

New Jersey Commissioner of Education**Final Decision**

Wayne Ernst,

Petitioner,

v.

New Jersey State Board of Examiners,

Respondent.

Synopsis

Pro-se petitioner challenged the denial of his application for a Teacher of Physical Science Certificate by the New Jersey Department of Education, Board of Examiners (the Board). The Board denied the application because petitioner did not meet the specified requirements under *N.J.A.C.* 6A:9B-10.4, as he satisfied the physics requirement but lacked seven (7) semester-hour credits in chemistry. Petitioner contended that the Board erred by not accepting as equivalent his similar coursework from disciplines that overlap with chemistry and his professional experience teaching chemistry. The Board filed a motion to dismiss.

The ALJ found, *inter alia*, that: when a decision by the Board has been appealed, the Commissioner must determine whether that decision is supported by sufficient credible evidence in the record and will not disturb the decision unless the appellant has demonstrated that the Board acted in a manner that was arbitrary, capricious, or contrary to law; pursuant to *N.J.S.A.* 18A:6-38, the Board is responsible for determining if an instructional teaching certificate may be issued to an applicant; if an applicant has been advised of a deficiency in their certification requirements, they may provide the Board with evidence of alternative education and/or experience that he or she believes is equivalent to the area(s) of deficiency; in this case, the Board determined not to accept petitioner's alternative education to satisfy the remaining requirements that he needed to receive a Teacher of Physical Science certificate; and the Board's decision in this matter was reasonable and consistent with applicable regulations. The ALJ concluded that petitioner did not meet requirements for a Teacher of Physical Science Certificate pursuant to *N.J.A.C.* 6A:9B-9.1 and 10.4; accordingly, the ALJ granted the Board's motion to dismiss.

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.

New Jersey Commissioner of Education

Final Decision

Wayne Ernst,

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.

In this matter, petitioner challenges the New Jersey State Board of Examiners' (Board) denial of his application for a Teacher of Physical Science Certificate. Petitioner currently holds a Teacher of Physics Certificate of Eligibility with Advanced Standing and a Teacher of Physics Certificate. The Board denied his application because he was missing seven (7) semester-hour credits in chemistry. Petitioner argued that his alternative education and experience satisfied a one-to-one-correspondence to the missing chemistry credits, in accordance with *N.J.A.C. 6A:9B-4.12(b)*. The Board found that while the physics courses petitioner took may have included chemistry concepts, they did not include the in-depth chemistry instruction required under *N.J.A.C. 6A:9B-10.4*; further, the topics petitioner taught in a chemistry course were not comparable to the coursework required for a Teacher of Physical Science, which includes chemistry at the advanced level. Following a motion to dismiss, the Administrative Law Judge (ALJ) found that petitioner did

not meet requirements for a Teacher of Physical Science Certificate pursuant to *N.J.A.C.* 6A:9B-9.1 and 10.4.

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), applied deference to the Board, and stated that the Board's decision in this case would 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 review of the record and applying the appropriate standard of review, the Commissioner agrees with the ALJ's ultimate determination that petitioner has not met the requirements for a Teacher of Physical Sciences Certificate pursuant to *N.J.A.C.* 6A:9B-9.1 and 10.4. Petitioner is seven (7) semester-hour credits short of the requirement in chemistry and his physics coursework does not satisfy a one-to-one equivalent to the missing chemistry courses, as both physics and chemistry courses are required for the Physical Sciences endorsement.

