

New Jersey Commissioner of Education

Final Decision

Jaroslav Nimczyk,

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 he had not met the requirements for issuance of an administrative certificate with a Supervisor endorsement pursuant to *N.J.A.C. 6A:9B-12.6*. Specifically, the SBE determined that petitioner had not successfully completed the required number of graduate credits necessary for a Supervisor certificate.

The ALJ found, *inter alia*, that: the pivotal issue in this case is whether petitioner satisfied his 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 Supervisor certificate; *N.J.A.C. 6A:9B-12.6(a)* sets forth the eligibility requirements for a standard administrative certificate with a supervisor endorsement; the SBE determined that petitioner did not satisfy the three graduate credits in general principles of curriculum design and development for preschool through grade twelve which is required to qualify for a Supervisor certificate; petitioner’s proffered alternative education was not deemed equivalent to satisfy that deficiency; and petitioner failed to establish that the SBE’s decision to deny his application for a Supervisor 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 his 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.

98-22  
OAL Dkt. No. EDU 15422-19  
Agency Dkt. No. 242-9/19

## New Jersey Commissioner of Education

### Final Decision

Jaroslav Nimczyk,

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 Jaroslav Nimczyk filed a petition of appeal under *N.J.A.C. 6A:3.1 et seq.* challenging the State Board of Examiners' (Board) decision denying his application for an administrative certificate with a Supervisor endorsement. After a hearing at the OAL, the Administrative Law Judge (ALJ) determined that the petitioner did not satisfy the requirements necessary to obtain a Supervisor endorsement pursuant to *N.J.A.C. 6A:9B-12.6* because he had not attained the requisite graduate credits.

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, 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.


In the Initial Decision, the ALJ mistakenly referenced *N.J.A.C. 6A:4-4.1(a)* and stated that the Board's decision in this case will not be overturned unless the petitioner proves that the Board acted in a manner that was arbitrary, capricious or contrary to law. 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 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 consists of completely different regulatory provisions than *N.J.A.C. 6A:4*; these two Administrative Code Sections should never be conflated. 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 Boards' 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 Supervisor certificate under *N.J.A.C. 6A:9B-12.6*. Although the ALJ applied an inaccurate standard of review, the record of the matter, which includes the transcript from the October 26, 2020 hearing at the OAL, demonstrates that the petitioner did not complete the required course work and that the Board's decision to deny his 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.<sup>1</sup>

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

Date of Decision: May 16, 2022  
Date of Mailing: May 18, 2022

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<sup>1</sup> 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 15422-19

AGENCY DKT. NO. 242-9/19

**JAROSLAW NIMCZYK,**

Petitioner,

v.

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

Respondent.

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**Jaroslav Nimczyk**, petitioner, pro se

**Michal Czarnecki**, Deputy Attorney General, for respondent (Matthew J. Platkin,  
Acting Attorney General of New Jersey, attorney)

Record Closed: March 15, 2021

Decided: April 1, 2022

BEFORE **MARGARET M. MONACO**, ALJ:

**STATEMENT OF THE CASE**

Petitioner Jaroslav Nimczyk appeals the determination by respondent, the New Jersey Department of Education, State Board of Examiners (Board of Examiners),

denying his application for a Supervisor certificate. The denial is predicated on petitioner's failure to satisfy the eligibility requirement of three graduate credits in general principles of curriculum design and development for preschool through grade twelve set forth in N.J.A.C 6A:9B-12.6(a)(2)(ii)(2), and the Board of Examiners' determination that petitioner's offered alternative education was not the equivalent of this deficiency.

### **PROCEDURAL HISTORY**

On or about September 11, 2019, petitioner filed a Petition of Appeal with the Commissioner of Education (Commissioner) contesting the Board of Examiners' denial of his application for a Supervisor certificate. On October 28, 2019, the Board of Examiners filed a Motion to Dismiss the Petition of Appeal in lieu of an answer, and the Department of Education transmitted the matter to the Office of Administrative Law, where it was filed for determination as a contested case. On December 30, 2019, I issued an Order denying the Board of Examiners' motion, and the Board of Examiners filed an Answer to the Verified Petition of Appeal on or about January 9, 2020. Following prior adjournments of the hearing, the hearing was held, via Zoom, on October 26, 2020, after which the record remained open for the receipt of a transcript of the hearing and post-hearing briefs. The parties submitted briefs in support of their respective positions and the record closed upon receipt of the last submission.

