

New Jersey Commissioner of Education

Final Decision

In the Matter of the Teaching Certificates of
Mary Jo Reid, Board of Education of the City of
Summit, Union County.

Synopsis

This matter was opened before the Commissioner of Education in June 2021, by way of an Order to Show Cause (OTSC) served by the petitioner, the Board of Education of the City of Summit, upon Mary Jo Reid, requiring respondent to show cause why an order should not be entered suspending her “teaching certificate 1-09-6610” pursuant to *N.J.S.A. 18A:26-10* for retiring from her position as a Behaviorist without giving the 60 days’ notice required by her contract because of health and safety concerns with regard to the Covid-19 pandemic. Respondent asserted that the OTSC sought suspension of her Board Certified Behavior Analyst (BCBA) Certification, under which she was employed by the respondent, and that this matter should be dismissed because the Commissioner of Education lacks jurisdiction to suspend this certificate. Respondent filed a motion to dismiss, which was opposed by the petitioning Board.

The ALJ found, *inter alia*, that while the Board argues that it intended to seek the suspension of respondent’s educational services certificate, the certificate 1-09-6610 referenced in the OTSC corresponds to respondent’s Board Certified Behavior Analyst (BCBA) certification. Respondent’s BCBA certificate was issued by the Behavior Analyst Certification Board, Inc., and not by the Department of Education. The ALJ found that the Commissioner does not have the authority to suspend respondent’s BCBA certificate. Accordingly, the respondent’s motion to dismiss was granted and the ALJ ordered the OTSC dismissed.

Upon review, the Commissioner agreed that she does not have jurisdiction to suspend respondent’s BCBA certificate, which was not issued by, and is not regulated by, the Department. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter and the OTSC 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.

21-22

OAL Dkt. No. EDU 06568-21

Agency Dkt. No. 98-6/21

New Jersey Commissioner of Education

Decision

In the Matter of the Suspension of the Teaching Certificates of Mary Jo Reid, Board of Education of the City of Summit, Union County.

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 matter, the Board filed an Order to Show Cause (OTSC) to suspend respondent's "teaching certificate 1-09-6610" pursuant to *N.J.S.A. 18A:26-10* for resigning without giving the notice required by her contract. Respondent was employed by the Board as a Behaviorist since 2012 and retired with less than 60-days' notice because of health and safety concerns with regard to working in the school during the COVID-19 pandemic. While the Board argues that it intended to seek the suspension of respondent's educational services certificate, the certificate 1-09-6610 referenced in the OTSC corresponds to respondent's Board Certified Behavior Analyst (BCBA) certification. Respondent's BCBA certificate was issued by the Behavior Analyst Certification Board, Inc., and not by the Department. As such, the ALJ found that the Commissioner does not have the authority to suspend respondent's BCBA certificate.

Upon review, the Commissioner agrees with the ALJ that she is without jurisdiction to suspend respondent's BCBA certificate, which is not issued or regulated by the Department.¹

¹ The Commissioner need not decide whether respondent's educational services certificate should be suspended because it is not at issue in this matter.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter and the OTSC is hereby dismissed.

IT IS SO ORDERED.²


ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 27, 2022
Date of Mailing: January 27, 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

OAL DKT. NO. EDU 06568-21

AGENCY DKT. NO. 98-6/21

**IN THE MATTER OF THE SUSPENSION
OF THE TEACHING CERTIFICATE(S) OF
MARY JO REID, BOARD OF EDUCATION
OF THE CITY OF SUMMIT, UNION COUNTY.**

Janelle Edwards-Stewart, Esq. for petitioner Summit Board of Education (Porzio,
Bromberg & Newman, attorneys)

Philip Stern, Esq., for respondent Mary Jo Reid (DiFrancesco, Bateman,
Kunzman, Davis, Lehrer & Flaum, attorneys)

