

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0911**

In the Matter of the Application of
Kimberly Baker.

**Filed January 8, 2018
Reversed and remanded
Cleary, Chief Judge
Concurring specially, Connolly, Judge**

Minnesota Board of Teaching
OAH Docket No. 5-1302-33332

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Considered and decided by Jesson, Presiding Judge; Cleary, Chief Judge; and
Connolly, Judge.

S Y L L A B U S

Minn. Stat. § 122A.23, subd. 2 (2016), does not require an applicant to show that
the training program underlying her out-of-state teaching license is similar to the training
program underlying the Minnesota license for which she applies.

O P I N I O N

CLEARY, Chief Judge

In this certiorari appeal, relator Kimberly Baker challenges a decision by respondent
the Minnesota Board of Teaching (the board) denying her application for a Minnesota

special-education teaching license. Because we hold that the board’s decision was based on an error of law, we reverse and remand.

FACTS

Baker received her Iowa teaching license (Iowa license) in 2002 after graduating from the University of Northern Iowa’s unified program and completing two student-teaching experiences. Baker’s Iowa license allows her to “teach children from birth through [age eight]¹” including students with disabilities. Iowa Admin. Code r. 282-13.26(3)a. (2016).² In November 2013, Baker applied for three Minnesota teaching licenses based on her Iowa license: (1) early-childhood education; (2) elementary education; and (3) early-childhood special education (ECSE). In April 2014, the board issued the first two licenses to Baker, but denied the ECSE license because the “Iowa License did not result from essentially equivalent training to that required by Minnesota.” An ECSE license allows a teacher to “provide evaluation and specially designed instruction to eligible children, birth through age six, who exhibit a broad range of developmental delays or disabilities.” Minn. R. 8710.5500, subp. 1 (2016).

¹ The regulation authorizes a license holder to teach “children from birth through grade three.” Iowa Admin. Code r. 282-13.26(3)a. The regulation proceeds to break down this grade range to birth through age eight. *Id.* r. 282-13.26(3)b.(1)1. For clarity and consistency, we will use the “birth through age eight” scope of the Iowa license when comparing it with the ECSE license, which has an age rather than grade scope.

² The substantive law governing Baker’s Iowa license did not change between the time she received the license and the time that the board made its decision in May of 2017. *Compare* Iowa Admin. Code r. 282-14.140(16) (2002), *with* Iowa Admin. Code r. 282-13.26(3) (2016). The applicable provisions of this regulation have since been rescinded. 40 Iowa Admin. Bull. 97-99 (July 5, 2017).

In 2015, the Minnesota Legislature amended Minn. Stat. § 122A.23 governing licensure for applicants with out-of-state licenses.³ The law, with such changes noted with underlining (additions) and strikeouts (deletions), provides:

Subd. 2. Applicants licensed in other states. (a) Subject to the requirements of sections 122A.18, subdivision 8, and 123B.03, the Board of Teaching must issue a teaching license or a temporary teaching license under paragraphs ~~(b)(c)~~ to ~~(e)~~ (f) to an applicant who holds at least a baccalaureate degree from a regionally accredited college or university and holds or held ~~a similar~~ an out-of-state teaching license that requires the applicant to successfully complete a teacher preparation program approved by the issuing state, which includes either (1) field-specific teaching methods and, student teaching, or essentially equivalent experience, or (2) at least two years of teaching experience as the teacher of record in a similar licensure field.

(b) The Board of Teaching may issue a standard license on the basis of teaching experience and examination requirements only.

(c) The Board of Teaching must issue a teaching license to an applicant who:

(1) successfully completed all exams and human relations preparation components required by the Board of Teaching; and

(2) holds or held an out-of-state teaching license to teach ~~the same~~ a similar content field and grade levels if the scope of the out-of-state license is no more than two grade levels less than a similar Minnesota license, and either (i) has completed field-specific teaching methods, student teaching, or equivalent experience, or (ii) has at least two years of teaching experience as the teacher of record in a similar licensure field.

³ The applicable provisions of this statute have since been repealed, effective July 1, 2018. 2017 Minn. Laws 1st Spec. Sess. ch. 5, art. 3, § 36(b), at 80 (to be codified at Minn. Stat. § 122A.23 (2018)).