### **FACTUAL DISCUSSION**

At the hearing, petitioner testified on his own behalf and the Board of Examiners offered testimony by the Director of the Office of Certification and Induction, Rani Singh. Based upon a review of the testimony and the documentary evidence presented and having had the opportunity to observe the demeanor and assess the credibility of the witnesses who testified, I **FIND** the following **FACTS**:

Petitioner holds a Teacher of Mathematics certificate and a Master of Arts in Teaching from Montclair State University. (See J-10; J-11.) He is employed as a mathematics teacher in the Linden Public School District (Linden). (Ibid.)

Petitioner applied for a Supervisor certificate. On November 1, 2018, the Office of Certification and Induction issued an “Evaluation of Credentials-Supervisor” to petitioner regarding his application, which advised that petitioner did not meet the requirements for a Supervisor certificate. (J-9.) Specifically, it was determined that petitioner had completed the master’s degree requirement, the certification requirement, and the three years of experience requirement. However, it was also determined that petitioner met only two of the four graduate-level semester-hour credit requirements; namely, petitioner had not completed three graduate credits in general principles of curriculum design and development, and three graduate elective credits in curriculum design and development.

By e-mail dated November 2, 2018, Melissa Orłowski, an examiner with the Office of Certification and Induction, informed petitioner:

After reviewing the syllabus, it was determined the course is not a course in curriculum development in grades P-12 or a course in a curriculum development elective. For these requirements, you need courses where the sole focus is to design, develop and create curriculum from scratch, not add to existing curriculum. Both Montclair and NJCU have two approved curriculum courses that meet this requirement. (J-6.)

Subsequently, petitioner requested the Board of Examiners to consider his experience as a mathematics teacher in Linden, and the coursework he took during his Master of Arts in Teaching program at Montclair, as demonstrating alternative experience and/or education equivalent to the noted areas of deficiency. (See J-11.) The Board of Examiners considered petitioner’s application at its meeting on May 17, 2019, and later issued a written decision. (See J-10.) Rani Singh, who is employed by the Department of Education as the Director of the Office of Certification and Induction and serves as the Secretary of the Board of Examiners, provided petitioner with a copy of the Board of Examiners’ decision under letter dated July 1, 2019. (J-12.)

The Board of Examiners’ decision memorializes the finding that petitioner had satisfied the requirements for issuance of a Supervisor certificate set forth in N.J.A.C. 6A:9B-12.6(a)(2)(ii) except for the requirements of (1) three graduate semester-hour

credits in general principles of curriculum design and development for preschool through grade 12 and (2) three graduate semester-hour elective credits in curriculum design and development. (J-10.) The Board of Examiners concluded that petitioner “established a compelling one-to-one correspondence between his experience in developing and designing the Applications of Linear Algebra course in Linden and the elective in Curriculum Design and Development that he lacks,” and that petitioner “will therefore receive three credits in that area.” (Ibid.) However, the Board of Examiners also determined that “the other coursework [petitioner] submitted for consideration was not the equivalent of the remaining area he needs.” (Ibid.) Rather, “[t]hat course was math based and focused on one specific area rather than a more broad-based design development foundation as is required.” (Ibid.) Accordingly, the Board of Examiners granted petitioner’s application in part and denied it in part. (Ibid.)

In his appeal to the Board of Examiners, petitioner submitted that courses CURR 560, CURR 561 and CURR 562 were the equivalent of the missing requirement. (See J-2.) The course description for CURR 560, titled “Inquiry into Knowledge, Learning and Education,” states:

This course focuses on the development of three distinct, but interconnected, understandings about knowledge, learning, and adolescent identity within urban communities outside of school. Through personal learning autobiographies and hands-on learning activities, students come to understand how and why they learn and how their personal learning histories affect them in different contexts. They also study the lives and learning of urban youth, and explore the urban community. Through reflection they acquire new understandings about the nature of knowledge, the lives of urban youth and communities, and the processes and products of learning. Their understanding of knowledge construction and learning is applied to the teaching and learning of math and science in non-traditional settings. Field trips, internships in community-based organizations, book groups, an online discussion forum and a student study form the core activities of this fulltime experience . . . . (See J-1; J-2.)

