

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
BY THE ALASKA BOARD OF PSYCHOLOGISTS AND PSYCHOLOGICAL
ASSOCIATE EXAMINERS**

IN THE MATTER OF)
)
 Wendy Arundale, Ph.D.) Case No. OAH-07-0369-PSY
) Agency No. 2950-07-001
_____)

REVISED PROPOSED DECISION

I. Introduction

Dr. Wendy Arundale appealed the May 15, 2007, decision of the Board of Psychologists and Psychological Associate Examiners ("the board") to deny her application for licensure as a psychologist by examination. Dr. Arundale filed a motion for summary adjudication. The Division of Corporations, Business and Professional Licensing ("division") opposed the motion and filed its own motion for summary adjudication. The parties provided briefing, and presented oral argument on November 15, 2007. Administrative Law Judge Dale Whitney prepared a proposed decision for the board's consideration. The board returned the case to the ALT to take additional evidence and make additional findings of fact. The board ordered

...that this case be returned to the administrative law judge to take additional evidence about the requirements of 12 A A C 60.083(b). In this case the additional evidence would be an official statement from Union Institute & University (UI&U) verifying that the professors, other than those listed as official UI&U faculty by UI&U, were considered faculty at UI&U for this degree. At this point, the Board has only an unsigned log from the applicant indicating that they were considered UI&U faculty.

And make additional findings about the number of hours of student-faculty contact involving face-to-face or group educational meetings as required by 12 A A C 60.083(b)(1). Based on the faculty listing on the UI&U website, only 199 hours were conducted by individuals who are listed as UI&U faculty, this is 61% of Dr. Arundale's total student faculty hours, which under 12 A A C 60.083(b)(2)(B) must be conducted by the faculty of the institution at least 90 percent of the time.

II. Discussion

Dr. Arundale seeks to meet the residency requirement for licensure by complying with the terms of 12 A A C 60.083(b). That regulation states that:

(b) Compliance with all of the following requirements is the equivalent of the one year of full-time residence at the degree-granting institution required in (a)(1) of this section:

(I) a minimum of 324 hours of student-faculty contact involving face to face individual or group educational meetings;

- (2) educational meetings required by (b)(1) of this section must
 - (A) include both faculty and peer interaction;
 - (B) be conducted by faculty of the institution at least 90 percent of the time;
 - (C) be fully documented by the student and the institution; and
 - (D) relate substantially to the program components listed in (a) of this section....

In support of her summary adjudication motion, Dr. Arundale had filed a copy of a "Detailed Residency Log" that listed the "hours of student-faculty contact involving face to face individual or group educational meetings" that she claimed in support of her application.¹ This log listed the faculty members conducting each educational meeting. This log was apparently prepared for the division or for the board, as it contains a statement on page 8 that "these hours meet the requirements of A A C 60.083(b)(1) *[sic]* as the equivalent of one-year of full-time residence at the degree-granting institution required in (a)(1) of this section" followed by a discussion of how the listed meetings comply with 12 A A C 60.083(b).

The last page of the log contains a list of Dr. Arundale's "doctoral committee members" and their titles. Heading the list is Dr. Arundale herself, with the title, "learner." Seventeen other names are listed, with the following various titles: Core faculty advisor, second core reader, adjunct professor, peer advisor, internship supervisor, and consultant. The list is followed by this notation:

In addition to regular Union Institute & University faculty members, adjuncts and consultants are officially nominated, their credentials are reviewed by the dean, and they are appointed for service on the learner's doctoral committee. Please note: In this capacity, they are considered Union Institute & University faculty, (emphasis in original)

The log in Exhibit 7 is prefaced by a letter from the chair of the UI&U psychology department, Dr. Lawrence Ryan, that reads in part:

I am attaching a Detailed Residency Log documenting all of Dr. Arundale's face-to-face individual and group education meetings within the UI&I program. This Log documents 596 hours of such meetings, at least 516 of which appear to meet the residency requirements for licensure in Alaska, as outlined at the end of the Log. Dr. Arundale's record exceeds the UI&I requirements for 500 hours of such meetings, a requirement that has been in place since 1992.

The log does not contain any entries that appear inherently suspicious to a psychiatric layperson. The largest single block of time is 80 hours in a ten-day period described as "PS Y 700 Introduction to Doctoral Research (Entry Colloquium/Seminar). There arc three forty-hour

blocks spread over five days each described as seminars designated as PSY 706, PSY 881 and PSY 841, with seminar titles. Five other large blocks of time ranging from 17.5 hours to 65 hours are spread over a period of months or years. The remainder of the time is made up by blocks of time of less than five hours each. The log indicates that each of these educational meetings was conducted by a person listed at the end of the log as either a member of the regular faculty or one of the adjuncts or consultants that the log states UI&U regards as faculty for the purposes of Dr. Arundale's program. Some entries are marked with asterisks to indicate that peers were also involved. A separate part of the log lists peer seminars at which faculty were not present. A tally in the log states that Dr. Arundale completed 516.0 hours of faculty-supervised educational meetings, which is confirmed by counting up the hours listed.

