

MICHAEL GREENMAN, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

NEW JERSEY STATE BOARD OF : DECISION

EXAMINERS, :

RESPONDENT. :

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SYNOPSIS

Petitioner challenged the denial of his application for a Teacher of Career and Technical Education Certificate of Eligibility (CTE): Audio Visual Broadcast Production, and CTE: Graphic Design. Respondent, New Jersey State Board of Examiners (SBE), determined that petitioner failed to meet the requirement of 8,000 hours of employment acquired within ten years of the certification, pursuant to *N.J.A.C. 6A:9B-11.3(b)(1)(i)*. The SBE filed a motion to dismiss, and oral argument on the motion was held on August 6, 2018, after which the record closed.

The ALJ found, *inter alia*, that: there were no material facts at issue in this matter, and the case was ripe for summary decision; the issue herein is whether the SBE acted arbitrarily, capriciously or unreasonably by denying petitioner the CTEs he sought when he presented evidence that failed to meet the standards required under *N.J.A.C. 6A:9B-11.3(b)*; petitioner applied for two CTE certifications, Audio Visual Broadcast Production, and Graphic Design; the SBE conceded that petitioner meets all other criteria for these two CTEs, except for the requirements delineated in *N.J.A.C. 6A:9B-11.3(b)*, which sets forth the various requirements and endorsements needed to be eligible for a particular CTE; an applicant may satisfy the regulation requirements based on their prior employment experience or by holding the requisite degree required for the particular CTE; because petitioner does not hold the required degree for the two CTEs in question, he applied based on his prior work experience; petitioner needed to demonstrate that he possessed “a minimum of four years (8,000 hours) of department approved and documented employment experience” which took place “within 10 years of the endorsement application”; in the alternative, applicants may present evidence of other education/experience that they deem equivalent to the area of deficiency, so long as a one to one correspondence can be established between the evidence presented and the requirements of the certificate; petitioner failed to demonstrate compliance with the requirements of *N.J.A.C. 6A:9B-11.3(b)*; and petitioner’s arguments contending that the SBE’s decision was arbitrary, capricious or unreasonable are without merit. The ALJ concluded that the SBE’s decision was reasonable; accordingly, the SBE’s motion for summary decision was granted and the matter was dismissed with prejudice.

Upon review, the Commissioner concurred with the ALJ’s findings, and adopted the Initial Decision of the OAL as the final decision in this matter.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

September 20, 2018

OAL DKT. NO. EDU 03247-18  
AGENCY DKT. NO. 11-1/18

MICHAEL GREENMAN, :  
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 PETITIONER, :  
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 V. : COMMISSIONER OF EDUCATION  
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 NEW JERSEY STATE BOARD OF : DECISION  
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 RESPONDENT. :  
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties did not file exceptions.

Upon such review, the Commissioner agrees with the Administrative Law Judge (ALJ) that the New Jersey State Board of Examiners did not act in an arbitrary, capricious, or unreasonable manner when it denied petitioner’s application for a Teacher of Career and Technical Education Certificate of Eligibility (CTE): Audio Visual Broadcast Production and CTE: Graphic Design certificates. The Commissioner further concurs with the ALJ that petitioner failed to demonstrate that he had completed four years or 8,000 hours of employment experience in the appropriate field within 10 years of the endorsement application, as required by *N.J.A.C. 6A:9B-11.3(b)(1)(i)*. The Commissioner further notes that, pursuant to *N.J.A.C. 6A:9B-11.3(b)(1)(i)(1)*, petitioner’s teaching experience cannot be used as a substitute for the required four years of occupational experience.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter – for the reasons expressed therein – and the petition is hereby dismissed.

IT IS SO ORDERED.\*

COMMISSIONER OF EDUCATION

Date of Decision: September 20, 2018

Date of Mailing: September 21, 2018

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\* This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36* (*N.J.S.A 18A:6-9.1*).



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

**SUMMARY DECISION**

OAL DKT. NO. EDU 03247-18

AGENCY DKT. NO. 11-1/18

**MICHAEL GREENMAN,**

Petitioner,

v.

**DEPARTMENT OF EDUCATION, STATE**

**BOARD OF EXAMINERS,**

Respondent.

