education teachers. N.T. 274-276, 308, 313, 314. Also, Dr. Curl stated that the reason that she was called upon to be a member of the Instructional Support Teams was to provide her knowledge of special education to the other team members. N.T. 308. She admitted that most of the students in CASSP, an initiative designed to assist students receiving services from Mental Health-Mental Retardation agencies, were special education students. N.T. 267-269, 317. Regarding her role in the orientation of regular and special education teachers, Dr. Curl testified that her part of the orientation was to “focus . . . primarily on navigating the Special Education system ” N.T. 277.

Dr. Curl’s own testimony regarding these areas illustrates that they were special education-related duties, by anyone’s definition of that term. The occasional overlap between Dr. Curl’s special and regular education duties is explained by the District’s policy of educating

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<sup>2</sup> In 2001, Chapter 16 of the State Board of Education regulations governing gifted education in Pennsylvania became effective. See 22 Pa. Code § 16.1 *et seq.* titled “Special Education for Gifted Students.” Prior to the implementation of these regulations (and for the majority of Dr. Curl’s career) special education and gifted education were governed by the same regulatory provisions.

children with disabilities with non-disabled children to the maximum extent appropriate. The District's Special Education Plan for SY 2002-2005, written by Dr. Curl, states that "Children are removed from the regular education environment only if their needs cannot be met in the regular classroom with supplementary services." District Exhibit 6, p. 4. According to Dr. Curl's job description, it was her responsibility to "serve as a resource to the special education teachers and teachers of mainstreamed students." Joint Exhibit 3. With the District's policy favoring "mainstreaming" in mind, it is understandable that Dr. Curl would work closely with the regular education teachers and curriculum to make sure students with disabilities were receiving appropriate instruction alongside their non-disabled peers. Dr. Curl's work in these areas did not, however, make her anything but a supervisor of special education.

We acknowledge that Dr. Curl performed several miscellaneous tasks in the course of her employment which may or may not have been related to special education such as her responsibilities with regard to ESL instruction, Student Assistance Programs "EvenStart" and "Earobics." Yet the evidence shows that her duties in these areas were relatively minor when compared to her significant supervisory responsibilities over the District's special education program. N.T. 184, 267-277, 314; District Exhibit 22. It is undisputed that the District's very small ESL student population did not exceed 13 students annually (in a District with a total yearly enrollment of several thousand students) while Dr. Curl was employed by the District. During several years in the course of Dr. Curl's employment, the District did not have any students enrolled in ESL classes. District Exhibit 22. Moreover, Dr. Curl conceded that her ESL-related responsibilities were most time-consuming during one school year (SY 2002-2003) when the District's ESL program was being audited. N.T. 180, 304-305. Assistant Superintendent Martin Hudacs credibly testified that he assumed all duties regarding oversight of

the District's ESL program when he was hired in October 2003. N.T. 184. By Dr. Curl's own admission, she was "weaned away" from participating in the Student Assistance Programs and that her involvement in the programs did not take up very much time over the course of her nine-year period of employment with the District. N.T. 267, 317-318. Dr. Curl also had responsibilities of a short duration involving the District's EvenStart and Earobics programs. Her duties with regard to these initiatives were limited primarily to one school year for each program. N.T. 276-277, 314, 316.

Regarding these assorted duties, which Dr. Curl again claims were not related to special education, we find that Dr. Curl attempted to portray these tasks as more substantial than they actually were. In our opinion, even if these tasks were unrelated to special education, they cannot be construed as a significant part of Dr. Curl's job. None of the non-special education-related tasks performed by Dr. Curl were particularly time-consuming or essential to her job as Director of Instructional Services. Upon our careful review of the evidence regarding each and every job duty Dr. Curl claims to have performed on behalf of the District we find that Dr. Curl did not present sufficient evidence to support her position that she had substantial responsibilities beyond the realm of special education. Accordingly, we find Dr. Curl's testimony that she spent 25 to 30 percent of her time on-the-job in areas unrelated to special education to be not credible.<sup>3</sup> N.T. 263, 282.