After the board remanded the case, Dr. Arundale submitted an additional affidavit from Dr. Ryan. In this affidavit, Dr. Ryan states that he is Chair of the Psychology Concentration at UI&U, the equivalent of a dean's level position. Dr. Ryan states that he has "authority to speak on matters of faculty credentials and faculty-student contact hours on behalf of UI&U," and that he has "personal knowledge of Dr. Arundale's faculty-contact hours and of the qualifications of the faculty involved."

According to Dr. Ryan, the Detailed Residency Log contained in Exhibit 7 has been reviewed and approved by the dean of UI&U, and that "as of late May 2007 it has been part of Dr. Arundale's Program Summary, an official UI&U document." Dr. Ryan agrees that the Detailed Residency Log in Exhibit 7 was created after Dr. Arundale completed her residency in response to concerns raised by the board. Dr. Ryan explains that although Dr. Arundale did complete all of the activities and hours shown in the log, she had somehow not submitted the correct documentation of the activities for review. It is unclear exactly how this happened, but the result was that Dr. Arundale's program summary did not reflect all of the hours of faculty contact she had completed. Dr. Ryan states that he and Dr. Arundale's advisor both verified the hours and all other information in the log and found it to be accurate. Dr. Ryan states that the document was then reviewed by the associate dean of UI&U, who approved the document. The log was then added to Dr. Arundale's program summary as an addendum, making it an official UI&U document.

Dr. Ryan also discussed the faculty members conducting the educational meetings listed in the log. Some of these were regular members of the faculty, while others were adjuncts or

¹ Applicant's Exhibit 7 of hearing record.

"consultant faculty." Dr. Ryan described the process for selection of adjunct and consultant faculty members. Dr. Ryan affirmed that

All the activities listed in Dr. Arundale's "Detailed Residency Log" were earned out under the direction of Union Institute and University faculty, either regular faculty, guest faculty, or members of her Doctoral Committee who were selected, vetted, and appointed **as members of the faculty** for the purpose of mentoring Dr. Arundale. (emphasis in original) ²

III. Findings

Union Institute & University has provided an official statement confirming that Dr. Arundale's "Detailed Residency Log" accurately reflects completion of 516 hours of student-faculty contact involving face to face individual or group educational meetings. The faculty members in these meetings were comprised of regular members of the UI&U faculty, adjunct professors, and consultants, all of whom UI&U has confirmed were considered UI&U faculty for this degree.

Of the 515 hours of student-faculty contact, 328 hours also included peer interaction. This documentation confirms that Dr. Arundale has met the requirement of 12 A A C 60.083(a)-(b) for at least 324 hours of student-faculty contact involving face to face individual or group educational meetings that include both faculty and peer interaction and are conducted by faculty of the institution at least 90 percent of the time.

IV. Conclusion

Examination of the additional evidence does not suggest a basis for change to the previous proposed decision. The proposed Decision of February 25, 2008, is hereby incorporated by reference, including the conclusion that the application of Wendy Arundale, Ph.D. for licensure as a psychologist by examination be granted.

DATED this 27th day of May, 2008.

By: Dale Whitney
Administrative Law Judge

² Affidavit of Lawrence J. Ryan, page 3.

Adoption

On behalf of the Alaska Board of Psychologists and Psychological Associate Examiners, the undersigned adopts this decision as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 29th day of May, 2008.

By: Lorin L. Bradbury, Ph.D.
Chairman

The undersigned certifies that this is a true and correct copy of the original and that on this date an exact copy of the foregoing was provided to the following individuals:

Case Parties
6/13/08

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Wendy Arundale, Ph.D.)	Case No. OAH-07-0369-PSY
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DECISION

I. Introduction

Dr. Wendy Arundale appeals the May 15, 2007, decision of the Board of Psychologists and Psychological Associate Examiners ("the board") to deny her application for licensure as a psychologist by examination. Dr. Arundale filed a motion for summary adjudication. The Division of Corporations, Business and Professional Licensing ("division") opposed the motion and filed its own motion for summary adjudication. The parties provided briefing, and presented oral argument on November 15, 2007.

No material facts are in dispute. The issue raised is resolved by interpretation of the regulation in question. Dr. Arundale's application should be approved.

