

**New Jersey Commissioner of Education****Decision**

C.S., on behalf of minor child, I.S.,

Petitioner,

v.

Rikki Frischman,

Respondent.

**Synopsis**

*Pro se* petitioner sought to hold respondent, Rikki Frischman, accountable for allegedly failing to report an incident of harassment, intimidation, and bullying (HIB) and filed a petition requesting that the respondent “be removed from working with students.” Respondent worked in North Brunswick Township schools as a teaching staff member during the 2021-2022 school year; petitioner’s child, I.S. was a student in Ms. Frischman’s second grade class.

The ALJ found, *inter alia*, that: the issue in this case is whether petitioner may seek to revoke respondent’s teaching certificate; respondent filed a motion to dismiss, arguing that petitioner has no standing to seek revocation of respondent’s teaching certificate; petitioner’s response to the motion to dismiss did not address respondent’s legal arguments as to lack of standing or failure to state a claim upon which relief can be granted but opposed the motion, arguing that respondent failed to report an alleged incident of abuse and failed to be honest; accordingly, petitioner sought to “terminate” respondent’s teaching certificate; *N.J.A.C. 6A:3-1.10* provides that prior to transmittal of a case to the OAL, the Commissioner may dismiss the petition on grounds that the petitioner has advanced no cause of action or for lack of jurisdiction, failure to prosecute or other good reason; the New Jersey Administrative Code governs the revocation and suspension of teaching certificates; *N.J.A.C. 6A:9B-4.5* sets forth circumstances by which revocation or suspension of teaching certificates may be triggered, all of which are initiated by action of the Board of Examiners; there is no provision in regulation for an individual to compel revocation of a teacher’s certificates. The ALJ concluded that the petitioner failed to state a claim upon which relief can be granted. Accordingly, the motion to dismiss was granted.

Upon review, the Commissioner concurred with the ALJ that an individual may not compel the revocation of a teacher’s certificate, as the authority to revoke or suspend teaching certificates lies solely with the State Board of Examiners, pursuant to *N.J.A.C. 6A:9B-4.5*. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter, 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**

C.S., on behalf of minor child, I.S.,

Petitioner,

v.

Rikki Frischman,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed and considered. The parties did not file exceptions.

Upon review, the Commissioner concurs with the Administrative Law Judge that an individual may not compel the revocation of a teacher's certificate, as the authority to revoke or suspend teaching certificates lies solely with the State Board of Examiners, pursuant to *N.J.A.C. 6A:9B-4.5*.

Accordingly, the Board's motion to dismiss is granted, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.<sup>1</sup>

  
ANGELINA ALLEN McMILLAN, Jd. S.  
ACTING COMMISSIONER OF EDUCATION

Date of Decision: February 2, 2023  
Date of Mailing: February 6, 2023

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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**

**ON MOTION TO DISMISS**

OAL DKT. NO. EDU 05483-22

AGY. REF. NO. 44-3/22

**C.S. ON BEHALF OF MINOR CHILD I.S.,**

Petitioner,

v.

**RIKKI FRISCHMAN,**

Respondent.

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**C.S.**, petitioner, pro se

**Michael T. Barrett**, Esq., for respondent (Bergman & Barrett, attorneys)

Record Closed: November 1, 2022

Decided: December 12, 2022

BEFORE **SUSAN L. OLGATI**, ALJ:

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

Petitioner, C.S. seeks to hold respondent, Rikki Frischman accountable for allegedly failing to report an incident of harassment, intimidation, and bullying (HIB). On March 14, 2022, petitioner filed a Pro Se Petition of Appeal with the Commissioner of Education, requesting that the respondent “be removed from working with students.” On or about June 10, 2022, the Regulatory Officer of the Department of Education,

Office of Controversies and Disputes emailed C.S. seeking clarification of her Petition of Appeal. More specifically, petitioner was asked, “Are you asking the Commissioner to revoke Ms. Frischman’s teaching certificates, appealing an HIB decision, both, or something else?” (See, Transmittal packet.) On the morning of June 10, 2022, C.S. responded, “Good morning, I am requesting that Mrs. Frischman [sic] teaching privileges be revoked as she failed to report (violating N.J. Admin. Code 6A:16-5.3) the incident that was reported to her . . .” Id. Later that evening, C.S. further responded, “Good evening, Ms. Simon, I see there is a little misunderstanding of my response and the language used “revoke Mrs. Frischman certification I was referring to termination from duty as a teacher at John Adams not revoke as in reverse her teaching degree.” Id.

