

COMMUNITY CARE AND ASSISTED LIVING APPEAL BOARD

*Community Care and Assisted Living Act,
SBC 2002, c. 75*

APPELLANT: MR (Certificate Applicant)
RESPONDENT: Director, Early Childhood Educator Registry
PANEL: Gordon Armour, Chair
Deborah Harden, Member
Mary-Ann Pfeifer, Member

DECISION

Introduction

[1] The appellant appeals a decision of the respondent Director of the Early Childhood Educator Registry ("ECE Director") refusing to grant her application dated January 20, 2009, for an Early Childhood Educator ("ECE") 5 year certificate under the *Community Care and Assisted Living Act* ("CCALA"). Instead, the ECE Director subsequently issued the appellant an ECE Assistant certificate.

Background

[2] Section 8(1) of the *CCALA* and sections 25 and 28 of the *Child Care Licensing Regulation*, BC Reg. 332/2007, govern the issuance of early childhood educator assistant certificates. They read as follows:

CCALA

8 (1) A certificate may be issued to a person in accordance with the regulations stating that the person has the qualifications required by the regulations for certification as an educator of children, or as an educator in the manner specified in the certificate respecting children, at a community care facility.

Child Care Licensing Regulation

25 The director may issue an early childhood educator assistant certificate to an applicant who does all of the following:

- (a) submits an application to the director;
- (b) has successfully completed at least one course of a basic early childhood educator training program in child development, guidance, health and safety, or nutrition, through an educational institution in item I of Schedule D;
- (c) provides a written reference from an educator stating that the person is personally satisfied, from his or her own observations of the applicant, that the applicant is competent
 - (i) in the areas of child development, guidance, health and safety and nutrition,
 - (ii) to develop and implement an early childhood education curriculum, and

(ii) with respect to the fostering of positive relationships with children under the care of the applicant, the families of children and with co-workers;

(d) provides proof of

(i) having completed at least 500 hours of work experience relevant to early childhood education, or

(ii) sufficient child care experience that the director is satisfied that the applicant has become competent in the matters set out in paragraph (c);

(e) demonstrates to the satisfaction of the director that the applicant

(i) is of good character,

(ii) has the personality, ability and temperament necessary to manage or work with children, and

(iv) has the training and experience and demonstrates the skills necessary to be an educator.

28 (1) Despite section 25 to 27 [requirements for certificates], the director may exempt an applicant for a certificate from a requirement under any of those sections to complete a program or course if

(a) the applicant has completed a program or course

(i) in qualifying for another profession, or

(ii) through an educational institution that is not listed in the applicable provision of Schedule D, and

(b) the director considers the completed program or course to be at least equivalent to the required program or course.

(2) For the purposes of subsection (1), the director may determine that a program or course is not equivalent to a required program or course solely on the basis that the institution through which the applicant completed the program or course is not approved by a provincial, state, national or other government body.

[3] The ECE Director's decision to refuse the appellant's application for an ECE certificate, and subsequently awarding an ECE Assistant certificate, is dated August 6, 2009. The reason given was that the course work the appellant completed did not include instruction in all the required areas for the minimum hours of instruction (902 hours of instruction that encompasses the areas of- child growth and development, program development, curriculum and foundations; interpersonal skills, community relations and families; health, safety and nutrition and practicum).

Issues and Arguments

[4] The appellant's notice of appeal dated August 17, 2009, said that her course work and training, her numerous certifications, experience in hosting workshops and instructing ECE educators, together with 1000 hours of work in the field is sufficient to qualify for an ECE certificate. Her statement of points dated October 2, 2009, said that she is challenging the designations of "partial" or "no" requirements met in all areas of competencies. The appellant claims to be fully competent in all areas with both education and experience as verification.