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

IT IS SO ORDERED.¹


ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 14, 2022

Date of Mailing: November 16, 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

SUMMARY DECISION

OAL DKT. NO. EDU 05270-22

AGENCY DKT. NO. 137-6/22

**IN THE MATTER OF THE DENIAL OF
THE TEACHING CERTIFICATE OF
WAYNE ERNST, NEW JERSEY
DEPARTMENT OF EDUCATION,
BOARD OF EXAMINERS.**

Wayne Ernst, petitioner, pro se

Sydney Finkelstein, Deputy Attorney General, for respondent, New Jersey
Department of Education, Board of Examiners (Matthew J. Platkin, Acting
Attorney General, attorney)

Record Closed: September 1, 2022

Decided: September 30, 2022

BEFORE **KATHLEEN M. CALEMMO**, ALJ:

STATEMENT OF THE CASE

Petitioner, Wayne Ernst, challenged the denial of his application for a Teacher of Physical Science Certificate by the New Jersey Department of Education, Board of Examiners (the Board). The Board denied the application because Ernst did not meet

the specified requirements under N.J.A.C. 6A:9B-10.4; he satisfied the physics requirement but lacked seven semester-hour credits in chemistry. Petitioner contends that the Board erred by not accepting his similar coursework from disciplines that overlap with chemistry and his professional experience teaching chemistry as equivalent to his area of deficiency.

PROCEDURAL HISTORY

On March 4, 2022, the Board rendered its written decision denying petitioner's request. On June 1, 2022, petitioner filed an appeal of the Board's decision with the Bureau of Controversies and Disputes. On June 21, 2022, respondent filed a Motion to Dismiss in lieu of an Answer, and the contested case was transmitted to the Office of Administrative Law (OAL) where it was filed on June 28, 2022. N.J.S.A. 52:14B-1 to 15 and N.J.S.A. 52:14F-1 to 13.

After a telephone conference, I set a briefing schedule regarding the respondent's pending Motion to Dismiss. On August 23, 2022, petitioner filed his opposition to respondent's motion. Respondent replied by letter brief on September 1, 2022, at which time the record closed.

FACTUAL DISCUSSION

A Motion to Dismiss is recognized in the Administrative Code at N.J.A.C. 6A:3-1.5(g). While the Commissioner may dismiss the petition based on such motion prior to referral of the matter to the OAL, it is also the Commissioner's prerogative to transfer determination of the motion to the OAL. In assessing such a motion, the claims made by the party who filed the petition must be deemed to be true and all reasonable inferences such allegations may support must be accepted. The standard utilized by the courts in judging such motion is traditionally quite liberal towards the non-moving party. Green v. Morgan Props., 215 N.J. 431, 451 (2013).

Herein, respondent maintained that petitioner has failed to state a claim upon which relief can be granted. The standard to be applied in deciding this motion is

essentially the same that govern a motion under R. 4:46-2 for summary judgment in civil litigation. Contini v. Bd. of Educ. of Newark, 286 N.J. Super. 106, 121, (App. Div. 1995), certif. denied, 145 N.J. 372 (1996). Under this standard, the court or agency must determine “whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party in consideration of the applicable evidentiary standard, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party.” Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995). When making a summary decision, 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, 142 N.J. at 540.

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

Ernst received his Bachelor of Science degree in physics with a concentration in astronomy and a minor in mathematics from Montclair State University. He currently holds a Teacher of Physics Certificate of Eligibility with Advanced Standing (CEAS), issued in June 2013, and a Teacher of Physics Certificate, issued in November 2015.

In the spring of 2021, Ernst filed an application for an additional endorsement in Physical Science. To meet the endorsement requirements under N.J.A.C. 6A:9B-9.1(a)1iii, Ernst was required to have completed “[a] 30-credit coherent sequence of courses in physics and a minimum of 15 credits in chemistry.” N.J.A.C. 6A:9B-10.4. Ernst met the requirement for physics but not for chemistry. As shown on his transcripts, Ernst earned eight credits in chemistry-specific courses, leaving him seven credits short.

In his appeal, Ernst asked the Board to consider alternative education and professional experience as equivalent to the seven chemistry credits. Ernst believes that certain courses at Montclair State University should have been credited toward the chemistry requirement because these courses covered topics, concepts, and skills that overlap with chemistry courses. His position is that the unique relationship between physics and chemistry and the overlap between these disciplines should not be divided

by a mere course label of “PHYS” versus “CHEM.” As noted on his transcript, Ernst took a total of forty-seven credit-hours in courses labeled as “PHYS” and eight credit-hours in courses labeled as “CHEM.” He stressed that a review and comparison of the courses is required to appropriately assess his qualification for this endorsement.