The course description for CURR 561, titled “Inquiry into Knowledge, Learning, and Schooling,” states:



This course focuses on assessing and building on students' prior knowledge, strengths, and needs, planning curriculum and instruction, and teaching math or science. Residents learn to use student data to plan differentiated math or science instruction. They explore how students' learning histories affect their classroom achievement and learn about students' lives outside the classroom. They also plan math/science teaching around how students do their best learning, gather data about what student learning looks like through formal and informal assessments, and create action plans for addressing the learning needs of students. These concepts are developed primarily through an apprenticeship with a classroom-based mentor in math or science during which residents co-teach the mentor's full teaching assignment, develop and teach units and lessons, and collaboratively engage in action research with the mentor. Additionally, residents participate in instructional rounds and a weekly half-day seminar and are observed by university education, subject area, and school based faculty. (J-4.)

The syllabus for that course indicates that one of the assignments, which started on September 27, 2012, and ended on November 1, 2012, entailed "designing a mini-curricular unit." (J-4.)

The course description for CURR 562, titled "Inquiry into Teaching and Schooling," states:

Builds on teacher residents' prior knowledge & experience planning for student learning in math & science. Residents employ pedagogical content knowledge in designing & implementing classroom activities, assessments, & units of study. They learn to evaluate their teaching effectiveness & adjust their instruction based on monitoring learning through formative & summative assessments. Special attention is given to addressing the needs of students with disabilities & English lang[uage] learners, & supporting differentiated instruction through the use of educational technologies. The residents engage in math/science curriculum study. They explore how curriculum is developed, why it is selected, & the epistemological theory that informs the curriculum & its implementation. Residents examine the school culture & engage in professional relationships with all members of the school community. Takes place primarily through an

apprenticeship with a classroom-based mentor during which residents co-teach the mentor's full teaching assignment, develop & teach units & lessons, & collaboratively engage in action research with the mentor. Additionally, residents participate in instructional rounds & a weekly half-day seminar, & are observed by university education, subject area & school based faculty . . . . (See J-1; J-2.)

The State has pre-approved courses that satisfy the three graduate credits in general principles of curriculum design and development requirement. New Jersey City University course EDLD 662, titled "Principles of Curriculum Development and Evaluation," is one of the State approved courses. The course description for EDLD 662 states:

This course offers an overview of the factors, principles and elements of curriculum development in the elementary and secondary school. Emphasis is on the philosophical and psychological influences in education, as well as designing and evaluating curricular patterns for urban schools. (J-5.)

In addition to the evidence that forms the foundation of the above findings of facts, a summary of other pertinent testimony follows.

### **The Testimony**

#### **Rani Singh**

Singh testified that a candidate for a certificate must meet all the requirements for the particular endorsement sought by the candidate. She explained that the purpose of the requirements "is to ensure that we have equitable requirements for all candidates across all content areas," and to ensure that "the educators that are teaching the students are meeting the exact requirements coming into the classroom." Regarding the general principles of curriculum design and development credits, Singh described that it is "a broad based design development course that focuses on the overall design of a curriculum from scratch," and "the entire philosophical historical and pedagogical perspectives of creating a curriculum from scratch." It is "an overview of the principles and developing curriculum, the historical perspective of curriculum throughout education,"

and “it’s geared towards . . . writing curriculum from kindergarten all the way up to grade twelve” and “[e]valuating in different school settings from elementary all the way up to high school [and] [u]rban versus suburban versus rural.” Singh testified that “it is important” that these graduate credits are taken “because the supervisor endorsement is for grades K through twelve,” and it is important to have “an overview of designing and developing curriculum in all of those levels” and “a good strong historical background of design and curriculum [s]o, if you are placed at any type of setting you’re able to design and develop curriculum in that setting.” She noted that a supervisor can supervise any subject and be placed anywhere depending on the needs of the school district. Singh described that the significance of these general principles of curriculum design and development is “to ensure that . . . someone who receives a supervisor certificate . . . [is] able to modify and adjust according to the grade level, the school, [and] the content that they’re placed in because . . . this certificate is very general” and it is a K-12 supervisor. “[T]hese general courses [are] to make sure that the educator has a proper . . . background in curriculum design and development so they are able to design curriculum from scratch and [in] any type of content or school setting.”