Record Closed: November 12, 2021

Decided: December 16, 2021

BEFORE **SUSANA E. GUERRERO, ALJ:**

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner Summit Board of Education (the Board or petitioner) filed a motion for an Order to Show Cause with the New Jersey Department of Education (NJDOE), on or around June 11, 2021. On June 24, 2021, the Acting Commissioner of Education granted the motion and ordered that Mary Jo Reid (respondent) show cause before the Commissioner of Education why an Order should not be entered suspending "the

teaching certificate 1-09-6610 . . . for unprofessional conduct pursuant to N.J.S.A. 18A:26-10.” Respondent filed an Answer to the Order to Show Cause (OTSC) on July 29, 2021, together with a Notice of Motion seeking the dismissal of the OTSC with prejudice. Petitioner opposed the motion to dismiss, and oral argument was held on October 28, 2021. The record closed on November 12, 2021, upon receipt of additional information requested from the parties at the oral argument.¹

FACTUAL DISCUSSION

In respondent's Motion to Dismiss, she asserts that the OTSC seeks the suspension of her Board Certified Behavior Analyst (BCBA) Certification, under which she was employed by the respondent, and that this matter should be dismissed because the Commissioner of Education lacks jurisdiction to suspend this certificate. The parties concede that Reid, who is now retired, was employed by the Board since around 2012 as a Behaviorist. Respondent asserts that she only served under the BCBA certificate while employed by the Board, and that the BCBA certificate is not sanctioned by the Commissioner of Education but by the Behavior Analyst Certification Board, Inc., which is outside the jurisdiction of the NJDOE and the Board of Examiners.

The Board filed an opposition to respondent's motion to dismiss, asserting that the Board actually seeks an order to suspend respondent's educational services certificate due to her alleged unprofessional conduct, and that this does fall within the jurisdiction of the Commissioner of Education. Petitioner asserts that the educational services certificate was required to serve as a Behaviorist.

In her reply brief, Reid challenges the Board's assertion that New Jersey certification is required to work as a behaviorist for a school district, and she asserts that the Board excluded the requirement of an educational services certificate in respondent's

¹ Pursuant to my request on October 28, 2021, I received and considered Reid's Job Description and Certification on October 29, 2021. I also requested any legal authority relied on by the Board to support its position that an Educational Services Certificate is required of all Behaviorists working for the District or any New Jersey public school district. In response to my request, I received and considered a letter brief and certification on behalf of the Board, received on November 8, 2021; a November 9, 2021 letter and certification from counsel for Reid; and a November 12, 2021 letter from counsel for the Board responding to the November 9, 2021 letter.

job description in order to prevent district behaviorists from obtaining tenure. Reid did not accrue tenure as a Behaviorist in the District, and she argues that since she never served under her educational services certificate when employed by the Board, she should not be sanctioned with its suspension.

Oral argument was held via Zoom on October 28, 2021. The parties agree that Reid was employed as a Behaviorist with the Board; that she maintained a BCBA certificate when employed with the District; that the Commissioner and Department of Education lack jurisdiction to suspend her BCBA Certificate; that the Board's job description for a Behaviorist does not require an educational services certification; and that Reid also holds an educational services certification, with a social worker endorsement.

While the Order to Show Cause that was signed by the Commissioner of Education requires that Reid show cause why an Order should not be entered suspending "the teaching certificate 1-09-6610," counsel for the Board asserts that the reference to certificate 1-09-6610 (which pertaining to Reid's BCBA certificate) was a typo and that since the affidavit signed by the district's superintendent and the certification prepared by counsel for the Board, submitted in support of the Board's application to the NJDOE, reference the suspension of Reid's educational services certification, the matter should not be dismissed.² The Board also argues that while its job description for a Behaviorist only requires a BCBA certificate, an educational services certificate is required to work as a Behaviorist in any New Jersey public school district. Despite my request for legal authority supporting this position, the Board failed to provide any regulation or statute illustrating that Behaviorists employed by New Jersey public school districts must maintain an educational services certificate.³

² The affidavit signed by the superintendent references that Reid possesses a BCBA and an educational services certificate. He only attaches a copy of Reid's BCBA certificate to the affidavit, and the superintendent does not indicate in the affidavit that Reid was employed by the Board under the educational services certificate.