II. Facts

Dr. Arundale received a Ph.D. in clinical psychology from Union Institute and University (UIU), a school properly accredited as required by 12 A A C 60.082(2). She applied for licensure as a psychologist by examination on September 15, 2006. A period followed during which the board several times requested additional information, and Dr. Arundale responded by providing various items to document her background and credentials. The board discussed Dr. Arundale's application for licensure in Alaska as a psychologist at its regular meeting on April 12, 2007, and decided to deny Dr. Arundale's application. On May 7, 2007, Dr. Arundale presented additional documentation of her education¹ to the division and requested that the board reconsider its previous decision. At a teleconference meeting on May 10, 2007, the board elected not to revisit its decision of April 12, 2007, and it therefore has not considered the new material.

The division advised Dr. Arundale of the board's decision in a letter dated May 15, 2007; this decision document serves as the Statement of Issues under AS 44.62.370 from which Dr.

¹ Exhibit 7.

Arundale's appeal is taken.² After quoting portions of AS 08.86.130 and 12 A A C 60.083, the letter explains why the board denied Dr. Arundale's application:

After a careful review of the documentation submitted at the April 12-13, 2007 meeting, the Board stated that the residency program at Union Institute and University fails to meet statutory and regulatory requirements. Our records indicate that submitting documentation to verify that your doctoral program meets Alaska requirements has been an ongoing process for you. The Board first reviewed your application and asked for additional documentation at the September 21-22, 2006 Board meeting.

The Board believes that the one year full-time residency requires that a student be on site at the degree-granting institution for the full year. The program that you attended had you at various locations including New York, Cincinnati, New Hampshire, Ohio, New Mexico and Massachusetts.³

The remainder of the letter states that the letter is intended to serve as a statement of issues for purposes of AS 44.62.370, and it provides information on the appeal process.

III. Discussion

This appeal is governed by AS 44.62 (the Administrative Procedure Act).⁴ When the agency is declining to grant a new application for a license, the applicant has the burden of proof by a preponderance of the evidence.⁵ Thus, Dr. Arundale has the burden of proof in this case.

The decision document, which is the "statement of issues" for purposes of the APA, indicates that the board denied Dr. Arundale's application because her residency did not comply with a requirement that "a student be on site at the degree-granting institution for the full year." Dr. Arundale asserts that while one year of on-site residency is one way of meeting the law's residency requirement, 12 A A C 60.083 also provides an alternative method and that she has met the requirements of that alternative option. The sole issue in this case is whether Dr. Arundale has proved by a preponderance of the evidence that the board erred in concluding that she failed to complete the equivalent of the one year of full-time residence at the degree-granting institution required in 12 A A C 60.083(a)(1) that is described in 12 A A C 60.083(b) because the program that she attended had her at various locations including New York, Cincinnati, New Hampshire, Ohio, New Mexico and Massachusetts. The answer to this question determines whether Dr. Arundale qualifies for licensure or not.

² A copy of the statement of issues is at Exhibit 8.

³ Exhibit 8.

⁴ AS 08.86.100.

⁵ AS 44.62.460(e).

Dr. Arundale has moved for summary adjudication. In an administrative adjudication, the right to a hearing does not require the development of facts by means of an administrative hearing when there is no dispute over the facts that are material to the issues raised in the case.⁶ If the disputed issues in a case concern the application of law to undisputed facts, it is not necessary to hold an evidentiary to determine what the facts are. Under the law as interpreted in this decision, facts that are not disputed resolve the case. An evidentiary hearing is therefore not required.

The Board of Psychologists and Psychological Associate Examiners is charged by state law with the duty of establishing standards for licensure of psychologists, and approving the issuance of licenses to qualified applicants.⁷ The requirements for licensure are contained in AS 08.86.130. There is no dispute that Dr. Arundale has met all requirements for licensure with the possible exception of AS 08.86.130(a)(3), the requirement that the applicant have "one year of post doctoral supervised experience approved by the board."

The kinds of post doctoral experience that the board will approve are described in 12 A A C 60.083 (hereinafter referred to as "the regulation"). The relevant portion of the regulation reads,

(a) In addition to the criteria established in 12 A A C 60.082, programs of graduate study for a doctorate degree in psychology must require

(1) the equivalent of three full-time academic years of graduate study, two years of which are through the degree-granting institution, and one year of which is in full-time residence at the degree-granting institution or the equivalent as described in (b) of this section....

(b) Compliance with all of the following requirements is the equivalent of the one year of full-time residence at the degree-granting institution required in (a)(1) of this section:

(1) a minimum of 324 hours of student-faculty contact involving face to face individual or group educational meetings;

(2) educational meetings required by (b)(1) of this section must

(A) include both faculty and peer interaction;

(B) be conducted by faculty of the institution at least 90 percent of the time;

(C) be fully documented by the student and the institution; and

⁶ 2 A A C 64.250; *Douglas v. Alaska*, 880 P.2d 113 (Alaska 1994); *Church v. Alaska*, 973 P.2d 1125 (Alaska 1999).