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**Roy B. Greenman**, Esq., on behalf of petitioner (Budin, Greenman & Greenman, attorneys)

**Laurie Fichera**, Esq., Deputy Attorney General, on behalf of respondent (Gubir S. Grewal, Attorney General of New Jersey, attorney)

Record Closed: August 6, 2018

Decided: August 8, 2018

BEFORE **JOANN LASALA CANDIDO**, ALAJ:

Petitioner, Michael Greenman, challenges the action of the State Board of Examiners (respondent/Board) in denying his application for a Teacher of Career and Technical Education Certificate of Eligibility (CTE): Audio Visual Broadcast Production and Technical of Career and Technical Education (#4104) and Graphic Design (#4112)

certificates as set forth in N.J.A.C. 6A:9B-11.3. The Board of Examiners determined that Greenman failed to meet the 8000 hours of employment acquired within ten years of the certification as required under N.J.A.C. 6A:9B-11.3 (b)(1)(i).

On February 27, 2018, the Board filed a Motion to Dismiss the Petition of Appeal. Petitioner filed a response on March 2, 2018. A telephone conference was held on March 19, 2018, and the parties were going to attempt settlement. Telephone status conferences were held on April 24 and May 17, 2018, and it was determined that the matter could not be resolved. The Board submitted a Reply brief on June 7, 2018. Petitioner requested oral argument on the Motion to Dismiss (that will be addressed as a summary decision motion) that was held on August 6, 2018, on which date the record closed.

The Board seeks relief pursuant to N.J.A.C. 1:1-12.5, which provides that summary decision should be rendered “if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” These provisions mirror the language of Rule 4:46-2 and the Supreme Court’s decision in Judson v. Peoples Bank and Trust Co. of Westfield, 17 N.J 67 Agency Final Decision (1954). Under N.J.A.C. 1:1-12.5(b), the determination to grant summary judgment should be based on the papers presented as well as any affidavits, which may have been filed with the application. For the adverse, i.e., the non-moving party to prevail in such an application, responding affidavits must be submitted showing that there is indeed a genuine issue of fact, which can only be determined in an evidentiary proceeding. The Court in Brill v. Guardian Life Insurance Co. of American, 142 N.J 520, 523 (1995), set the standard to be applied when deciding a motion for summary judgment. Therein the Court stated:

The determination whether there exists a genuine issue with respect to a material fact challenged requires the Motion Judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party... are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party.

In this matter the parties agree there is no question of fact. The issue is whether the State Board of Examiners acted arbitrarily, capriciously, or unreasonably by denying Greenman the #4104 and #4112 CTEs when he presented evidence that failed to meet the standards of N.J.A.C. 6A:9B-11.3(b).

Greenman applied for two CTE (Career and Technical Education) certifications, to wit: Audio-Visual Broadcast Production Technology (#4104) and Graphic Design (#4112). At that time, Mr. Greenman held an Interactive Media CTE (#4150), and had been employed at Morris County School of Technology as a Visual and Performing Arts teacher. In support of his application, Greenman cited his work as a videographer and digital album designer from 2005-present, his work as a production director from 2013-2017, and his work as a visual and performing arts teacher from 2013-2017. I/M/O Application of Michael Greenman, St. Bd. of Exam'rs (December 8, 2017).

On November 1, 2017, the Board heard Greenman's application for the two additional CTEs and determined that he had not satisfied the requirements of having 8,000 hours of employment acquired within 10 years of his application as set forth in N.J.A.C. 6A:9B-11.3(b)(1)(i).

Greenman carries the burden of demonstrating by a preponderance of the credible evidence that he is entitled to the certification he seeks. Farrar v. State Bd. of Exam'rs, EDU 13763-08, Initial Decision (April 27, 2010), aff'd, Comm'r (July 26, 2010), <<http://lawlibrary.rutgers.edu/oal/search.html>>. The Commissioner will "not disturb the decision [of the Examiners] unless the appellant has demonstrated that the Board [of Examiners] or the Commissioner acted in a manner that was arbitrary, capricious or contrary to law." N.J.A.C. 6A:4-4.1; Farrar, supra, EDU 13763-08 (citing Fisher v. State Bd. of Exam'rs, 96 N.J.A.R.2d (EDU) 58). Where there is room for two opinions, action is not considered arbitrary or capricious when exercised honestly and upon due consideration, even though court may believe that an erroneous conclusion has been reached. Bayshore Sewerage Co. v. Dep't of Env't'l Prot., 122 N.J. Super. 184, 199 (App. Div. 1973).