Ernst maintained that three credits he earned in thermodynamics under the “PHYS” label should have been deemed a one-to-one equivalent for a chemistry course. In support of his argument, Ernst compared the course outline from his thermodynamics course in the physics department under the “PHYS” label at Montclair State University with course syllabi from chemistry departments under the “CHEM” label at other universities. These included: Princeton University’s Chemical Dynamics and Thermodynamics; New Jersey Institute of Technology’s Physical Chemistry I; Rowan University’s Chemical Engineering Thermodynamics; and the College of New Jersey’s Chemical Thermodynamics. As a further demonstration of the equivalency of his physics department thermodynamics course, Ernst included an email from Dr. Michael T. Kelly, who offered a comparison between Chemistry 306 offered at Princeton with Physics 320 offered at Montclair. Dr. Kelly determined that the comparison was “quite good” with some exceptions.

As demonstrated above, Ernst maintained that he established a one-to-one equivalency with his thermodynamics physics course, that should have provided him with three additional chemistry credits. Although Ernst maintained that he could easily make up the four-credit deficit from his other courses, he requested that the Board approve his professional experience teaching chemistry at Jack M. Barrack Hebrew Academy for the remaining four credits.

Ernst appeared before the Board at its meeting on January 21, 2022. He was asked no questions. The Board considered the alternative education and experiences that Ernst believed was equivalent to his coursework deficiency. After review, the Board determined that Ernst “did not provide compelling evidence of a one to one correspondence between his proffered alternative education and experience and the 7 semester-hour credits in chemistry.” In denying his application, the Board noted that “while Ernst may have taken courses that included concepts covered in chemistry

courses and taught a chemistry course, the Board finds that it is necessary to complete the full complement of coursework for eligibility as a Teacher of Physical Science because the endorsement enables its holder to teach a variety of courses related to the physical science, including chemistry, at the advanced level.”

LEGAL ANALYSIS AND CONCLUSION

Ernst 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://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 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. Jessica Walder v. New Jersey State Board of Examiners, EDU 08530-14, Initial Decision (November 10, 2014), aff’d, Commissioner (May 15, 2013), <<http://njlaw.rutgers.edu/collections/oal/>>.

Ernst urges that I undertake the comparison between his physics courses and chemistry courses that the Board declined to do. But that is not my role. Rather, I must assess whether the actions of the Board were patently unreasonable and arbitrary when they decided that, in their view, courses that may include concepts also covered in chemistry courses do not meet the requirement embodied in the administrative code that required a minimum of fifteen credits in chemistry. N.J.A.C. 6A:9B-10.4. While the comparison syllabi with Princeton and other prestigious institutions of higher learning and Dr. Kelly's assessment of the comparison provided by Ernst offer well-considered arguments in favor of giving him the credit he seeks, the law demands that I defer to the viewpoint of the Board, as it is the body delegated with the authority to determine what credentials qualify applicants to teach the children of New Jersey. The Legislature has delegated the responsibility for the issuance of teaching certificates to the Board. N.J.S.A. 18A:6-38.

Moreover, I concur with the Board that the regulatory scheme plainly states that coursework both in physics and chemistry are prerequisites to the certificate Ernst seeks. N.J.A.C. 6A:9B-10.4. It would thus be inconsistent with the regulatory scheme to permit Ernst to satisfy his missing chemistry credits with physics credits. The regulatory scheme required Ernst to have completed a **minimum** of fifteen credits in chemistry while also completing a thirty-credit coherent sequence of courses in physics. Moreover, N.J.A.C. 6A:9B-4.12(c) in pertinent parts provides:

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.

Therefore, I **CONCLUDE** that the Board's decision relative to Ernst's application for certification is reasonable; is consistent with the regulatory intent, which is to rigorously vet applicants for certification; and is entitled to deference.

ORDER

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.

September 30, 2022

DATE



KATHLEEN M. CALEMMO, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

KMC/jns