Singh explained that petitioner was not given the three graduate credits for general principles of curriculum design and development because the “coursework that he submitted and also his experience was very math and content focused . . . on one specific area which was math.” The Board determined that petitioner’s submitted coursework was not the equivalent of the remaining needed area and that it was “math based and focused on one specific area rather than a more broad-based design development foundation as is required.” (J-10.) Singh testified that CURR 560 did not qualify for the credits because “[t]he course was focused on teaching and also focused on specific teaching and learning of math and science.” CURR 562 did not qualify for the credits because it was “teaching based and it was focused more on designing Math and Science, a specific curriculum.” CURR 561 did not qualify because, according to the syllabus, the course was concentrated on math and science teaching. In addition, the project from September to November described in the syllabus for CURR 561 was not sufficient “[b]ecause this . . . was designing a particular mini unit of curriculum, it wasn’t designing an entire curriculum from scratch.”

Singh testified that the State approved course (EDLD 662) qualifies for the three graduate credits because “it provides the overview of the curriculum development and design . . . in New Jersey education”; “[i]t focuses on the philosophical, historical and psychological influences . . . in education”; “[i]t is a general overview dealing with all skills associated in developing a curriculum”; and “[i]t looks at the organizational systems in the schools and looks at all types of variables that are used to design and develop a curriculum.” She explained that this course differs from the classes that petitioner took because it “is a general overview of K-12 in all settings,” whereas petitioner’s classes were “more focused on teaching, teaching curriculum and interpreting and using existing curriculum for the classrooms” and were “very . . . focused on content.” Petitioner’s work experience did not qualify for the missing coursework because “this experience was specifically Math content based.” Petitioner’s Master of Arts in Teaching also did not qualify because it is a master’s degree “focused on teaching.”

Singh explained that the Board determines whether the applicant’s documentation demonstrates a one-to-one relationship with the particular certification requirement that is lacking. (See J-10.) Regarding whether there can be a three to one relationship, Singh testified, “It’s always been one to one.” Regarding whether an applicant can substitute three or four classes to demonstrate meeting one requirement, she stated, “It is usually-- usually it’s always been one to one” but “[a]pplicants do submit various courses and experiences to meet . . . that requirement but it’s usually one to one relationship.” Regarding whether there is a situation when more than one course can be considered, Singh explained that “we can consider more than one” but “it is up to the Petitioner to provide that one to one correspondence [e]ither with the course work they have taken or the experience they have accumulated.” She stated that the one-to-one correspondence could be established by three courses in total, noting that her office does use a combination of coursework, experience, and alternative education. An applicant’s experience can satisfy the requirement, which Singh indicated is “still a one to one relationship.” It is “using the experience that is provided to meet the deficiencies,” and that would satisfy a specific course even though not everything in that course was covered.

**Jaroslav Nimczyk**

Petitioner articulated his position that “the culmination” of the courses he took (i.e., CURR 560, CURR 561 and CURR 562) “cover everything that is . . . covered in EDLD 662” and compare to the course description for EDLD 662. Petitioner testified that the courses he took “focus on developing the curriculum” and “an overview.” He stated that his education was “mainly based on Math and Science but it was . . . a program from middle school through high school,” which “encompasses more than half the grades.” Petitioner noted that CURR 561 was a nine-credit course, and the mini-curricular unit assignment was worked on for approximately seven weeks, which he opined would equal approximately five credit hours and at least three credit hours. He acknowledged that the project was not the sole focus for the entire seven weeks but described that “it did take a bulk of time and it was one of the major assignments or projects.”

Regarding EDLD 662, petitioner noted that one of the course objectives listed in the syllabus states, “Develop a new or revised curriculum plan,” and the listed projects for the course do not specify a subject or grade level and refer to revising curriculum, not developing it from scratch. (See J-5.) The listed “Project 1-Curriculum Development Process” states, “Part 1 has to do with the curriculum development process for updating and rewriting curricula that a district follows,” and “Project 2- Curriculum Plan” states, “Working collaboratively in a group of three or four colleagues revise or develop an innovative curriculum **plan** (not the actual curriculum) for an area of study relevant to today.” Petitioner testified that, although Ms. Orlowski indicated in her e-mail the need to develop curriculum from scratch, according to the syllabus for EDLD 662, “you do not have to create it from scratch.” The syllabus for EDLD 662 states under “Class Activities”:

Students will spend most of their class time involved in readings/activities and discussions. Class activities will emphasize student interaction with ideas, text and each other, as well as application of principles of curriculum development and evaluation to real and hypothetical educational situations. All curriculum ideas and practices will be subject to analysis and evaluation.