Furthermore, under the District's managerial structure and chain-of-command, an assistant superintendent, not Dr. Curl, was responsible for supervision over the elementary and secondary instructional program, Title I programs, educational assessments, Act 48 compliance and teacher mentoring programs. N.T. 177-185, 202-204; District Exhibits 8, 12. Given that the

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<sup>3</sup> To the contrary, Superintendent Jon Rednak, Dr. Curl's immediate supervisor, credibly testified that 95 percent of Dr. Curl's job duties were dedicated to special education. N.T. 205, 238.

District assigned an assistant superintendent to supervise the curriculum and instructional program for the duration of Dr. Curl's employment, we are not convinced that Dr. Curl also had significant responsibilities in these areas. While Dr. Curl's position may have involved curriculum and instruction issues from time to time, her job duties predominantly involved the supervision and direction of the District's special education program.

During her employment with the District, Dr. Curl held a Pennsylvania Educator certification known as a Letter of Eligibility but did not hold any other relevant certifications. Joint Exhibit 2; N.T. 245-246. In its CSPGs,<sup>4</sup> the Department issued guidance outlining what positions a person possessing a Letter of Eligibility is qualified to hold. CSPG 46 states that a person holding a Letter of Eligibility is qualified to serve as (1) a Superintendent or an Assistant Superintendent, (2) an Intermediate Unit Executive Director or an Assistant Executive Director, (3) a Supervisor of Curriculum and Instruction, (4) a Supervisor of Pupil Personnel Services, (5) an Elementary School Principal, (6) an approved Middle School Principal or (7) a Secondary School Principal. *See*, Joint Exhibit 10. Based upon the persuasive evidence submitted by the District including the credible testimony of its witnesses, we find that Dr. Curl's position was not similar to a Supervisor of Curriculum and Instruction or any other position a Letter of Eligibility qualifies one to hold.

A Letter of Eligibility is a "comprehensive Supervisory certificate" defined in CSPG 40 as a certificate "[i]ssued for supervision across instructional or integrated pupil personnel areas". CSPG 40 states that a "comprehensive Supervisory certificate . . . does not qualify the holder for assignment as a supervisor of single instructional areas for which he/she does not hold such

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<sup>4</sup> CSPG is an acronym for Certification and Staffing Policies and Guidelines, which the Department publishes on a regular basis to interpret existing laws and regulations as they pertain to the certification of educators. *See*, 22 Pa. Code § 49.13 (b)(10). The CSPGs cited in this Opinion were those in effect at the time of Dr. Curl's separation from employment with the District.

single-area supervisory certificate.” *See*, Joint Exhibit 7. Because Dr. Curl was assigned primarily to supervise special education, a single instructional area, we conclude that she needed to possess the Supervisor of Special Education Certificate, a single-area Supervisory certificate, to be qualified for that assignment. This conclusion is consistent with determinations of the Bureau of Teacher Certification and Preparation (on two occasions) and the Department of Auditor General. Like the District, these two entities also found that Dr. Curl was not appropriately certified for her position because she lacked the Supervisor of Special Education Certificate. *See*, Joint Exhibits 17 and 26.

Pursuant to the Educators’ Code of Professional Conduct, “[p]rofessional educators shall be prepared, and legally certified in their areas of assignment. Educators may not be assigned or willingly accept assignments that they are not certified to fulfill.” 22 Pa. Code 235.4(b)(2). Because Dr. Curl was not certified for the Director of Instructional Services position in which she was employed, we find that the District was justified in its decision to terminate her employment. Accordingly, we enter the following:

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

<b>SHIRLEY K. CURL</b>	:	
	:	
v	:	<b>TTA No. 01-04a</b>
	:	
<b>SOLANCO SCHOOL DISTRICT</b>	:	
	:	
<b>Appellee</b>	:	

**ORDER**

AND NOW, this 8<sup>th</sup> day of February 2006, it is hereby ordered and decreed that the appeal of Shirley K. Curl is denied and the decision of the Solanco School District to dismiss Shirley K. Curl from employment with the Solanco School District is affirmed.

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/s/  
Gerald L. Zahorchak, D.Ed.  
Acting Secretary of Education

Date Mailed: February 8, 2006