On or about June 23, 2022, respondent filed a motion to dismiss with the Commissioner. Thereafter, the matter was transferred to the Office of Administrative Law (OAL) as a contested case, where it was filed on July 5, 2022. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -23. The transmittal notice noted that petitioner named only Frischman as respondent and that jurisdiction with regard to Frischman is a threshold issue. The transmittal notice further noted that the issue of whether the Board’s HIB decision was arbitrary, capricious, and unreasonable, was not transmitted to the OAL and would follow in a separate transmittal if a petition is filed.

On or about September 20, 2022, respondent refiled the motion to dismiss in the OAL. On October 20, 2022, respondent filed a supplemental letter brief in support of the motion. Petitioner filed her response to the motion on or about October 28, 2022. A telephone case conference was held on November 1, 2022, where the parties confirmed that all responsive papers had been filed and the record closed.

## **FACTUAL DISCUSSION**

Frischman was employed by the North Brunswick Township Board of Education (hereinafter referred to as the Board) as a teaching staff member for the 2021–2022 school year. During that time, I.S.<sup>1</sup> was a student in Frischman's second grade class.

On February 2, 2022, respondent excused I.S. from class to use the restroom. C.S. contends that while I.S. was in the restroom, another student bit him on his buttock. (Petr.'s response to motion to dismiss.) C.S. claims that after leaving the restroom, I.S. met Frischman in the hallway and reported the incident to her. In response, respondent allegedly answered something to the effect of, "Don't worry, I will handle it. If you don't feel comfortable using this bathroom, you can use the 3<sup>rd</sup> and 4<sup>th</sup> grade bathroom." Id.

I.S. told C.S. about the incident later that evening. Thereafter, C.S. emailed his teachers and added the principal to the email. Frischman responded to the email that evening and said she had no knowledge of the incident. Frischman arranged to speak with C.S. via telephone the next morning. Petitioner contends that during their conversation, Frischman continued to deny knowledge of the incident but advised that she reported the matter to the instructional dean. Id.

Petitioner asserts that she met with the principal on February 4, 2022, who informed her there was video footage of Frischman having a brief conversation with I.S. in the hallway on the date of the incident and that the other student involved had yet to be interviewed. Id.

Petitioner indicates that an intake report (#21381646) was made to the Institutional Abuse Investigation Unit (IAIU) hotline regarding the incident, but contends that the report was not intended to address the negligence of respondent and that the matter was not escalated into a formal investigation or referred to the Board of Examiners.

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<sup>1</sup> I.S. is also referred to the responsive papers/supporting documentation as "Ibn."

Thereafter, on March 14, 2022, petitioner filed her Petition of Appeal seeking termination of Frischman's teaching certificate. Id.<sup>2</sup>

Finally, petitioner states, that by letter dated June 9, 2022, she was advised by Frischman's attorney, that Frischman had since resigned and was no longer employed by the Board.

Respondent denies that I.S. told her about an HIB incident and claims that I.S. only reported that students were playing in the bathroom. (Frischman Cert.) Upon receiving the email from petitioner on the evening of February 2, 2022, Frischman emailed her instructional dean and principal to inform them of C.S.'s claims. Id.

### **LEGAL ANALYSIS AND CONCLUSIONS OF LAW**

The issue is whether petitioner may seek to revoke respondent's teaching certificate.

Respondent filed the motion to dismiss, arguing that petitioner has no standing to seek revocation of respondent's teaching certificate. Respondent argues that revocation proceedings are generated by the findings of a state body or agency such as the Division of Criminal Justice, the employing Board of Education, or the IAIU. Respondent further argues that while an individual may bring a claim or concern to the attention of a Board of Education, it is up to the Board to determine what, if any, action to be taken. Respondent contends that none of the basis for bringing a revocation action have been triggered. Thus, respondent argues there is no legal authority for petitioner's action and the matter should be dismissed.

Petitioner does not address respondent's legal arguments as to lack of standing or failure to state a claim upon which relief can be granted but opposes the motion

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<sup>2</sup> Petitioner incorrectly states in her opposition papers that on this date she filed a motion with the OAL. The Petition of Appeal filed by petitioner on that date was filed with the Commissioner of Education.

arguing that respondent failed to report an alleged incident of abuse, and failed to be honest, and therefore seeks to “terminate” her teaching certificate.