Petitioner opined that EDLD 662 “describes a very similar scenario of the class activities through the three courses” he completed. He described that, “[n]ot only were we focusing on hypothetical educational situations, we were actually dealing with real students and applying them to real-life courses,” and “trying these methods in a real classroom while discussing it with other students in the course.”

### **LEGAL DISCUSSION AND CONCLUSIONS**

The Board of Examiners is entrusted with the issuance of certificates to teach, or to administer, direct or supervise the teaching, instruction or educational guidance of, pupils in public schools under the rules and regulations prescribed by the State Board. N.J.S.A. 18A:6-38.

N.J.A.C 6A:9B-12.6(a) sets forth the eligibility requirements for a standard administrative certificate with a supervisor endorsement. The regulation provides that the candidate must:

1. Hold a master’s or higher degree from a regionally accredited college or university;
2. Successfully complete one of the following:
  - i. A Commissioner-approved college curriculum that specifically prepares the candidate for the endorsement;
  - ii. Twelve graduate-level semester-hour credits, including the following:
    - (1) Three credits in general principles of instructional staff supervision in preschool through grade 12;
    - (2) Three credits in general principles of curriculum design and development for preschool through grade 12;
    - (3) Three elective credits in curriculum design and development; and
    - (4) Three elective credits in instructional staff supervision and/or curriculum design and development;or
  - iii. A Commissioner-approved training program that is implemented by a Commissioner-approved provider and

specifically prepares the candidate for the endorsement;  
and

3. Hold a standard New Jersey instructional or educational services certificate, or its out-of-State equivalent, and complete three years of successful, full-time teaching and/or educational services experience. Teaching and/or educational services experience completed in a New Jersey school district must have been under an appropriate New Jersey certificate.

“If the candidate is not eligible for the certificate sought, the Office shall issue a written evaluation that identifies the deficiency(ies) for certification.” N.J.A.C. 6A:9B-5.3(c). The “Office” is defined as “the office within the Department that is assigned to provide staff support to the Board of Examiners in the exercise of its statutory and regulatory responsibilities.” N.J.A.C. 6A:9-2.1; see N.J.A.C. 6A:9B-2.1. “A candidate for certification may appeal to the Board of Examiners an adverse decision of the Office regarding his or her certification eligibility.” N.J.A.C. 6A:9B-4.12(a). “If a candidate receives an evaluation pursuant to N.J.A.C. 6A:9B-5.3(c) that identifies areas of deficiency in the certification requirements, the candidate 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 of Examiners may not, however, “[w]aive any test, GPA, degree completion, or approved educator preparation program completion requirements” or “[p]ermit a candidate to substitute education and/or experience for any test, GPA, degree, or approved educator preparation program completion requirements[.]” N.J.A.C. 6A:9B-4.12(c) (1) and (2).

Petitioner bears the burden of demonstrating, by a preponderance of the credible evidence, that he is entitled to the endorsement he seeks. See Miller v. N.J. State Bd. of Examiners, EDU 03040-17, Initial Decision (September 19, 2018), adopted, Comm’r (November 1, 2018) <https://njlaw.rutgers.edu/collections/oal/>; McQuilken v. N.J. State Bd. of Examiners, EDU 8375-11, Initial Decision (December 13, 2011), adopted, Comm’r (January 27, 2012) <https://njlaw.rutgers.edu/collections/oal/>; Farrar v. N.J. State Bd. of Examiners, EDU 13763-08, Initial Decision (April 27, 2010), adopted, Comm’r (July 26, 2010) <https://njlaw.rutgers.edu/collections/oal/>. In this regard, petitioner shoulders the burden of establishing a one-to-one correspondence between his alternative education

and the licensing deficiency. See *Neuhoff v. N.J. State Bd. of Examiners*, EDU 11780-17, Initial Decision (March 6, 2018), adopted, Comm'r (April 13, 2018) <https://njlaw.rutgers.edu/collections/oal/>; *Hutchinson v. N.J. State Bd. of Examiners*, EDU 16373-12, Initial Decision (April 5, 2013), adopted, Comm'r (May 15, 2013) <https://njlaw.rutgers.edu/collections/oal/>.; *Farrar*, EDU 13763-08.