[5] The ECE Director's statement of points dated October 22, 2009, explained that the appellant's course work relied on in her statement of points is not part of an approved ECE training program, and an equivalency assessment under section 28 of the *Child Care Licensing Regulation* was therefore completed. The ECE Director's policy is to assess equivalency under s. 28(1)(b) on the basis of the following:

- Confirmation that the admission requirement is the completion of secondary education or receipt of a school-leaving certificate,
- Confirmation that the province, state, national or other government body, approves the training institution.
- The course content and instructional hours meet the minimum standards as outlined in the BC Child Care Occupational Competencies and the Linking Competencies document.
 - In order to be granted full equivalency the training must meet a minimum of 80% of the instructional hours and course competencies.
 - Partial equivalency is granted when less than 80% but more than 50 % of instructional hours and competencies have been met.
 - No equivalency is granted when less than 50% of the instructional hours and competencies have been met.

[6] The ECE Director's statement of points explained in detail how the course work and training relied on in the appellant's statement of points was completed at the Toronto Montessori Institute, but it is not an approved educational institution as listed under item 1 of Schedule D of the *Child Care Licensing Regulation*, and consequently an equivalency assessment was completed.

[7] The ECE Director's statement of points provided an analysis of how an equivalency assessment was completed, comparing the training completed by the appellant, as noted in a Program Confirmation Form and transcript provided by the training institution, against standards as outlined in the BC Child Care Occupational Competencies and the Linking Competencies, which are policy documents that the ECE Registry uses as assessment tools. In summary, the ECE Director explained that, based on the equivalency assessment completed by the ECE Registry, the training completed by the appellant meets some, but not all, of the academic requirements for licensure as an Early Childhood Educator. The ECE Director also explained that, although the appellant has a variety of experience in the field of early childhood education, section 28 of the *Child Care Licensing Regulation* does not provide the ECE Director with the authority to grant equivalency based on work experience.

[8] By memorandum to the parties dated November 28, 2009, the Board requested clarification from the ECE Director as to whether the Toronto Montessori Institute in the Province of Ontario was approved by a provincial, state, national or other government body, and whether the International Credential Evaluation Service (ICES) was used to determine equivalency in this case.

[9] On December 2, 2009, the ECE Director replied that the Toronto Montessori Institute is not recognized by the College of Early Childhood Educators of Ontario, the body in Ontario responsible for the credentialing of Early Childhood Educators. The ECE Director also responded that, just prior to the implementation of the Agreement on Internal Trade in April 2009 (a pan-Canadian agreement regarding labour mobility), the ECE Registry changed the assessment process for individuals trained within Canada. As a result of this change, individuals who have attended training in Canada are no longer required to have their credentials evaluated through the International Credential Evaluation Service ("ICES"). As the appellant attended the Toronto Montessori Institute in Ontario, she was not required to go through the ICES credential evaluation process.

Analysis

[10] Section 29(2) of the *CCALA* provides for a right of appeal to the Board by an applicant for a certificate under section 8 from a refusal to issue the certificate, in this case an ECE certificate. Sections 29(11) and (12) govern the hearing of the appeal and the Board's decision-making powers:

29(11) The board must receive evidence and argument as if a proceeding before the board were a decision of first instance but the applicant bears the burden of proving that the decision under appeal was not justified.

(12) The board may confirm, reverse or vary a decision under appeal, or may send the matter back for reconsideration, with or without directions, to the person whose decision is under appeal.

[11] Section 36 of the *Administrative Tribunals Act*, SBC 2004, c. 45, applies to the Board and is significant because it permits the Board to hear appeals by any combination of written, electronic and oral hearings. The Board informed the parties that, subject to any objections they made, it intended to hear and decide this appeal without an oral hearing, on the basis of the material filed including any further reply from the appellant. No objections were received. The Board is satisfied that there are no questions of credibility or other circumstances favouring an oral hearing, and this appeal is appropriately determined by a written hearing.

