

#250-14A

STATE BOARD OF EXAMINERS DKT. NO. 1213-148;  
COMMISSIONER APPEAL NO. 5-5/13A

KAREN GABA :  
V. : COMMISSIONER OF EDUCATION  
NEW JERSEY STATE BOARD :  
OF EXAMINERS : DECISION  
\_\_\_\_\_ :

Appellant challenges the determination of the New Jersey State Board of Examiners (Board of Examiners) that it was constrained from removing two decisions concerning her from the Department of Education’s (Department) website. The subject decisions memorialized the Board of Examiners’ refusal to reissue appellant’s revoked substitute teaching credential and the State Board of Education’s (State Board) denial of her appeal from the Board of Examiners’ decision. 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.”

The facts underlying this controversy are established and undisputed. As a result of an incident which occurred in 1994, appellant agreed – in June 1996 – to a revocation of her substitute teaching credential. She had faced criminal charges as a result of the incident, but – in September 1996 – a consent order was issued in Sussex County Superior Court that expunged from local and State law enforcement agencies all records relating to the charges. In June 1998, appellant’s application for a new substitute teaching credential was denied by the Board of

Examiners, and in November 1999 the State Board denied an appeal from the Board of Examiners' decision.

In January 2004 the Board of Examiners voted to allow appellant to apply for permanent teaching certification, and in February 2004 a standard teaching certificate with a Health and Physical Education endorsement was issued to appellant. Eight years later, in November 2012, appellant requested that the Board of Examiners remove from the Department's website copies of the 1998 Board of Examiner decision and the 1999 State Board decision regarding her substitute teaching credential.

In a letter-decision issued on April 30, 2013, the Board of Examiners denied the request, stating:

The Board . . . cannot remove any decisions from the Department of Education's website regarding Gaba that were not issued by the Board itself. Moreover, the Board cannot remove the decisions pertaining to [Gaba], as they accurately reflect Board action taken at the time.

*In the Matter of Gaba*, State Board of Examiners Docket No. 1213-148 (April 30, 2013).

However, the Board of Examiners did elect to "amend its decision and minutes to reflect the expungement of appellant's criminal record, and remove any references to the specifics of her case." The instant appeal followed.

Reviewing the Board of Examiners' decision in the context of the foregoing facts, the Commissioner cannot conclude that the Board of Examiners acted arbitrarily, capriciously or contrary to law. At the outset, the Board of Examiners – a component of the Department – is correct in advising that it has no authority to remove from the Department's website information, documents or files that were created by the State Board, Commissioner, or other constituents of the Department.

As to the Board of Examiners' June 1998 decision rejecting appellant's request for a new county substitute credential, *N.J.S.A.* 47:1A-1<sup>1</sup> and 47:1A-1.1<sup>2</sup> bar the Board of Examiners from obstructing public access to same. The text of those statutes advises that the public has a right of access to government records, including memorializations of formal decisions made by government instrumentalities. While certain records may be protected for reasons of privacy, applications for teaching certification are not included in that carve-out. *See, Muench v. New Jersey Board of Examiners*, Commissioner Decision No. 199-13A, decided May 28, 2013, at 4.<sup>3</sup>

In sum, the Board of Examiners' action denying appellant's request to delete the subject decisions from the Department's website was not arbitrary, capricious or contrary to law. Moreover, the Board of Examiners made a good faith effort to accommodate appellant by amending its own decision to reflect the above-referenced September 1996 expungement order,

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<sup>1</sup> Legislative findings, declarations: 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 (C.47:1A-1 et seq.)* as amended and supplemented, shall be construed in favor of the public's right of access;

<sup>2</sup> "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.

<sup>3</sup> Appellant's suggestion that the 1996 expungement order requires the removal of Department decisions from its website is contradicted by the express terms of that order. More specifically, the order limits the expungement of records to four entities: the Sussex County prosecutor, Superintendent of State Police, New Jersey Attorney General and Chief of Police of Sandyston Township. Similarly, the expungement statute, *N.J.S.A.* 2C:52-1 *et seq.* allows the removal of criminal records from the files of courts, detention and correctional facilities, law enforcement and criminal justice agencies, but not from other State administrative agencies. *See, E.A. v. N.J. Real Estate Comm'n.*, 208 *N.J. Super.* 65, 68 (App. Div.), *certif. denied*, 104 *N.J.* 415 (1986).

and by removing from the decision any references to the “specifics” of the 1994 incident which precipitated the revocation of her substitute teaching credential.

Accordingly, the Commissioner will not disturb the decision of the Board of Examiners. It is affirmed for the reasons set forth therein, and the appeal is dismissed.

IT IS SO ORDERED.<sup>4</sup>

ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 10, 2014

Date of Mailing: June 11 2014

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<sup>4</sup> 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.