2015 Minn. Laws 1st Spec. Sess. ch. 3, art. 2, § 18, at 25; *see also* Minn. Stat. § 122A.23, subd. 2 (2016).

Baker appealed the denial of the ECSE license and requested a contested-case hearing. After a hearing conducted over three days, the administrative-law judge (ALJ) issued recommended findings of fact and conclusions of law, and recommended that the board issue an ECSE license to Baker. The ALJ based his recommendation on an interpretation of Minn. Stat. § 122A.23, subd. 2 (2016). The board accepted all findings of fact and some of the conclusions of law, but refused to follow the ALJ's recommendation. The board concluded that the ALJ misapplied Minn. Stat. § 122A.23, subd. 2, by failing to require Baker to demonstrate that the ECSE license was a "similar Minnesota license" to her Iowa license. Specifically, the board concluded that the licenses were not similar because they did not require similar training. This certiorari appeal follows.

ISSUES

- I. Did the board err by interpreting Minn. Stat. § 122A.23, subd. 2(c), to require that an applicant's out-of-state training program be similar to a Minnesota training program?
- II. Did the board violate Baker's due process rights when its director acted in both adversarial and adjudicative functions?

ANALYSIS

An administrative agency's decision enjoys a presumption of correctness; we defer to the agency's expertise and special knowledge in its field. *In re Annandale NPDES/SDS Permit Issuance*, 731 N.W.2d 502, 514 (Minn. 2007). "We presume the agency's decision

. . . is correct, but the court may reverse an agency decision if the decision was affected by an error of law.” *N. States Power Co. v. Minn. Pub. Utils. Comm’n*, 344 N.W.2d 374, 377 (Minn. 1984). “The standard of review is not heightened where the final decision of the agency decision-maker differs from the recommendation of the ALJ.” *In re Excelsior Energy, Inc.*, 782 N.W.2d 282, 289 (Minn. App. 2010).

I. Statutory Interpretation

“Statutory interpretation is a question of law that we review de novo.” *J.D. Donovan, Inc. v. Minn. Dep’t of Transp.*, 878 N.W.2d 1, 4 (Minn. 2016). The board interpreted section 122A.23, subdivision 2(c), to require comparison of the training programs underlying an applicant’s out-of-state teaching license and the Minnesota license for which she applies. We hold that this interpretation runs contrary to the plain meaning of the statute.

We follow the plain language of a statute when it is unambiguous. *Vlahos v. R&I Constr. of Bloomington, Inc.*, 676 N.W.2d 672, 679 (Minn. 2004); Minn. Stat. § 645.16 (2016). “Under the basic canons of statutory construction, we construe words and phrases according to rules of grammar and according to their most natural and obvious usage unless it would be inconsistent with the manifest intent of the legislature.” *Vlahos*, 676 N.W.2d at 679; Minn. Stat. § 645.08 (2016).

The plain language of subdivision 2 does not require the training programs underlying out-of-state licenses to be similar to the training programs underlying Minnesota licenses. Subdivision 1 provides a means of obtaining a Minnesota license by virtue of an out-of-state applicant’s training. Minn. Stat. § 122A.23, subd. 1 (2016). In

contrast, subdivision 2 is devoid of any mention of training programs and instead provides a means of obtaining a Minnesota license for applicants already licensed in other states. *Id.* § 122A.23, subd. 2.

The history of section 122A.23 supports our plain-language interpretation. Subdivision 2 was first introduced into the statutes in 2000 by an omnibus bill, 2000 Minn. Laws ch. 489, art. 6, § 5, at 1960-61, and required the board of teaching to

(a) . . . issue a teaching license or a temporary teaching license under paragraphs (b) to (e) to an applicant who holds at least a baccalaureate degree from a regionally accredited college or university and holds or held a similar out-of-state teaching license that requires the applicant to successfully complete a teacher preparation program approved by the issuing state, which includes field-specific teaching methods and student teaching or essentially equivalent experience.

(b) The board of teaching must issue a teaching license to an applicant who: (1) successfully completed all exams and human relations preparation components required by the board of teaching; and (2) holds or held an out-of-state teaching license to teach the same content field and grade levels if the scope of the out-of-state license is no more than one grade level less than a similar Minnesota license.

Minn. Stat. § 122A.23, subd. 2 (2000).