A decision by the Board of Examiners will not be disturbed unless petitioner “has demonstrated [that] 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). See *McQuilken*, EDU 8375-11; *Glennon v. N.J. State Bd. of Examiners*, EDU 07419-07, Initial Decision (August 4, 2009), adopted, Comm'r (Sept. 18, 2009) <https://njlaw.rutgers.edu/collections/oal/>; *Flaherty v. N.J. State Bd. of Examiners*, EDU 5327-98, Comm'r (June 30, 1999) <https://njlaw.rutgers.edu/collections/oal/>; *Marshello v. N.J. State Bd. of Examiners*, 92 N.J.A.R.2d (EDU) 378. In other words, the scope of the Commissioner’s review is limited. The Commissioner’s role is not to substitute his or her judgement for that of the Board of Examiners, but to “ascertain whether the decision is supported by sufficient credible evidence in the record[.]” N.J.A.C. 6A:4-4.1(a). Our courts have defined “arbitrary” and “capricious” as “having no rational basis,” and “[a]rbitrary and capricious action of administrative bodies means willful and unreasoning action, without consideration and in disregard of circumstances.” *Bayshore Sewerage Co. v. Dep’t of Env’tl. Prot.*, 122 N.J. Super. 184, 199 (Ch. Div. 1973), aff’d, 131 N.J. Super. 37 (App Div. 1974). And “[w]here 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.” *Ibid.*

In the within matter, the Board of Examiners determined that petitioner did not satisfy the requirement of three graduate credits in general principles of curriculum design and development for preschool through grade twelve necessary to qualify for a Supervisor certificate and that petitioner’s offered alternative education was not the equivalent of that deficiency. Accordingly, the pivotal issue presented is whether petitioner has satisfied his burden of demonstrating, by a preponderance of the evidence, that the Board of Examiners acted in a manner that was arbitrary, capricious, or contrary to law when it



determined not to accept petitioner's offered alternative education to satisfy the remaining requirement that petitioner needed to receive a Supervisor certificate.

The crux of petitioner's post-hearing submissions reiterates the position that the culmination of petitioner's three courses should be deemed the equivalent of the missing requirement. He argues that "there are numerous topics/areas/portions that show a 1-1 correspondence" between the State approved course and petitioner's completed courses.<sup>1</sup> Petitioner also postulates that the culmination of his courses encompass the claimed missing historical, philosophical and psychological components.<sup>2</sup> Petitioner asserts that, although it was claimed that his courses do not qualify because the curriculum has not been designed from scratch, the two projects in the State approved course "do not mention anything about being developed from scratch," and the totality of the mini-curricular unit assignment in CURR 561 "took about 7 weeks which works out to about 5 credit hours alone as this was a 9-credit course." Petitioner avers that, although it was claimed that his "courses were not broad enough (focused on math and science)," in the syllabus for EDLD 662, "the descriptions of Projects 1 and 2, do not specify subject or grade level, allowing the student a project of their choosing without restrictions to any

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<sup>1</sup> In this regard, petitioner contends that the "overview of the factors, principles, and elements of curriculum development in the elementary and secondary school" set forth in the course description for EDLD 662 corresponds to the course descriptions for CURR 562 ("explore how curriculum is developed, why it is selected, & the epistemological theory that informs the curriculum & its implementation") and CURR 561 ("This course focuses on assessing and building on students' prior knowledge, strengths, and needs, planning curriculum and instruction"). Petitioner asserts that the described emphasis "on philosophical and psychological influences in education, as well as designing and evaluating curricular patterns for urban schools" set forth in the course description for EDLD 662 corresponds to the course descriptions for CURR 560 ("This course focuses on the development of three distinct, but interconnected, understandings about knowledge, learning, and adolescent identity within urban communities outside of school. Through personal learning autobiographies and hands-on learning activities, students come to understand how and why they learn and how their personal learning histories affect them in different contexts. They also study the lives and learning of urban youth, and explore the urban community"); CURR 561 ("They explore how students' learning histories affect their classroom achievement and learn about students' lives outside the classroom"); and CURR 562 ("They explore how curriculum is developed, why it is selected, & the epistemological theory that informs the curriculum & its implementation").

