

SBE #CR005-09/02
SB # 51-02

IN THE MATTER OF THE DENIAL OF :
THE ISSUANCE OF A TEACHING : STATE BOARD OF EDUCATION
CERTIFICATE TO ROBERT ELMEZZI. : DECISION

Decided by the State Board of Examiners, September 26, 2002

Decision on motion by the State Board of Education, May 7, 2003

For the Petitioner-Appellant, Lentz & Gengaro (George M. Holland, Esq.,
of Counsel)

For the Respondent-Respondent, Sarah Crowley, Deputy Attorney
General (Peter C. Harvey, Attorney General of New Jersey)

On April 15, 1999, the State Board of Examiners revoked the certificate of eligibility held by Robert Elmezzi (hereinafter "appellant") as the result of his action in presenting a fraudulent instructional certificate to school officials in order to obtain public school employment.

On September 26, 2002, the Board of Examiners denied the appellant's application for certification following revocation as a teacher of biological science and physical science. The Board of Examiners concluded that the appellant had not demonstrated his rehabilitation as required by N.J.A.C. 6:11-3.6(g), stressing that the documents supplied by the appellant provided little, if any, insight as to rehabilitation for

the specific conduct which had caused it to revoke his certificate of eligibility.¹ The Board of Examiners explained that the appellant “has not indicated that he has received counseling or other such help that would allow him to understand his actions and prevent their recurrence. Without such information, the Board of Examiners cannot rightly assess whether such conduct is likely to be repeated.” Board of Examiners’ Decision, slip op. at 2.

The appellant filed the instant appeal to the State Board of Education.²

On May 7, 2003, the State Board granted the appellant’s motion to supplement the record with a letter relating the circumstances surrounding the conduct that led to the revocation of his certificate and his subsequent efforts to remedy the situation, a letter of recommendation, and the report of his psychological evaluation. The State Board found that the proposed exhibits were material to the issues on appeal. N.J.A.C. 6A:4-1.9(b).

The appellant argues that he has now demonstrated his rehabilitation. The Deputy Attorney General representing the Board of Examiners requests that it be

¹ N.J.A.C. 6:11-3.6(g) provides that:

Where an applicant for certification indicates that he or she previously held a certificate issued by the State Board of Examiners, which certificate was revoked, the Board of Examiners may require the applicant to set forth the pertinent circumstances relating to the revocation, and require the applicant to demonstrate to the Board rehabilitation which warrants reinstatement of the revoked certificate. The Board shall not refuse to reinstate a revoked certificate without providing the petitioner an opportunity to be heard.

² The appellant originally filed his appeal with the Commissioner of Education. In a subsequent certification to the State Board, counsel for the appellant averred that the Deputy Attorney General assigned to the case had advised the Director of the Bureau of Controversies and Disputes in the Department of Education that the appeal should have been filed with the State Board. Counsel indicated that he was then advised by the Director of Controversies and Disputes that he was required to refile his appeal with the State Board, which he did.

provided with the opportunity to consider the record as supplemented by the State Board, contending that the Board of Examiners is the proper forum for consideration in the first instance of the additional evidence.

Initially, we stress that an appeal from an adverse decision of the Board of Examiners on an application for certification following revocation is properly made to the Commissioner of Education, rather than to the State Board. As we explained in our recent decision in In the Matter of the Denial of the Issuance of a Teaching Certificate to Otto Krupp, decided by the State Board of Education, May 7, 2003, slip op. at 2-3, which also involved an appeal from the denial of an application for certification following revocation:

[W]e are aware that the written decision mailed to appellant by the Board of Examiners indicated that an appeal of the decision could be made to the State Board of Education pursuant to N.J.S.A. 18A:6-28. However, that statute provides that an appeal to the State Board by a party aggrieved by a determination of the Commissioner of Education must be taken within thirty days “in the manner prescribed by the rules of the board.” The regulations governing appeals to the State Board provide that final decisions of the State Board of Examiners are appealable to the State Board of Education as of right, but define such decisions as “[a]ny decision of the State Board of Examiners pertaining to the revocation or suspension of a certificate.” N.J.A.C. 6A:4-1.1(a)(2). Hence, as it has long been established, any appeal from a determination made by the State Board of Examiners to deny the issuance of certification must be made to and decided by the Commissioner of Education pursuant to the original jurisdiction conferred on him by N.J.S.A. 18A:6-9 to hear and determine all controversies and disputes arising under the school laws except those governing higher education. In the absence of any change in the statutory framework that establishes the jurisdiction of the Commissioner to determine all controversies arising under the school laws or in the procedural regulations which we have adopted to govern appeals to the State Board, we find no basis that would

justify departing from our comprehensive system of appeals as it has been effectuated up until this point. In re Masiello, 25 N.J. 590 (1958).

Ordinarily, we would remand this matter to the Commissioner. However, under the circumstances, in which we have granted the appellant's request to supplement the record with documents pertaining to the deficiencies in his proofs cited by the State Board of Examiners in its decision of September 26, 2002, we find that the appropriate course is to remand this matter to the Board of Examiners in order to provide it with the opportunity to consider whether the appellant has demonstrated his rehabilitation on the basis of the enhanced record. We reiterate in that regard that the Board of Examiners is the body charged with the responsibility in the first instance for determining whether an applicant for certification following revocation has demonstrated his or her rehabilitation. N.J.A.C. 6:11-3.6(g). We also again emphasize that any appeal from an adverse determination of the Board of Examiners should properly be made to the Commissioner.

September 3, 2003

Date of mailing _____