

Certified Does Not Equal Qualified: School Districts Have Discretion In Hiring

By Jonathan P. Riba

Sweet, Stevens, Katz and Williams LLP just successfully litigated a case of first impression in which the Commonwealth Court upheld the decision of the Court of Common Pleas of Tioga County finding that there is no requirement in the School Code and/or related Pennsylvania Department of Education (PDE) guidelines requiring a school district to hire a certified teaching applicant for a vacant position when the district determines the applicant is not fully qualified for the position based on his performance during an interview.

In this case, the plaintiff, a duly certified teaching candidate, was one of four applicants for a vacant mathematics position. After interviewing all four applicants, the district determined that none of the applicants were fully qualified for the position. The district subsequently sought an Emergency Permit from PDE to fill the vacant position with a long term substitute who was not certified in mathematics for the first semester. The district was then going to re-advertise the position in the fall. PDE granted the request and the position was filled.

The plaintiff subsequently sued the district, pursuant to 22 Pa.Code § 49.21, arguing that the district was required to hire him because he was properly certified for the position and was not permitted to seek an Emergency Permit. The plaintiff argued the Emergency Permit issued by PDE was invalid because it did not meet the three specific criteria set out in PDE Guideline CPSG No. 13, which permits a district to seek an Emergency Permit: (1) when there is an inappropriate salary demand by the certified applicant; (2) where the applicant has documented unsatisfactory prior service in other school districts; and (3) if the applicant has resigned or been terminated for cause. In response, the district argued that, irrespective of the language contained in CPSG No. 13, it has discretion in determining whether a properly certified individual is fully qualified for a particular position and should not be mandated to hire someone simply because they are certified. Otherwise, the district argued, hundreds of inappropriate hirings would take place.

In rejecting the plaintiff's argument and finding in favor of the district, the Commonwealth Court's decision permits a school district to determine whether a "certified" teacher is a truly a "qualified" teacher. Therefore, a district has discretion in whom it chooses to hire. Had the plaintiff been successful, a district would be forced to hire a certified applicant for a position, even if the district felt he was a poor candidate or performed horribly during the interview process.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.