

New Jersey Commissioner of Education

Final Decision

Melody Travisano,

Petitioner,

v.

New Jersey State Board of Examiners,

Respondent.

Synopsis

Pro-se petitioner appealed the determination of the respondent New Jersey State Board of Examiners (SBE) that she had not met the requirements for issuance of a Teacher of English standard certificate because she had not successfully completed the required number of semester hour credits in English. Petitioner requested credit for journalism courses, as well as her experience working as a journalist, to satisfy the semester hour requirements for English certification; however, the SBE did not accept petitioner's alternative college courses or experience, finding that petitioner failed to establish a compelling one-to-one correspondence between the Teacher of English certification requirements and her journalism education and experience. Petitioner thereafter filed the within appeal.

The ALJ found, *inter alia*, that: the issue in this case is whether petitioner satisfied her burden of demonstrating, by a preponderance of the evidence, that the SBE acted in a manner that was arbitrary, capricious, or contrary to law when it determined not to accept petitioner's alternative education to satisfy the remaining requirements that petitioner needed to receive a Teacher of English certificate; *N.J.A.C.* 6A:9B-9.1 sets forth the requirements for issuance of a standard instructional certificate; the SBE determined that petitioner did not satisfy the requirements for certification because she lacks eighteen semester-hour credits in English, of which twelve must be advanced courses; petitioner's alternative education and experience was not deemed equivalent to satisfy that deficiency; and petitioner failed to establish that the SBE's decision to deny her application for a Teacher of English certificate was arbitrary, capricious or unreasonable. Accordingly, the ALJ affirmed the SBE's decision and dismissed the petition.

Upon comprehensive review, the Commissioner found, *inter alia*, that: the ALJ mistakenly applied the wrong standard of review in the Initial Decision, stating that the SBE's decision will not be overturned unless the petitioner proves that the SBE acted in a manner that was arbitrary, capricious or contrary to law; the appropriate standard of review here is whether the SBE's decision was consistent with the applicable statutory and regulatory provisions of *N.J.A.C.* 6A:3; nonetheless, the record of this matter demonstrates that the petitioner did not complete the required course work and that the SBE's decision to deny her application was consistent with the applicable regulatory provisions. Accordingly, the Initial Decision of the OAL was modified with respect to the appropriate standard of review and the petition was dismissed.

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.

190-22

OAL Dkt. No. EDU 03126-22

Agency Dkt. No. 58-3/22

**New Jersey Commissioner of Education
Final Decision**

Melody Travisano,

Petitioner,

v.

Department of Education, State Board of
Examiners,

Respondent.

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.

In this case, petitioner Melody Travisano filed a petition of appeal under *N.J.A.C. 6A:3.1 et seq.* challenging the State Board of Examiners' (Board) decision denying her application for a Teacher of English certificate. The Administrative Law Judge (ALJ) determined that the petitioner did not satisfy the requirements necessary to obtain the certificate because she lacked the required semester hour credits in English courses, and that her journalism classes and newspaper experience are not one-to-one equivalents to the required courses in the subject area.

As a threshold matter, a discussion of the applicable standard of review for petitions of appeal that are filed under *N.J.A.C. 6A:3* is necessary. When there is a challenge to a determination made by an office within the Department of Education, the Commissioner is not

mandated to give deference to her staff, but instead determines if the finding was legally appropriate. *See, Jaroslaw Nimczyk v. New Jersey State Board of Examiners*, Commissioner Decision No. 98-22, dated May 16, 2022 (comprehensively detailing the appropriate standard of review to be applied in matters filed against the Board of Examiners pursuant to *N.J.A.C. 6A:3*); and *Board of Trustees of the Passaic County Elks Cerebral Palsy Center v. New Jersey Dept. of Educ., Office of Fiscal Accountability and Compliance*, Commissioner's Decision No. 334-14, dated August 14, 2014 (finding that a decision of the Office of Fiscal Accountability and Compliance is not given deference by the Commissioner). Moreover, where the Department of Education has limited the scope of review of a subordinate office or division, it has done so by regulation, *i.e.* appeals filed under *N.J.A.C. 6A:4* challenging a decision of the State Board of Examiners revoking/suspending a certificate, or a decision of the School Ethics Commission.