⁷ AS 08.86.070(3)-(4).

(D) relate substantially to the program components listed in (a) of this section; and

(3) the institution must clearly document how the student's performance is assessed and evaluated....

In quoting (a)(1) of the regulation, the original decision omitted a significant part of the regulation the end of the quote: "or the equivalent as described in (b) of this section." The full text of the regulation states that one year of the required graduate study must be "in full-time residence at the degree-granting institution" *or* "the equivalent as described in (b)." The use of the disjunctive "or" makes clear that there are two alternatives available. Applicants must demonstrate that they have met one alternative or the other, but not both.

The parties do not dispute that Dr. Arundale met the first requirements of subsection (a)(1): she completed the equivalent of three full-time academic years of graduate study, and at least two of these years were completed through the institution that granted her degree. Dr. Arundale does not dispute that she has not completed "one year...in full-time residence at the degree-granting institution." Instead, she has attempted to qualify by meeting the permissible alternative provided by subsection (b) of the regulation.

The original decision quoted subsection (b) as follows:

12 A A C 60.083(b) states "Compliance with all of the following requirements is the equivalent of the one year of full-time residence at the degree-granting institution required in (a) (1) of this section:

- (1) a minimum of 324 hours of student-faculty contact involving face to face individual or group educational meetings;
- (2) educational meetings required by (b)(1) of this section must
 - (A) include both faculty and peer interaction;
 - (B) be conducted by faculty of the institution at least 90 percent of the time;
 - (C) be fully documented by the student and the institution; and..."

The underlining of the word "at" in the second line is from the May 15, 2007, decision letter.

The underlined "at" in the statement of issues, and the conclusions that Dr. Arundale does not qualify because "the one year full-time residency requires that a student be on site at the degree-granting institution for the full year" and that "the program that you attended had you at various locations including New York, Cincinnati, New Hampshire, Ohio, New Mexico and Massachusetts," indicates a misreading of subsection (b) of the regulation.

The initial decision read (b) to mean, "compliance with all of the following *at the degree-granting institution* is the equivalent of the one year of full-time residence required in (a)(1)." If the regulation were written this way, it would be clear that whatever requirements

followed the sentence would need to be met at the degree-granting institution. But this is not how the regulation is written. In the regulation, "at the degree-granting institution" is placed later in the sentence, so that it modifies "the one year of full-time residence" for which the listed requirements may substitute. It does not modify "compliance with all of the following".

In the sentence "compliance with all of the following requirements is the equivalent of the one year of full-time residence at the degree-granting institution required in (a)(1) of this section," everything that comes before "is the equivalent of modifies everything that comes after. The sentence could be expressed mathematically thus:

[compliance with the following requirements] = [the one year of full-time residence at the degree-granting institution required in (a)(1)]

If a person can show "compliance with the following requirements," it is unnecessary to show "one year of full-time residence at the degree-granting institution." The part of the sentence reading "the one year of full-time residence at the degree-granting institution" is included because (a)(1) contains several different elements, and it is necessary to make clear what portion of (a)(1) that the listed requirements are the equivalent of.

The plain language of the regulation makes clear that any person who meets each of the listed requirements in (b) has met the equivalent of one year of full-time residence at the degree-granting institution, regardless of where the requirements of (b) were met. The listed requirements themselves do not contain any limitations on where they may be met.

In addition to its own summary adjudication motion, the division argues in the alternative that a hearing should be conducted to examine Dr. Arundale's educational credentials generally. But the division did not take a position asserting that Arundale's academic credentials are inadequate in any way other than the single issue raised in the initial decision letter. The APA requires the statement of issues to identify the statutes or regulations that the applicant must comply with, and "particular matters that have come to the attention of the initiating party and that would authorize a denial of the agency action sought."⁸ Thus, it is not enough for the statement of issues to list a statute and then hold a hearing to see if the applicant is able to comply with every element of the statute. As its name suggests, the statement of issues must identify issues with enough specificity that the applicant can meaningfully address the alleged deficiency.

⁸ AS 44.62.370.

The board's concern is addressed by careful reading of the regulation. The statement of issues does not identify any other issues in the manner required by the A P A . There are no remaining issues to examine in an evidentiary hearing.

IV. Conclusion

Because there are no material issues of fact in dispute, summary adjudication is appropriate and there is no need to hold an evidentiary hearing. Dr. Arundale's educational meetings meet the residency equivalency requirements of 12 A A C 60.083(b), as that regulation is properly read. The application of Wendy Arundale, Ph.D. for licensure as a psychologist by examination should be granted.

DATED this 25th day of February, 2008.

By: Dale Whitney
Administrative Law Judge