

101-22

OAL Dkt. No. EDU 08737-21
Agency Dkt. No. 131-9/21

New Jersey Commissioner of Education
Decision

Calvin Abramowitz,

Petitioner,

v.

New Jersey 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.

Upon review, the Commissioner agrees with the Administrative Law Judge's determination that the Board of Examiners' Motion to Dismiss should be granted. 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.¹



ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 19, 2022
Date of Mailing: May 19, 2022

¹ 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 08737-21

AGENCY DKT. NO. 131-9/21

CALVIN ABRAMOWITZ,

Petitioner,

v.

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

Respondent.

Calvin Abramowitz, petitioner, pro se

Sadia Ahsanuddin, Deputy Attorney General, for respondent (Matthew J. Platkin, Acting
Attorney General of New Jersey, attorney)

Record Closed: April 6, 2022

Decided: April 14, 2022

BEFORE SARAH G. CROWLEY, ALJ:

STATEMENT OF THE CASE

Petitioner Calvin Abramowitz (petitioner) challenges the denial of his application for a supplemental instruction in reading and mathematics (K-8) Certificate of Eligibility by the State Board of Examiners (the Examiners). The Examiners reply that petitioner failed to meet the regulatory requirements for issuance of this certificate set forth in N.J.A.C. 6A:9B-8.3. The reasons for the denial were that he lacked the requisite cumulative grade point average (GPA) requirements in the regulations. Under the applicable regulations, the petitioner needed a

cumulative GPA of at least 2.75. The petitioner's GPA was 2.35, and thus the application was denied.

PROCEDURAL HISTORY

Petitioner filed a petition of appeal with the Commissioner of Education (the Commissioner) on August 30, 2021. A Motion to Dismiss, in lieu of an Answer, was filed by the Examiners, and the contested case was transmitted to the Office of Administrative Law (OAL) on October 19, 2021. The petitioner filed opposition to the motion and several conference calls were conducted with the parties.

FINDINGS OF FACT

The Examiners' Motion is filed in accordance with N.J.A.C. 6A:3-1.5(g), which permits the filing of a Motion to Dismiss, in lieu of an Answer. In ruling on a Motion to Dismiss:

[t]he judge considers whether all the evidence together with all legitimate inferences therefrom could sustain a judgment in favor of the party opposing the motion. The judge is not concerned with weight, worth, nature or extent of the evidence. The judge must accept all the evidence supporting the party defending against the motion and accord that party the benefit of all inferences that can reasonably and legitimately be deduced therefrom. If reasonable minds could differ, the motion must be denied.

[37 New Jersey Practice, Administrative Law and Practice § 5.19, at 259-60 (Steven Lefelt, Anthony Miragliotta & Patricia Prunty) (2d ed. 2000).]

Accordingly, for purposes of the Motion, the facts alleged by the petition will be deemed admitted. I **FIND** as follows:

1. The petitioner applied for a supplemental instruction in reading and mathematics (K-8) Certificate of Eligibility.

2. Petitioner submitted a transcript from Yeshiva University demonstrating a bachelor's degree with a grade-point average of 2.35.
3. The degree included courses from other institutions for which he had obtained credits with a pass/fail grade. Accordingly, no GPA is attributed to pass classes and they were accorded no weight in the GPA calculation.
4. The petitioner's overall GPA fails to meet the requirement of the regulations for Certification for Supplemental Instruction in Reading and Mathematics (K-8).

The above facts are not in dispute and are **FOUND** as **FACT**.

LEGAL ANALYSIS AND CONCLUSIONS

The issue presented by this appeal is "whether the decision [by the Examiners to deny Abramowitz's application is consistent with the applicable statutory and regulatory provisions." Walder v. State Bd. of Exam'rs, OAL Dkt. No. EDU 08530-14, Initial Decision (November 10, 2014), aff'd with mod., Comm'r (December 29, 2014), <http://njlaw.rutgers.edu/collections/oal/>. Abramowitz 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, OAL Dkt. No. EDU 13763-08, Initial Decision (April 27, 2010), aff'd, Comm'r (July 26, 2010), <http://njlaw.rutgers.edu/collections/oal/>. I **CONCLUDE** that the Examiners' decision was consistent with applicable law and thus, must be upheld.

The petitioner does not meet the GPA requirements of the regulations and petitioner has not demonstrated by a preponderance of the evidence that the Board's decision was not consistent with the applicable law. The petitioner's argument that he should be able to pick and choose which courses are used in calculating his GPA has no legal foundation. Accordingly, I **CONCLUDE** that the Board's Motion to Dismiss is granted, and the appeal is **DISMISSED**.

ORDER

Based on the foregoing, it is hereby **ORDERED** that the Board of Examiners' Motion to Dismiss is **GRANTED** and the petition of appeal is **DISMISSED**.

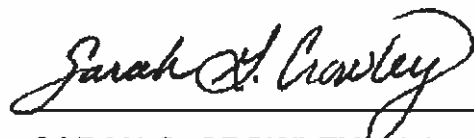
I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

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.

April 14, 2022

DATE



SARAH G. CROWLEY, ALJ

Date Received at Agency:

April 14, 2022

Date Mailed to Parties:

April 14, 2022

SGC/sm