The “judge’s function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.”Brill, supra, 142 N.J. at 540 (quoting Anderson v. Liberty Lobby, 477 U.S. 242, 249, 106 S. Ct. 2505, 2511, 91 L. Ed. 2d 202, 212 (1986)). When the evidence “is so one-sided that one party must prevail as a matter of law,” the trial court should not hesitate to grant summary judgment. Liberty Lobby, supra, 477U.S. at 252, 106 S. Ct. at 2512, 91 L. Ed. 2d at 214.

I **CONCLUDE** that this matter is ripe for summary decision. There is no material disputed facts which require a plenary hearing, and the Board of Examiners is entitled to judgment as a matter of law.

The Board concedes that Greenman meets all other criteria for the #4104 and the #4112 CTEs except for the requirements delineated in N.J.A.C. 6A:9B-11.3(b). This regulation sets forth the various requirements and endorsements needed to be eligible for a particular CTE. The applicant may satisfy the regulation’s requirements based on their prior employment experience or by holding the requisite degree required for the particular CTE. Because Greenman does not hold the required degree for the #4104 and #4112 CTEs, he applied based on his prior work experience.

N.J.A.C. 6A:11.3(b)(1)(i) provides:

To be eligible for the CE, the candidate shall fulfill one of the following:

1. Experience-based endorsements: All candidates for an experienced-based endorsement shall pass an examination in physiology, hygiene, and substance abuse issues pursuant to N.J.A.C. 6A:9B-5.9. If the candidate seeks an endorsement in a regulated occupation for which a State-issued occupational license, certificate, or registration is required for employment in or practice of the occupation, the candidate also shall hold the State-issued occupational license, certificate, or registration. The employing school district shall recommend for approval the candidate's experience pursuant to the criteria and procedures in this subsection. Candidates shall meet one of the following requirements:

- i. Employment experience: The candidate shall present a minimum of four years of Department-approved and documented employment

experience, which will be equivalent to 8,000 hours of employment. The employment experience shall be acquired within 10 years of the endorsement application and shall be verified by the applicant's employer(s).

(1) Teaching experience in the occupation cannot be used as a substitute for the required four years of occupational experience; however, the Department may consider teaching experience in an apprenticeship training program registered with the United States Department of Labor or equivalent state agency as evidence of eligible employment experience.

(2) The Department will identify industry credentials in consultation with experts from education and business. The industry credentials may be considered equivalent to the employment experience requirement in this subparagraph.

ii. Self-employment: The candidate shall present a notarized letter from a tax preparer and/or an attorney verifying the following:

(1) The candidate has filed State and/or Federal taxes for the self-employment using a Federal U.S. Census North American Industry Classification System (NAICS) that is appropriate for the endorsement; and

(2) The candidate's self-employment experience meets the minimum of four years of employment experience within 10 years of the certificate application, which will be equivalent to 8,000 hours of employment.

iii. Military experience: Candidates shall present a Military Discharge certificate (DD-214) indicating military qualifications and occupational training received to determine the extent of credit to be applied toward satisfying the employment experience requirements pursuant to (b)1i above. Pursuant to N.J.A.C. 6A:9B-11.3(b)(1)(i)

Greenman needed to demonstrate that he possessed “a minimum of four years [8,000 hours] of department approved and documented employment experience” which took place “within 10 years of the endorsement application[.]” Furthermore, if an applicant is deficient on certification requirements, they may present “evidence of alternative education and/or experience that he or she believes is equivalent to the area(s) of deficiency.” N.J.A.C. 6A:9B-4.12(b). This evidence must be commensurate to the requirements outlined in the licensing deficiencies, establishing a “one-to-one

correspondence” between the evidence presented and the requirements of the certificate. Hutchinson v. N.J. St. Bd. of Exam’rs, OAL Dkt. No. EDU 16373-12, Initial Decision (Apr. 5, 2013). The “petitioner carries the burden of demonstrating by a preponderance of the credible evidence that [he] is entitled to the endorsement [he] seeks.” McQuilken v. N.J. St. Bd. of Exam’rs, OAL Dkt. No. EDU 8374-11, Initial Decision (Dec. 13, 2011), adopted, Comm’r (January 27, 2012).