Despite several decisions in which the Commissioner has clearly articulated the appropriate standard of review for matters filed under *N.J.A.C. 6A:3*, here the ALJ mistakenly referenced *N.J.A.C. 6A:4-4.1(a)* in the Initial Decision and stated that the Board's decision will not be overturned unless the petitioner proves that the Board acted in a manner that was arbitrary, capricious or contrary to law.¹ It is important to recognize that a decision by the Board denying an application for a certificate is not entitled to the arbitrary, capricious or unreasonable standard of review that is afforded to appeals filed under *N.J.A.C. 6A:4*, challenging a decision of the Board revoking or suspending a certificate. *See, Jessica Walder v. New Jersey Department of Education, State Board of Examiners*, Commissioner's Decision No. 503-14, decided December 29, 2014 (finding that the Commissioner does not give deference to

¹ The Motion to Dismiss filed by the Board of Examiners also referenced *N.J.A.C. 6A:4-4.1(a)* and the incorrect standard of review that applies in this matter.

a decision of the State Board of Examiners denying a request for issuance of a certificate). The petition of appeal in this matter was filed in accordance with *N.J.A.C.* 6A:3, which contains completely different regulatory provisions than *N.J.A.C.* 6A:4; these two Administrative Code Sections should never be conflated. *Nimczyk, supra at 2.* As such, the standard of review that governs appeals filed under *N.J.A.C.* 6A:4 does not apply to this case. Therefore, the appropriate standard of review of the Board's decision is whether the decision is consistent with the applicable statutory and regulatory provisions.

Upon a comprehensive review of the record and applying the appropriate standard of review, the Commissioner is in accord with the Board's determination that the petitioner did not satisfy the requirements necessary to qualify for a Teacher of English certificate under *N.J.A.C.* 6A:9B-8.7 and 9.1. Although the ALJ applied an inaccurate standard of review, the record of the matter demonstrates that the petitioner did not complete the required course work and that the Board's decision to deny her application was consistent with the applicable regulatory provisions.

Accordingly, the Initial Decision is modified with respect to the appropriate standard of review and the petition is hereby dismissed.

IT IS SO ORDERED.²


ANGELINA ALLEN McMILLAN, J.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: August 8, 2022
Date of Mailing: August 8, 2022

² This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A.* 18A:6-9.1. Under *N.J.Ct.R.* 2:4-1(b), a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 03126-22

AGENCY DKT. NO. 58-3/22

MELODY TRAVISANO,

Petitioner,

v.

**NEW JERSEY DEPARTMENT OF
EDUCATION, STATE BOARD
OF EXAMINERS,**

Respondent.

Melody Travisano, petitioner pro se

Colin Klika, Deputy Attorney General, for respondent, (Matthew J. Platkin,
Acting Attorney General, attorneys)

Record Closed: June 10, 2022

Decided: June 22, 2022

BEFORE **GAIL M. COOKSON**, ALJ:

STATEMENT OF THE CASE

The New Jersey Department of Education, State Board of Examiners (Board) denied petitioner's request for the issuance of a Teacher of English standard certification, because she lacked the required semester hour credits in English courses.

Petitioner appeals the Board's decision and requests credit for other educational courses, specifically, journalism, and experience as a journalist to satisfy the required semester hour credits to be issued the certification.

PROCEDURAL HISTORY

The Board rendered its written decision on March 4, 2022, denying petitioner's request. The petitioner filed a petition with the Bureau of Controversies and Disputes on March 23, 2022. The Deputy Attorney General for the Board filed a motion to dismiss in lieu of an Answer on April 18, 2022. The matter was transmitted to the Office of Administrative Law (OAL) and filed on April 20, 2022, to be heard as a contested case pursuant to N.J.S.A. 52:14B-1 to 15 and N.J.S.A. 52:14F-1 to 13.