³ In response to my request, counsel for the Board referenced one sentence found in the NJDOE website which states that New Jersey certification is required for "any professional staff member employed in New Jersey public schools" (<https://nj.gov/education/license/overview/>); a decision issued by the Commissioner of Education twelve years ago that does not address the position of a behaviorist and is not informative for purposes of this motion; and N.J.S.A. 18A:26-2, none of which dictate that behaviorists must maintain certification through the NJDOE to work for any public school. In fact, N.J.S.A. 18A:26-2 only applies to

Respondent asserts that the Board only required that Reid possess a BCBA certification when she worked for the Board as a behaviorist; she was never employed under the educational services certificate; and the law does not require that she maintain an educational services certification when employed by a school district as a Behaviorist.⁴ The Board's job description for a Behaviorist does not require any other certification other than a BCBA, and Reid maintains that this allowed the Board to hire BCBAs, such as herself, without having them accrue tenure rights. Reid asserts that since she was not employed under the educational services certification, she did not accrue tenure during the eight years that she worked for the Board.

Based on my review of the documents in support of, and opposition to, respondent's motion to dismiss, together with my consideration of the oral argument on the motion, I **FIND** that the Order to Show Cause issued to Reid does not reference her educational services certificate, and it only requires her to show cause why her BCBA certification should not be suspended; and the NJDOE does not have authority to suspend her BCBA certificate. While there may be a reference to an educational services certification in a supporting affidavit and certification, it is the OTSC that Reid is required to answer to. I also **FIND** that while respondent possessed an educational services certification with a social worker endorsement while she was employed by the Board as a Behaviorist, there is insufficient evidence that Reid was ever employed by the Board under this certification. Her job description as a Behaviorist did not require NJDOE certification, the Board did not provide adequate legal authority to support its claim that Reid was required to hold NJDOE certification when she worked as a Behaviorist; and the record is unclear as to whether she was ever employed by the Board under any certification other than her BCBA certificate.

"teaching staff member," and a teaching staff member is by statutory definition a certain professional staff member who is required to hold a certain certificate issued by the State Board of Examiners. See N.J.S.A. 18A:1-1. There is no evidence that Reid was a teaching staff member, or a professional staff member required to maintain a certain certification issued by the NJDOE.

⁴ Following oral argument, and to support her position that Reid did not, and was not required to possess an educational services certificate, Reid referenced a guidance document provided by the NJDOE's Office of Special Education Programs in which it acknowledges that BCBAs employed by public school districts in the State "do not always obtain" NJDOE certification, and that for that reason, the NJDOE added a job code to NJ SMART to collect data about those BCBAs who do not hold certification.

LEGAL ANALYSIS AND CONCLUSION

N.J.A.C. 3:1.10 provides, in relevant part:

At any time prior to transmittal of the pleadings to the OAL, in the Commissioner's discretion or upon motion to dismiss filed in lieu of answer, the Commissioner may dismiss the petition on the grounds that the petitioner has advanced no cause of action even if the petitioner's factual allegations are accepted as true or for lack of jurisdiction, failure to prosecute or other good reason. Id.

"To exercise jurisdiction over a dispute, an administrative agency must have specific legislative authority." Dolan v. Centuolo, Nos. A-2470-10T4, A-2710-10T4, at *11 (App. Div. July 9, 2012), <http://njlaw.rutgers.edu/collections/courts/> (citing Archway Programs, Inc. v. Pemberton Twp. Bd. of Educ., 352 N.J. Super. 420, 426 (App. Div. 2002)). As the OTSC seeks to suspend Reid's BCBA certificate, and it is undisputed that the Commissioner of Education and NJDOE lack the authority to suspend a BCBA certificate, I **CONCLUDE** that the petitioner has advanced no cause of action and that the respondent's Motion to Dismiss should be **GRANTED**.

ORDER


It is hereby **ORDERED** that the Order to Show Cause be **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.

12/16/21
DATE



SUSANA E. GUERRERO, ALJ

Date Received at Agency:

12/16/21

Date Mailed to Parties:

12/16/21

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