[12] The Board considered the following relevant facts and evidence:

- The appellant submitted reports from the Toronto Montessori Institute including a copy of her diploma granted on June 29, 2000 and a description of the course at that time. This course consisted of 4.5 months of daily class academic instruction, totaling 594 hours.
- The director of training for the Toronto Montessori Institute completed a form indicating that the appellant completed:
 - 68.5 hours of child growth and development, and 90 academic instructional hours are required in BC;
 - 291.5 hours of program development, curriculum and foundations, and 312 academic instructional hours are required in BC;
 - 3.5 hours of basic health, safety and nutrition, and 30 academic instructional hours are required in BC;
 - 26.5 hours of interpersonal skills, community relations, and interacting with families, and 45 academic instructional hours are required in BC; and
 - 205 hours of basic practicum, and 425 academic instructional hours are required in BC.

[13] It is readily apparent from the evidence that the course work and training completed by the appellant at the Toronto Montessori Institute does not fully meet the training requirements under section 25(b) of the *Child Care Licensing Regulation*. Our review finds that the appellant's academic competencies fall short in four out of five areas based on an 80% B.C. equivalency; specifically: Child Growth and Development; Basic Health, Safety and Nutrition; Interpersonal Skills/Community Relations/Interacting with Families; and her Basic Practicum. The Board finds that the ECE Director's policy for assessing equivalency, reasonable as it is, cannot absolutely dictate the scope of the ECE Director's discretion to determine equivalency. However, even accepting that the ECE Director has to maintain the flexibility to consider special circumstances of equivalency that fall outside of the four corners of the policy, it is clear to the Board that, regardless of the impressive number of certifications in the area of health and safety, the appellant's training falls significantly short of the instructional hours and competencies of an approved training program for full ECE certification under section 25.

[14] The Board notes that the appellant has completed over 1000 hours of experience from Montessori schools and ECE facilities in the Vancouver area alone; however, the Board finds that this work experience in itself does not meet the conditions required for a Practicum. Also, the Board agrees with the ECE Director that section 28 of the *Child Care Licensing Regulation* does not provide the authority to grant equivalency based on work experience.

[15] The appellant's childcare resume and employment record are impressive. She has obtained a significant number of certifications, although not directly supportive of her application for certification, that would provide her with added support, once certification is obtained. She also has excellent references. She clearly wants to work with children in a capacity that requires her to be licensed under the *CCALA*.

There is no indication or suggestion of any kind that she does not have the good character, personality, ability and temperament necessary to manage or work with children. The course work and training she has completed has achieved excellent outcomes; however, it does not meet the course requirement of section 28. The Board notes that her courses provide her with in-depth knowledge of specific important aspects of child safety such as water safety, food safety and emergency first aid, however we find that they do not provide a substitute for the course on child safety. They do not, in the panel's view, fulfill the requirements of a 30 hour course in basic health, safety and nutrition which would cover these topics in the context of community child care. The appellant is urged to seek direction from an approved training institution to complete her studies.

[16] The Board's finding that the ECE Director was reasonable, indeed correct, to decide that the appellant's college course work and her professional development course work do not meet the course requirement in section 25 or the equivalency requirement in section 28 disposes of this appeal, and the Board confirms the ECE Director's refusal to grant her application for an ECE certificate.

[17] The Board adds the following non-binding observation regarding the process followed by the ECE Registry for advising an applicant that, upon review of their application for certification, she or he has not met or has fallen short of requirements. The Board notes that the ECE Director's decision in the August 6, 2009 letter to the appellant does not outline the criteria used in making this decision. Outlining those criteria in the decision letter may have assisted the appellant in understanding the specific requirements for this certification. The Board suggests that a more inclusive approach to the identification of exactly which requirements were not met and why, would greatly benefit applicants and may help avoid the necessity for the applicant to appeal a decision in order to obtain that information.

Conclusion

[18] For the reasons provided above, the Board confirms the ECE Director's decision. Accordingly, the appeal is dismissed.

January 19, 2010

Gordon Armour, Panel Chair

Deborah Harden, Member

Mary-Ann Pfeifer, Member