I convened a case management conference on May 9, 2022, at which time a briefing schedule was agreed upon regarding the respondent's pending motion to dismiss, to be considered as a motion for summary decision. Petitioner filed a letter response on May 13, 2022. Respondent's final reply was served on June 10, 2022. Oral argument was not requested, and the matter is now ripe for determination.

FACTUAL DISCUSSION

Petitioner seeks the issuance of a K-12 Teacher of English certificate. She presently teaches Bilingual Language Arts at the middle school level. Petitioner was found by the Board to have satisfied the certification requirements except for eighteen (18) semester-hour credits in English, of which twelve (12) must be advanced courses. Petitioner applied for recognition of her college journalism credits and her journalism career experience. Travisano obtained her Bachelor of Arts in Journalism from Penn State in 1995. She also worked in journalism for twenty (20) years before switching careers in 2015 to teaching. After petitioner went into education, she obtained a Masters of Arts in Bilingual Education from Fairleigh Dickinson University in 2019.

The Board did not accept those alternative college courses or experience, finding they were not adequate substitutes. Specifically, the Board ruled:

After full consideration of Travisano's submission, the Board finds that she did not establish a compelling one-to-one correspondence between the Teacher of English certification requirements and her education and experience.... Travisano's degree in Journalism is not equivalent to 18 semester-hour credits in English as a subject area specifically. And, while Travisano's journalism background is a valuable tool in teaching certain writing techniques, this experience demonstrates neither the breadth of knowledge and skills associated with a variety of rhetorical techniques nor the critical theory and analysis of literature.

LEGAL ANALYSIS AND CONCLUSION

In an administrative law action, summary decision "may 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." N.J.A.C. 1:1-12.5(b). The non-moving party will prevail if they are able to "set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding." Id.

This standard is also set forth in New Jersey Court Rule 4:46-2, regarding a motion for summary judgment, which is the equivalent to an administrative law summary decision motion. In Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520 (1995), the New Jersey Supreme Court stated:

[A] determination whether there exists a "genuine issue" of material fact that precludes summary judgment 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 factfinder to resolve the alleged disputed issue in favor of the non-moving party.

[Brill at 540.]

The "judge's function is not . . . to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." Brill at 540, citing Anderson v Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). Summary judgment, like

summary decision, “is designed to provide a prompt, businesslike and inexpensive method of disposing of any case which a discriminating search of the merits in the pleadings, depositions and admissions on file, together with the affidavits submitted on the motion clearly shows not to present any genuine issue of material fact requiring disposition at trial.” Brill at 530, citations omitted. “An evidentiary hearing is mandated only when the proposed administrative action is based on disputed adjudicatory facts.” Contini v. Board of Education of Newark, 286 N.J. Super. 106, 120 (App. Div. 1995), cert. denied, 145 N.J. 372 (1996), citations omitted.

An applicant seeking to be issued an instructional teaching certification pursuant to N.J.A.C. 6A:9B-8, must satisfy the requirements outlined in N.J.A.C. 6A:9B-9.1. One of the requirements is that the applicant shall:

1. Complete one or more of the following coursework requirements for the subject area in which the candidate is seeking the endorsement:
 - i. Complete an undergraduate major in the subject area . . . ;
 - ii. Hold a graduate degree in the subject area; or
 - iii. Complete at least 30 credits in a coherent sequence of courses appropriate to the subject area as documented by an official transcript from a regionally accredited college or university, of which 12 semester-hour credits must be at the advanced level of study, including junior-, senior-, or graduate-level study as documented by the official transcript of a four-year, regionally accredited college or university . . .

[N.J.A.C. 6A:9B-9.1(a).]

