

STATE BOARD OF EXAMINERS DKT. NO. 1112-161
COMMISSIONER APPEAL NO. 3-5/13A

IN THE MATTER OF THE REVOCATION: COMMISSIONER OF EDUCATION
OF THE TEACHING CERTIFICATES OF : DECISION
KATHRYN SCHMICKING GUERRA :

Appellant challenges the determination of the New Jersey State Board of Examiners (Board of Examiners) that her action in entering into a plea agreement in Hudson County Superior Court – which agreement provided that she would be permanently barred from public employment in New Jersey – warranted the revocation of her teaching certificates. The Commissioner will be guided by *N.J.A.C. 6A:4-4.1(a)*, which instructs that “[i]n determining appeals from decisions of the State Board of Examiners . . . , the Commissioner shall ascertain whether the decision is supported by sufficient credible evidence in the record and shall not disturb the decision unless the appellant has demonstrated that the Board . . . acted in a manner that was arbitrary, capricious or contrary to law.”

As to the requirement that the Board’s decision be grounded in sufficient credible evidence, there appears to be no room for dispute. The basis for the State Board of Examiners’ decision was the terms of a plea agreement, which were placed on the record at a May 9, 2011 hearing and subsequently confirmed at a June 20, 2011 sentencing hearing. The transcript of the May 9, 2011 hearing – which transcript is annexed to appellant’s brief as Exhibit D – leaves no doubt that appellant agreed to “forfeit any future opportunity to to [sic] work for the State of New Jersey as an educator or otherwise.” (Exhibit D at 8) Further, the transcript shows that the

Judge warned appellant that she would not be successful should she attempt to reverse the prohibition on her public employment in the future. (*Id.* at 9)

Nor does the Commissioner find arbitrary, capricious or contrary to law the Board's conclusion that appellant's agreement to refrain from public employment in New Jersey, which agreement was a requirement in the disposition of criminal charges against appellant, constituted a reasonable basis for revoking appellant's teaching certificates. To the contrary, the Board's action in revoking appellant's certificates formalizes the practical effect of the plea agreement.

The arguments in appellant's brief do not alter the Commissioner's conclusions. Appellant states that she entered a guilty plea erroneously, her actions were actually not a crime, and stripping her of her livelihood is too harsh a consequence for those actions.¹ She further asserts that she "was never advised that her certificates to teach were ever in jeopardy" as a result of her guilty plea. Appellant also maintains that since her guilty plea was in lieu of a conviction, the statutes prescribing disqualifications for convictions do not apply to her. Finally, appellant suggests that the effect of her actions upon the school district was minimal and the Commissioner should consequently consider changing the penalty from the revocation to the suspension of her certificates.

Notwithstanding what appellant may or may not have believed when she entered into the plea agreement, its language is unambiguous. It permanently bars appellant from public employment in New Jersey. It is a mandate that outlives the pretrial intervention program or any other agreement into which she may have entered in connection with her indictment for actions alleged to have taken place during her employment in the Bayonne school district. Appellant

¹ In that regard appellant also points to work she has done on behalf of various charities and causes, and asks that her good citizenship mitigate against the revocation of her teaching certificates.

chose a plea agreement over a trial of the merits of her case.² In the absence of such a trial, neither the Board of Examiners nor the Commissioner can accept appellant's unilateral version of the merits, including her contention that the effect of her actions upon the respondent school district was minimal.

Nor does the discussion in appellant's brief concerning the statutory provisions prohibiting public employment for persons convicted of certain categories of offences address the basis for the Board of Examiner's revocation of appellant's certificates. As stated *supra*, the revocation is the logical consequence of the plea agreement's prohibition concerning public employment.

In summary, the Commissioner is not persuaded that there is any basis to disturb the decision of the Board of Examiners to revoke appellant's certificates. Accordingly, it is affirmed for the reasons set forth therein, and the appeal is dismissed.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: November 4, 2013

Date of Mailing: November 6, 2013

² Whether or not appellant was adequately advised about the ramifications of the terms of her plea agreement is a matter which must be resolved between her and her counsel.

³ Pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*, Commissioner decisions are appealable to the Appellate Division of the Superior Court.