

SB #99-98

IN THE MATTER OF THE DENIAL OF :
STANDARD CERTIFICATION TO : STATE BOARD OF EDUCATION
LINDA J. AVELLINO. : DECISION

Decided by the State Board of Examiners, November 30, 1998

For the Petitioner-Appellant, Zazzali, Zazzali, Fagella & Nowak (Kathleen A. Naprstek, Esq., of Counsel)

For the Respondent-Respondent, Arlene G. Lutz, Deputy Attorney General
(Peter Verniero, Attorney General of New Jersey)

This is an appeal from a decision made by the State Board of Examiners on November 5, 1998 and memorialized in a letter dated November 30, 1998. That decision denied Linda Avellino's request that the Board of Examiners issue standard certification to her as a Teacher of Elementary School, Teacher of Psychology, Student Personnel Services, and Substance Awareness Coordinator.

The Board of Examiners' letter of November 30 included the notice that: "Appeal of this decision may be made to the State Board of Education pursuant to the provisions of N.J.S.A. 18A:6-28." Accordingly, Ms. Avellino's attorney filed a notice of appeal to the State Board of Education, seeking reversal of the Board of Examiners' decision and the issuance of standard certification.

Because this appeal arises from a decision by the Board of Examiners to deny the issuance of certification, jurisdiction in the first instance lies with the Commissioner of Education rather than the State Board. E.g., In the Matter of the Issuance of a

Teaching Certificate to Paula Griskey, transferred to the Commissioner by the State Board of Education, January 7, 1987, decided by the Commissioner, August 4, 1987, reversed and remanded to the State Board of Examiners by the State Board of Education, August 3, 1988. We therefore transfer this appeal to the Commissioner in order that he may decide it in conformity with the standards established in In re Massiello, 29 N.J. 590 (1958). Id.

In doing so, we note that one of the pivotal issues involved in the underlying appeal is whether the district training program in which Ms. Avellino was employed by the Spotswood School District during the 1995-96 school year was in conformity with the requirements of the regulations governing provisional teachers. We stress that this question relates to the factual basis of the Board of Examiners' determination and that, although a full evidentiary hearing may not be required, Ms. Avellino must be afforded an adequate opportunity to present evidence material to resolving the issue. See Griskey, supra.

Finally, we direct the State Board of Examiners to revise its decision letters to insure that individuals who are denied the issuance of certification are properly notified that such decisions may be appealed to the Commissioner of Education. Cf. J.A. v. Board of Education for the District of South Orange and Maplewood, Docket #A-1615-97T2 (App. Div. 1999) (approved for publication), slip op. at 15-16.

May 5, 1999

Date of mailing _____