<sup>2</sup> In support of this stance petitioner cites the course descriptions for CURR 560 ("Through personal learning autobiographies and hands-on learning activities, students come to understand how and why they learn and how their personal learning histories affect them in different contexts"); CURR 561 ("They explore how students' learning histories affect their classroom achievement and learn about students' lives outside the classroom"); and CURR 562 ("Residents employ pedagogical content knowledge in designing & implementing classroom activities, assessments, & units of study . . . . Special attention is given to addressing the needs of students with disabilities and English language learners, & supporting differentiated instruction through the use of educational technologies. The residents engage in math/science curriculum study. They explore how curriculum is developed, why it is selected, & the epistemological theory that informs the curriculum & its implementation").

specific area of study or grade level,” and the course description for EDLD 662 “only focuses on urban schools” similar to the course description for CURR 560. Additionally, petitioner maintains that his educational program covered middle school and high school, which “encompasses 7 out of the 12 grades” or “almost 60% of all the grade levels.” Petitioner argues that Singh confirmed that “you can have experience satisfy part of the [S]tate’s requirement which in turn would satisfy the full requirement”; Singh’s testimony “shows that the [S]tate will accept portions of a requirement and utilize it to satisfy the requirement itself”; and petitioner’s courses “clearly” demonstrate that he has “met, completed and satisfied most if not all areas required by the [S]tate.” Finally, petitioner asserts that “[o]ver time, the board has changed [its] justification for not accepting [his] completed courses” (i.e. the Board “initially claimed that the curriculum must be from scratch then reverses course and says that it does not need to be from scratch but now apparently the courses are missing a general overview and the historical aspect”), which, petitioner argues, “seems very subjective, ambiguous and capricious.”

Against this backdrop, petitioner bears a substantial evidentiary burden to establish a case sufficient to set aside a decision by the Board of Examiners. A decision by the Board of Examiners will not be disturbed unless petitioner “has demonstrated [that] 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). It is not within the province of this forum to substitute its judgment for that of the Board of Examiners even if there is room for two opinions regarding the sufficiency of petitioner’s coursework. Rather, the pertinent inquiry is to “ascertain whether the decision is supported by sufficient credible evidence in the record[.]” N.J.A.C. 6A:4-4.1(a). Judged against this standard of review and based on a consideration of the testimony and documentary evidence presented, I **CONCLUDE** that petitioner has failed to shoulder his burden of proof and that the Board of Examiners’ decision is supported by sufficient credible evidence.

Petitioner sought a credentials review in connection with his application for a Supervisor certificate and requested the Board of Examiners to consider his experience as a Mathematics teacher in Linden and coursework during his Masters of Arts Teaching program at Montclair as demonstrating alternative experience and/or education equivalent to the requirements of three graduate credits in general principles of curriculum

design and development for preschool through grade 12 and three graduate elective credits in curriculum design and development. (J-10.) The Board of Examiners concluded that petitioner “established a compelling one-to-one correspondence between his experience in developing and designing the Applications of Linear Algebra course in Linden and the elective in Curriculum Design and Development that he lacks” and, therefore, determined that he will receive three credits in that area. (ibid.) However, the Board of Examiners also determined that the “coursework [petitioner] submitted for consideration was not the equivalent” of the requirement of three graduate semester-hour credits in general principles of curriculum design and development for preschool through grade 12. (ibid.) In this regard, the Board of Examiners explained that petitioner’s “course was math based and focused on one specific area rather than a more broad-based design development foundation as is required.” (ibid.)

Succinctly stated, the Board of Examiners’ determination that the courses petitioner offered as alternative education were not the equivalent of the missing certification requirement was a reasoned exercise of its discretionary authority pursuant to N.J.A.C. 6A:9B-4.12(b). The stated basis for the conclusion reached focused on the fact that petitioner’s coursework was too limited in that it was math based and focused on one specific area instead of the more broad-based design development foundation that is required. The record fails to support that the Board of Examiners’ determination was without ample consideration or in disregard of the circumstances. Equally lacking is evidence establishing that the Board of Examiners’ determination, after review of petitioners’ documents, was arbitrary, capricious, or contrary to law. Petitioner has not offered any pertinent evidence that was not considered by the Board of Examiners, but, instead, simply disagrees with the conclusion drawn by the Board of Examiners.