At that time, subdivision 2(a) required an applicant to hold a “similar out-of-state teaching license” to be eligible for a Minnesota teaching license, but subdivision 2(b) did not contain such requirement. *Id.* Though subdivision 2(b) describes “a similar Minnesota license,” the bill’s accompanying research summary describes that provision⁴ as requiring the board “to issue a Minnesota license if the applicant successfully completed all

⁴ Subdivision 2(b) is now subdivision 2(c). 2015 Minn. Laws 1st Spec. Sess. ch. 3, art. 2, § 18, at 25.

examinations and human relations components required by the board of teaching and holds or has held a license in another state to teach the same content field and equivalent grade levels as that under *a* Minnesota license.” H.F. 3800 H. Research B. Rep. (2000) (emphasis added). The legislature did not intend to promulgate a similarity requirement in subdivision 2(b) analogous to the one in subdivision 2(a); the phrase “similar Minnesota license” in subdivision 2(b) simply refers to the Minnesota license for which an applicant applies.

At the time of her application in 2013, Baker was subject to subdivision 2(a), requiring that her out-of-state license be similar to the Minnesota license for which she applied. Minn. Stat. § 122A.23, subd. 2(a) (2012). However, in 2015, before the board’s final decision on Baker’s application, the legislature amended this subdivision and replaced the words “a similar” with the word “an.” 2015 Minn. Laws 1st Spec. Sess. ch. 3, art. 2, § 18, at 25. The statute now requires the board to “issue a professional five-year teaching license or an initial professional one-year teaching license under paragraphs (c) to (f) to an applicant who holds at least a baccalaureate degree from a regionally accredited college or university and holds or held *an* out-of-state teaching license” Minn. Stat. § 122A.23, subd. 2(a) (2016) (emphasis added). Consequently, when the board made its decision in 2017, an applicant holding an out-of-state license was subject only to the requirements in paragraphs (c) to (f) of the statute.⁵ Minn. Stat. § 122A.23, subd. 2(a) (2016).

⁵ The legislature also amended subdivision 2(a) to read: “[t]he Board of Teaching must issue a teaching license or a temporary teaching license under paragraphs (c) to (f)” instead of the former “(b) to (e).” 2015 Minn. Laws 1st Spec. Sess. ch. 3, art. 2, § 18, at 25; Minn. Stat. § 122A.23, subd. 2(a) (2016).

Subdivision 2(a) no longer requires an out-of-state applicant to hold a teaching license similar to a Minnesota license. While the phrase “similar Minnesota license” still appears in subdivision 2(c), even if that provision is read to require an out-of-state applicant to prove that her out-of-state license is similar to a Minnesota license, there is no additional requirement of comparing the underlying training programs to ascertain such similarity.

“Similar Minnesota license” is the statutory phrase at issue, not “similar training program.” Teaching special education to children from birth through age six (ECSE license) is wholly within the scope of teaching special education to children from birth through age eight (Iowa license). In other words, Baker’s Iowa license qualifies her to teach the same content field (special education) to the same ages (birth through age six) as the ECSE license.⁶ Baker’s Iowa license is certainly similar to the ECSE license.

The landscape of section 122A.23, especially in light of its recent amendments, establishes that the legislature did not intend to require comparison of the training programs underlying licenses: the requirements focus exclusively on the resulting licenses and their similarities in terms of what they allow license holders to do.⁷ We hold that subdivision 2

⁶ In its order, the board denied that the Iowa license allowed a teacher to teach a similar content field and grade scope as the ECSE license, but at the hearing a board witness testified that the Iowa license and the ECSE license allowed a teacher to teach the same content field and grade levels.

⁷ As the ALJ concluded: “Had the legislature intended an applicant for a teacher’s license, already licensed in another state, to undergo training identical or even similar to teacher license applicants in Minnesota, it would have said so. . . . Instead, the legislature unambiguously provided that licensure be granted when the applicant has an out-of-state license in a similar licensure area.”

does not require an applicant to show that the training program underlying her out-of-state teaching license is similar to the training program underlying the Minnesota license for which she applies. Accordingly, we reverse because the board's decision was affected by an error of law.⁸

II. Due Process

Baker contends that her due-process rights were violated when the director of the board acted in both an adversarial and adjudicative function. Because we reverse on other grounds, we need not review this issue, but we pause to address what occurred in this case.

At oral argument we learned that, while the director did not serve in a decision-making role, she was present when the board deliberated on Baker's application. Such conduct from an organizational leader, who had been involved in the adversarial process with the Licensing Committee and before the ALJ, exacts unspoken pressure on voting board members even where, as here, there is no clear due process violation or other indication of bias in the record.⁹ We believe even this appearance of impropriety significantly thwarts the public's trust in the board of teaching and the administration of justice generally. We strongly urge the board to reconsider this practice.

⁸ Baker also contends that the board's decision was arbitrary and capricious and was the result of an improperly unpromulgated rule. Because we reverse on other grounds, we need not address these issues.