The Board of Examiners is responsible for determining if an instructional teaching certificate may be issued to an applicant. N.J.S.A. 18A:6-38. If an applicant for a teaching certificate has been advised of a deficiency in their certification requirements, they “may provide the Board of Examiners with 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). The Board is not permitted to waive any requirements, but can consider

alternative education if the petitioner demonstrates, by a preponderance of the credible evidence, that the alternative education is the one-to-one equivalent with the statutory requirements.

(c) The Board of Examiners shall not:

1. Waive any test, GPA, degree completion, or approved educator preparation program completion requirements;
2. Permit a candidate to substitute education and/or experience for any test, GPA, degree, or approved educator preparation program completion requirements; or
3. Issue a certificate that is expired and/or is not a type of certificate endorsement pursuant to N.J.A.C. 6A:9B-9 through 11.

[N.J.A.C. 6A:9B-4.12.]

See also Hutchinson v. New Jersey State Board of Examiners, EDU16373-12, Initial Decision (April 5, 2013), aff'd, Commissioner (May 15, 2013), <<http://njlaw.rutgers.edu/collections/oal/>>.

When a decision by the Board has been appealed, 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 the State Board of Examiners . . . acted in a manner that was arbitrary, capricious, or contrary to law.” N.J.A.C. 6A:4-4.1(a). “Arbitrary and capricious action of administrative bodies means willful and unreasoning action, without consideration and in disregard of circumstances. Where there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached.” Bayshore Sewerage Co. v Dep’t of Environmental Protection, 122 N.J. Super. 184, 199 (App. Div. 1973), citations omitted.

The issue presented here is whether there is a genuine issue of material fact in dispute that the Board’s decision was arbitrary and capricious, when it chose not to accept the petitioner’s proposed alternative education courses to satisfy the semester

credits in English courses that she needs to receive a Teacher of English certificate. N.J.A.C. 6A:9B-9.1(a). The facts are viewed most favorably to the non-moving party. Nevertheless, the burden is on petitioner to prove that she has met the certification requirements by “clear and convincing evidence” of a one-to-one correspondence of experience or alternate education to the licensing deficiencies. N.J.A.C. 6A:9B-4.12(d)(1); McQuilken v. State Bd. Of Examiners, OAL No. EDU 8375-11, Initial Decision (Dec. 12, 2013) (<https://njlaw.rutgers.edu/collections/oal>.)

Here, and on the basis of the undisputed facts and records, petitioner cannot be found to have the required credits in English to be issued the certificate. The Board exercised its discretion pursuant to N.J.A.C. 6A:9B-4.12(b) and found that the journalism courses, for which no detailed syllabi or reading lists were even provided, and newspaper experience offered as alternative or equivalent education were not the one-to-one equivalent of courses on critical literature analysis and other advanced and “coherent sequence of courses appropriate to the subject area.” N.J.A.C. 6A:9B-9.1(a)(1)(iii). The Board exercised its discretion honestly and upon due consideration. It thoughtfully and reasonably chose to give credit to petitioner for some of her college-hour credits. Likewise, the Board thoughtfully and reasonably chose not to give her credit for her alternative journalism coursework and job experience, finding that journalism is a “valuable tool in teaching certain writing techniques” but does not encompass the variety of theories and analysis of literature central to the teaching of English at the high school level.

I **CONCLUDE** that the motion for summary decision shall be granted. Upon a review of the papers submitted, looked upon most favorably to the petitioner, there is no genuine issue of material fact in dispute that the Board’s decision was arbitrary and capricious, unreasonable, or otherwise contrary to the law.

ORDER

Based upon the foregoing, I hereby **ORDER** that respondent State Board of Examiners’ motion for summary decision is hereby **GRANTED**. It is further **ORDERED** that

the application of petitioner Melody Travisano for an appeal from the denial of her application for a standard teacher of English certificate is hereby **DISMISSED**.

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.



June 22, 2022
DATE

GAIL M. COOKSON, ALJ

Date Received at Agency:

6/22/2022

Date Mailed to Parties:
id

6/22/2022