

NICHOLAS ARMINIO, :  
 :  
 PETITIONER, :  
 :  
 V. : COMMISSIONER OF EDUCATION  
 :  
 NEW JERSEY STATE BOARD : DECISION  
 OF EXAMINERS, :  
 :  
 RESPONDENT. :  
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SYNOPSIS

Petitioner sought to appeal a determination of the State Board of Examiners (Board of Examiners) denying his application for recertification as a teacher. Petitioner’s teaching license was revoked in 1992 in the wake of charges of criminal sexual contact against students and misconduct in office. Petitioner applied for recertification in 1999, was denied by the Board of Examiners, and appealed to the Commissioner, who in 2001 adopted an Initial Decision of the OAL upholding the Board of Examiner’s denial of recertification. The instant petition asserted that the Board of Examiners erred when it concluded 1) that petitioner had voluntarily surrendered his license as a condition of the pre-trial intervention program he entered in 1992, and 2) had not shown rehabilitation; additionally, petitioner contended, *inter alia*, that the witnesses who accused him of criminal conduct were not credible. The respondent asserted that all issues raised by petitioner were previously decided by the Commissioner and that the petition must be dismissed in accordance with the doctrine of *res judicata*. Respondent further contends that *N.J.A.C. 6A:9-17.10* bars petitioner’s recertification.

The ALJ found, *inter alia*, that: the petition fails to present a cause upon which relief can be granted; the doctrine of *res judicata* properly applies as the claims petitioner now asserts have been the subject of a prior decision of the Commissioner after a full hearing before an administrative law judge; petitioner’s argument that *N.J.A.C. 6A:9-17.10* – which states in pertinent part that the Board of Examiners shall not issue a new certificate to any candidate who is ordered to forfeit certification as a condition for entrance into a pre-trial intervention program – should not apply in this case because it violates *ex post facto* clauses in the federal and state constitutions is flawed as this regulation is not a criminal statute; and the purpose of the laws governing licensure of teachers is regulatory in nature and not penal. The ALJ concluded that the petition should be dismissed.

The Commissioner concurred with the ALJ, and adopted the Initial Decision of the OAL as the final decision in this matter. The petition was dismissed.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

OAL DKT. NO. EDU 6382-09  
AGENCY DKT. NO. 140-7/09

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Petitioner challenges the New Jersey State Board of Examiners' (Board of Examiners) May 14, 2009 denial of his application for teaching recertification. The Commissioner has reviewed the record and Initial Decision of the Office of Administrative Law (OAL), and carefully considered the parties' exceptions and reply exceptions. As a result of such deliberation, the Commissioner accepts the Administrative Law Judge's (ALJ) recommendation that the petition be dismissed.

Petitioner's teaching certification was revoked in 1992 in the wake of charges of criminal sexual contact [against multiple students] and misconduct in office. He applied for recertification in 1999, was denied same by the Board of Examiners and appealed to the Commissioner. In 2001, the Commissioner adopted an Initial Decision of the OAL upholding the Board of Examiners' denial of recertification. *See, Nicholas J. Arminio v. State of New Jersey, Department of Education, Board of Examiners, Commissioner Decision No. 425-01, decided November 5, 2001.*

In the present petition, filed on July 2, 2009, three grounds were presented for the current challenge. First, petitioner alleged that it was error for the Board of Examiners to

conclude that he had voluntarily surrendered his license as a condition of the pre-trial intervention program that he entered in 1992, withdrew from in 1993 and re-entered in or about 1994. Second, petitioner maintained that it was error for the Board of Examiners to find that he had not shown rehabilitation. Third, petitioner contended that the witnesses who accused him of the criminal conduct were not credible, additional witnesses should have been presented, and the attorney who represented him at the time of his second entrance into a pre-trial intervention program lied to him about the terms of the deal – which in turn led to his being unrepresented at the hearing which resulted in the revocation of his license.

As pointed out by the ALJ in the present case, the first and second issues were expressly adjudicated in petitioner's 1999 appeal and, pursuant to the doctrine of *res judicata*, will not be relitigated here. Similarly, the credibility of the witnesses against petitioner and the alleged conduct of petitioner's counsel – including any failure to present relevant witnesses – were expressly addressed by the ALJ and the Commissioner in that same appeal and will not be revisited. Further, petitioner had the opportunity to address those issues in an appeal of the Commissioner's 2001 decision, but did not, and the time to appeal has long since expired.

In a submission filed on October 16, 2009, petitioner first brought up the issue of the application to him of *N.J.A.C. 6A:9-17.10(c)(4)*. That regulation provides, in pertinent part:

Notwithstanding the provisions of (b) above, the Board of Examiners shall not issue a new certificate to any candidate who is . . . (4) ordered to forfeit certification as a condition for entrance into a pre-trial intervention program as set forth in Rule 3.28 of the New Jersey Court Rules.

Petitioner argued that since *N.J.A.C. 6A:9-17.10(c)(4)* was enacted after the revocation of his license, it would be a violation of the *ex post facto* clauses in the federal and state constitutions to use it as a basis to deny him recertification. The Commissioner rejects this argument for the

reasons set forth in ALJ Masin's thorough discussion of the issue. (Initial Decision at 6 – 9)<sup>1</sup> It is clear that the laws concerning teaching certificates are regulatory in nature, and that their ultimate purpose is not to punish but to protect students and ensure an appropriate caliber of instruction. As the primary purpose of the regulation is not penal, the *ex post facto* provisions of the federal and State constitutions are not implicated.

Accordingly, the Initial Decision is adopted and the petition is hereby dismissed.

IT IS SO ORDERED.<sup>2</sup>

COMMISSIONER OF EDUCATION

Date of Decision: December 1, 2009

Date of Mailing: December 2, 2009

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<sup>1</sup> In light of the disposition of the foregoing issues, petitioner's contention that he "has had several more years of exemplary teaching and coaching experience since his prior petition" is immaterial to the ultimate resolution of this controversy.

<sup>2</sup> This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36*.