

AGENCY DKT. NO. 7-11/12A

ELLEN ANN MUENCH,	:	
	:	
APPELLANT,	:	COMMISSIONER OF EDUCATION
V.	:	
	:	DECISION
NEW JERSEY STATE BOARD OF	:	
EXAMINERS,	:	
	:	
RESPONDENT.	:	
_____	:	

Decided by the New Jersey State Board of Examiners, July 26, 2012

For the Appellant, Ellen Ann Muench, pro se

For the Respondent, New Jersey Attorney General (Daniela Ivancikova, D.A.G.)

The instant controversy is an appeal of the New Jersey State Board of Examiners’ (respondent) decision to deny appellant Muench’s request to remove internet postings relating to past actions which respondent has taken concerning her certification. The first posting is a July 25, 2006 decision denying her request for an additional year of participation in the provisional teacher program. The second posting is the minutes of the July 19, 2007 meeting in which respondent voted to grant appellant’s appeal of the aforementioned denial and allow her an extra year in the program.

More specifically, appellant first wrote to respondent on May 28, 2012, requesting that respondent remove the two postings “from all search engines” on the internet. Appellant stated that the postings were interfering with her attempts to secure a job in the field of education. She also feared that she or her family could be vulnerable to abuse by a person from her past because of the personal information contained in the subject internet postings.

On July 26, 2012, the respondent Board of Examiners voted to deny appellant's request to remove the internet postings, and – by letter dated September 24, 2012 – it advised appellant of same. The letter indicated that the denial rested upon the fact that respondent “does not have control over the Department’s entire website, but rather only over those portions that pertain to Board decisions.” Thus, continued respondent, it “cannot remove any decisions regarding your case that may have been issued by other offices within the Department [of Education].” Respondent also stated that the minutes of its July 19, 2007 meeting cannot be removed from the website because they accurately reflect its actions on that date. However, respondent assured appellant that it would “amend its minutes to remove any references to the specifics of [her] case,” and “remove from the website its decision of July 25, 2006 denying [her] an additional year in the Provisional Teacher Program.”

On November 5, 2012 appellant filed her notice of appeal. By letter dated December 3, 2012, the Bureau of Controversies and Disputes (Bureau) notified appellant that her appeal could not proceed until she had submitted proof that she had served her notice of appeal on the Attorney General. Appellant produced said proof of service on December 18, 2012.

The Deputy Attorney General assigned to the case filed a Certification and Statement of Items Comprising the Record on December 14, 2012. By way of a letter dated December 17, 2012, the Bureau advised appellant that (pursuant to *N.J.A.C. 6A:4-2.7(a)*) the brief supporting her appeal was due on or before December 28, 2012.

On December 18, 2012, in addition to filing the above referenced proof of service upon the Attorney General, appellant submitted an affidavit identifying her exhibits. No further documents have been filed by appellant, who is proceeding *pro se*. Respondent filed its answering papers on January 25, 2013.

Of relevance to this controversy is New Jersey's public records law. In its first provision, the law explains that, subject to specific statutes, regulations and court rules:

The Legislature finds and declares it to be the public policy of this State that: government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, with certain exceptions, for the protection of the public interest, **and any limitations on the right of access accorded by P.L. 1963, c. 73 . . . as amended and supplemented, shall be construed in favor of the public's right of access.**

*N.J.S.A. 47:1A-1.* (Emphasis added.)

The statute allows for the protection of citizens' personal information, but only where disclosure thereof would violate their "reasonable expectation of privacy":

a public agency has a responsibility and an obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy; and nothing contained in P.L. 1963, c. 73 . . . , as amended and supplemented, shall be construed as affecting in any way the common law right of access to any record, including but not limited to criminal investigatory records of a law enforcement agency.

*N.J.S.A. 47:1A-1.*

Section *N.J.S.A. 47:1A-1.1* of the public record law defines what a government record is:

"Government record" or "record" means any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been made, maintained or kept on file in the course of his or its official business by any officer, commission, agency or authority of the State or of any political subdivision thereof, including subordinate boards thereof, or that has been received in the course of his or its official business by any such officer, commission, agency, or authority of the State or of any political subdivision thereof, including subordinate boards thereof. The terms shall not include inter-agency or intra-agency advisory, consultative, or deliberative material.

The postings identified by appellant are unquestionably public records, as they are electronically stored information made and maintained in the course of official business by an agency of the government, and do not fall within the exceptions set forth in *N.J.S.A. 47:1A-1.1*. Further, in the Commissioner's view, an applicant for certification to teach in public schools can have no reasonable expectation that the Board of Examiners' determinations regarding his or her qualifications will be withheld from the public.

In the present case, because appellant's account of the reasons for the insufficient ratings she had received in the New Brunswick and Perth Amboy school districts persuaded respondent that its initial rejection of appellant's application for another year in the provisional teacher program may not have been appropriate, it advised appellant – in its September 24, 2012 letter decision to her – that it would accommodate her by removing from its website the July 25, 2006 decision rejecting her application.

As to the post regarding its July 19, 2007 minutes, respondent stated in that same September 24, 2012 letter decision that it would “remove any references to the specifics of [appellant's] case” from the minutes. As respondent has pointed out, provision *N.J.S.A. 10:4-14* of the Open Public Meetings Act, *N.J.S.A. 10:4-6 et seq.*, requires that the meeting minutes of all public bodies must be made available to the public:

Each public body shall keep reasonably comprehensible minutes of all its meetings showing the time and place, the members present, the subjects considered, the actions taken, the vote of each member, and any other information required to be shown in the minutes by law, which shall be promptly available to the public to the extent that making such matters public shall not be inconsistent with section 7 of this act.

*N.J.S.A. 10:4-14.*

Thus, respondent may not remove its July 19, 2007 minutes from its website. The Commissioner is persuaded that respondent's determination was a reasonable exercise of its authority.

Accordingly, respondent's September 24, 2012 decision is hereby affirmed, and the appeal is herewith dismissed.

IT IS SO ORDERED.\*

COMMISSIONER OF EDUCATION

Date of Decision: May 28, 2013

Date of Mailing: May 31, 2013

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\* This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36*.