⁹ At oral argument, counsel for the board affirmed that Licensing Committee members were also present during the vote, which raises similar concerns.

D E C I S I O N

Section 122A.23, subdivision 2, does not require comparing the training programs underlying Minnesota and out-of-state teaching licenses. The board's decision interpreting the statute as such is affected by an error of law. We reverse the board's decision denying Baker an ECSE license and remand.

Reversed and remanded.

CONNOLLY, Judge (concurring specially)

I concur with the majority’s thoughtful opinion that the Minnesota Board of Teaching (the Board) erred in its interpretation of Minn. Stat. § 122A.23, subd. 2(c) (2016) when it denied a license to the relator Kimberly Baker. I write separately to state that I would reach the due process issue. I believe that relator’s due process rights were clearly violated because the Board’s executive director was involved in both an adversarial and adjudicative role during the licensure proceedings.

This court reviews procedural-due-process issues *de novo*. *Zellman ex rel. M.Z. v. Indep. Sch. Dist. No. 2758*, 594 N.W.2d 216, 220 (Minn. App. 1999), *review denied* (Minn. July 28, 1999). The protections under the due process clauses of the United States and Minnesota constitutions are identical. *Sartori v. Harnischfeger Corp.*, 432 N.W.2d 448, 453 (Minn. 1988). “The amount of due process required . . . depends on an analysis of the particular situation.” *Lamusga v. Comm’r of Pub. Safety*, 536 N.W.2d 644, 646 (Minn. App. 1995). “[Q]uasi-judicial proceedings do not invoke the full panoply of procedures required in regular judicial proceedings.” *Barton Contracting Co., Inc. v. City of Afton*, 268 N.W.2d 712, 716 (Minn. 1978). The Minnesota Supreme Court has held that “[j]ustice requires that the judicial process be fair and that it appear to be fair; it necessarily follows that a presiding judge must be impartial and must *appear* to be impartial.” *State v. Pratt*, 813 N.W.2d 868, 878 (Minn. 2012) (emphasis added). In *Pratt*, the Minnesota Supreme Court reversed a conviction where the presiding judge in a criminal trial had also been hired as an expert witness by the county attorney in an unrelated civil lawsuit. The appearance

of impartiality should apply to quasi-judicial proceedings when an individual's constitutional interest is at stake.

“To establish the existence of a procedural due process violation, a plaintiff must first show that he had a liberty or property interest and that state action deprived him of that protected interest.” *Phillips v. State*, 725 N.W.2d 778, 782 (Minn. App. 2007). A property interest may come from a statute “that secure[s] certain benefits and that support[s] claims of entitlement to those benefits.” *Bd. of Regents v. Roth*, 408 U.S. 564, 577, 92 S. Ct. 2701, 2709 (1972). Here, relator has a property interest in the statute defining eligibility for a Minnesota teaching license by out-of-state applicants who had been licensed in other states. Minn. Stat. § 122A.23, subd. 2 (2016). Relator was deprived of that interest when the Board denied her license application.

Relator asserts that her due-process rights were violated because the executive director of the Board that was deciding whether or not to approve her license application acted in both an adversarial and adjudicative role. The Board relies on *Urban Council on Mobility v. Minn. Dep't of Nat. Res.*, 289 N.W.2d 729 (Minn. 1980) in arguing that dual roles within an agency do not violate due process unless the decision-maker is actually biased. However, in that case, the Minnesota Supreme Court held that the mere presence of agency staff at an agency hearing did not violate due process. *Id.* at 736. I agree. But what happened here was fundamentally different. The executive director was involved with the Licensing Committee's original evaluation of relator's application. Then, she was a significant part of the Licensing Committee's adversarial role as relator's opposing party in the process. The final step of that process was the Board's decision at the May 12

hearing. When the Board retired to make its decision, the executive director actually was present and in the room for the Board's deliberations.

The Board argues that because "[t]here is no evidence that [the executive director] cast a vote for (or against) the Board's final decision," that there was nothing improper. The Board completely misses the point. It does not matter that she did not cast a vote. She was in the room when the vote was taken. Such a procedure is analogous to an attorney arguing before a panel of this court, then joining the judges while we deliberate our decision. Whether the attorney actually votes or not, such an action flies in the face of due process because there is a strong appearance of unfairness and partiality. Therefore, I conclude that because of the executive director's actions, the Board violated relator's due-process rights protected under the United States and Minnesota constitutions.