Greenman presents arguments in showing that the Board’s decision was arbitrary and capricious: (1) that he met the requirements for the #4112 and the #4104 CTEs when he originally applied for and received his #4150 CTE, and since he met the requirements then he should have received the CTE now even though several years have elapsed, and (2) that if the Board had included his teaching experience at Morris County Vocational School from 2013-2017, he would have met the requisite hours needed to satisfy N.J.A.C. 6A:9B-11.3(b)(1)(i) and the Board did not take into consideration the #4150 certification Greenman obtained in 2012 which covers courses he has been teaching for the past four years and is similar to the requisite of #4104.

Hence, Greenman’s position is that the situation is unique when applying petitioner’s teaching experience in the past four years and the 8000 hours of past experience in the multi-media-telecommunication field and taking into consideration that he could have received the #4112 and #4104 CTEs if he had applied for them contemporaneously with his application for the #4150 CTE, makes him eligible for the #4104 certification. Greenman further avers that the Board erred by not including this work as a teacher from 2013-2017 in its analysis of his alternative experience. Greenman asserts that his teaching under the #4150 Interactive Media CTE overlaps with the #4104 A/V Broadcast Production and #4112 Graphic Design CTEs, and therefore should count as part of his alternative experience.

This is not reason for the Board to circumvent the ten-year requirement of N.J.A.C. 6A:9B-11.3(b)(1)(i). Although N.J.A.C. 6A:9B-4.12(b) provides the Board with discretionary authority in weighing an alternate experience for certification purposes, it does not provide the Board with discretion to circumvent the ten-year requirement set forth in N.J.A.C. 6A:9B-11.3(b)(1)(i).

N.J.A.C. 6A:9B-11.3(b)(1)(i)(1) clearly states that “[t]eaching experience in the occupation cannot be used as a substitute for the required four years of occupational experience[.]” Greenman contends that the Board read this regulation too narrowly when it set aside his teaching experience from its analysis. Conversely, N.J.A.C. 6A:9B-4.12(b) does not provide the Board with the discretion to issue a CTE in a situation where doing so contravenes a specific and direct regulation defining the exact experience necessary to obtain the CTE.

Being that the Board discharged its duty to weigh the evidence of alternative experience while following the requirements set forth in N.J.A.C. 6A:9B-11.3(b) does not suggest that it acted arbitrarily and capriciously in its decision. The Board is compelled to follow the law. The State has a compelling interest in regulating the experience necessary for educators to obtain a certificate to teach certain subjects. Without such standards, we risk subjecting our students to inconsistent and substandard education; “the state must maintain and certify a uniform level of educational performance and achievement in order to establish a fundamental baseline of competence upon which we can all rely.” Maslin v. N.J. Dept. of Ed. St. Bd. of Exam’rs, OAL Dkt. No. EDU 2689-06, Initial Decision (Feb. 28, 2008) adopted, Comm’r (April 8, 2008).

Greenman has not met his burden of showing that the Board acted arbitrarily, capriciously, or unreasonably in its decision to deny him the #4104 and #4112 CTEs because he failed to present evidence of alternative experience that did not contravene a directive of N.J.A.C. 6A:9B-11.3(b) and the Board did not abuse its discretion in following the pertinent regulations cited above. I therefore must **CONCLUDE** that the Board did not act arbitrarily, capriciously, or unreasonably when denying Greenman’s relief sought and I further **CONCLUDE** that the decision of the Board of Examiners must be upheld.

**ORDER**

Based on the briefs, exhibits and certifications submitted, respondent's motion for summary decision is hereby **GRANTED**. Accordingly, the petition filed in this matter is **DISMISSED WITH PREJUDICE**.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



August 8, 2018

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DATE

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**JOANN LASALA CANDIDO, ALAJ**

Date Received at Agency:

August 8, 2018

Date Mailed to Parties:

August 8, 2018

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