The conclusion that the Board of Examiners did not act in an arbitrary, capricious, or unreasonable manner is supported by the plain language of N.J.A.C. 6A:9B-12.6(a)(2)(ii)(2). Unlike the “elective credits in curriculum design and development” (N.J.A.C. 6A:9B-12.6(a)(2)(ii)(3)) for which the Board of Examiners determined that petitioner established a compelling one-to-one correspondence with his experience in developing and designing the Applications of Linear Algebra course in Linden, the credits in “general principles of curriculum design and development for preschool through grade

12” clearly requires, by its reference to “general principles,” a course with a broad overview of curriculum design and development. It also requires, by its reference to “for preschool through grade 12,” a course that is applicable to all grade levels. In other words, the purpose of the missing coursework is to establish the necessary knowledge for curriculum design and development regardless of subject area or grade since a Supervisor certificate is an endorsement for all grades that can be used to supervise any subject.

The conclusion that the Board of Examiners did not act in an arbitrary, capricious, or unreasonable manner is further supported by the syllabus and course descriptions for the courses petitioner offered to demonstrate equivalency. CURR 561 and CURR 562 specifically state that they are math and/or science focused. See J-1 and J-4, course description and syllabus for CURR 561 (“This course focuses on assessing and building on students’ prior knowledge, strengths, and needs, planning curriculum and instruction, and teaching math and science”); J-1, course description for CURR 562 (This course “[b]uilds on teacher residents’ prior knowledge & experience planning for student learning in math & science”). The course description for CURR 560 lacks any mention of “curriculum” and refers to the “teaching and learning of math and science.” Beyond this, petitioner candidly acknowledged that his educational program focused on middle and high school and, thus, petitioner lacks the general principles of curriculum design and development for preschool through grade five as dictated by the regulatory requirement. In short, the evidence supports the conclusion that petitioner lacks the broad-based education in curriculum design and development for all subjects and for all grade levels and, therefore, does not meet the requirements of N.J.A.C. 6A:9B-12.6(a).

I agree with the Board of Examiners’ stance that simply because CURR 561 may have a similar assignment to EDLD 662 regarding the development of a curriculum does not lead to the conclusion that the courses are equivalent, and petitioner has completed all the coursework in the State approved course. Likewise, that EDLD 662 references urban schools does not establish that it is the equivalent of CURR 560 or undermine the appropriateness of the Board of Examiners’ decision. Rather, as Singh explained, CURR 560 was determined not to be equivalent, not because it focused on urban or rural

settings, but because it was focused on teaching and focused on specific teaching and learning of math and science.

Based upon the foregoing, even if the culmination of education from separate courses is appropriate, I **CONCLUDE** that petitioner has failed to establish that the Board of Examiners' decision to deny his application for a Supervisor certificate, predicated on petitioner's failure to establish a one-to-one correspondence between his offered alternative education and the regulatory requirement, was arbitrary, capricious, unreasonable, or contrary to law. I **CONCLUDE** that the Board of Examiners' denial of petitioner's application for a Supervisor certificate was appropriate, within its discretion, and not arbitrary, capricious, unreasonable, or contrary to law.

### **ORDER**


It is **ORDERED** that the Board of Examiners' denial of petitioner's application for a Supervisor certificate be and hereby is **AFFIRMED** and petitioner's Petition of Appeal be and hereby 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 1, 2022  
DATE

  
\_\_\_\_\_  
**MARGARET M. MONACO, ALJ**

Date Received at Agency: \_\_\_\_\_

Date Mailed to Parties: \_\_\_\_\_

jb

**APPENDIX**

**List of Witnesses**

**For Petitioner:**

Jaroslav Nimczyk

**For Respondent:**

Rani Singh

**List of Exhibits in Evidence**

**Joint:**

- J-1 Course Descriptions
- J-2 Course Comparison
- J-3 CURR 561 Analysis
- J-4 CURR 561 Syllabus
- J-5 EDLD 662 Syllabus
- J-6 E-mail from Melissa Orłowski to Jaroslav Nimczyk dated November 2, 2018
- J-7 Motion to Dismiss
- J-8 Petition of Appeal
- J-9 Evaluation of Credentials-Supervisor
- J-10 Decision by the Board of Examiners
- J-11 Credentials Review Summary
- J-12 Letter from Rani Singh to Jaroslav Nimczyk dated July 1, 2019

**For Appellant:**

None

**For Respondent:**

None