**I. Standard for Motion to Dismiss**

N.J.A.C. 6A:3-1.10 provides:

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.

The Uniform Administrative Procedure Rules (UAPR), N.J.A.C. 1:1-1.1 to -21.3, provide that they “shall be construed to achieve just results, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.” N.J.A.C. 1:1-1.3(a). They further provide that, “[i]n the absence of a rule, a judge may proceed in accordance with the New Jersey Court Rules, provided the rules are compatible with these purposes.”

R.4:6-2, allows for motions for judgment on the pleadings. Under R. 4:6-2, if the basis for a motion to dismiss is that the petition has advanced no cause of action, or failed to state a claim upon which relief may be granted, “the test for determining the adequacy of [the] pleading [is] whether a cause of action is ‘suggested’ by the facts,” such that the “inquiry is limited to examining the legal sufficiency of the facts alleged on the face of the complaint.” Printing-Mart Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989) (citing R. 4:6-2(e); Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988); Rieder v. Dep’t of Transp., 221 N.J. Super. 547, 552 (App.Div.1987)). Thus, R. 4:6-2 is compatible with the purposes of the UAPR, and it is appropriate to assess respondent’s motion to dismiss under this standard.

For purposes of the motion, it does not matter whether a petitioner can ultimately “prove the allegation contained in the complaint” because “all facts alleged in the complaint and the legitimate inferences drawn therefrom are deemed admitted.” Id.

(citing Somers Constr. Co. v. Bd. of Educ., 198 F.Supp. 732, 734 (D.N.J.1961)); Smith v. City of Newark, 136 N.J. Super. 107, 112 (App.Div.1975) (citing Heavner v. Uniroyal, Inc., 63 N.J. 130, 133 (1973); J.H. Becker, Inc. v. Marlboro Twp., 82 N.J. Super. 519, 524 (App. Div. 1964)). While “[a] complaint should not be dismissed . . . where a cause of action is suggested by the facts,” “a dismissal is mandated where the factual allegations are palpably insufficient to support a claim upon which relief can be granted.” Rieder, 221 N.J. Super. at 552.

## II. Revocation

The New Jersey Administrative Code governs the revocation and suspension of teaching certificates. N.J.A.C 6A:9B-4.5 provides in relevant part that:

- (a) The Board of Examiners may issue an order to show cause to a certificate holder if the Board of Examiners determines the conduct of the holder may warrant the revocation or suspension of the certificate(s) held where:
1. The Commissioner transmits a contested case to the Board of Examiners that resulted in a teaching staff member’s loss of tenure, dismissal, resignation, or retirement;
  2. Pursuant to N.J.A.C. 6A:9B-4.3, the Board of Examiners receives information from a school district that a teaching staff member no longer is employed in the school district;
  3. The Board of Examiners receives information regarding a certificate holder’s criminal conviction or pending criminal charges;
  4. The Board of Examiners receives notices that a teaching staff member who is certified in New Jersey and who also holds a teaching certificate in another state has had action taken against his or her certificate by the other state;
  5. Pursuant to N.J.S.A. 9:6-8.10 the Department of Children and Families forwards to the Board of Examiners a copy of a report in which the



Department of Children and Families has substantiated that a certificate holder has abused or neglected a student or has identified concerns with the conduct of a teaching staff member;

6. Pursuant to N.J.S.A. 18A:6-7.3, the Commissioner notifies the Board of Examiners that an individual who holds New Jersey certification is disqualified from employment in public schools or has pending charges for an offense that is disqualifying;
7. A certificate holder fails to maintain any license, certificate, or authorization that is mandated, pursuant to this chapter, for the holder to serve in a position . . .

(b) Nothing in this section shall preclude the Board of Examiners from issuing an order to show cause on its own initiative when the Board of Examiners determines grounds for revocation or suspension of a certificate may exist.

N.J.A.C. 6A:9B-4.5.

The regulation sets forth multiple methods/circumstances by which revocation or suspension of teaching certificates may be triggered. All of which are initiated by action of the Board of Examiners based on findings or information including, but not limited to, a certificate holder's criminal conviction or pending criminal charges, action taken against a teaching staff member's certificate in another state, or report by the Department of Children and Families substantiating abuse or neglect or identifying conduct concerns. The regulation does not presently provide any avenue for an individual to compel revocation of an individual's teaching certificate.

Here, none of the methods by which the Board of Examiners may revoke or suspend a teaching certificate have been triggered. The Board of Examiners has not issued an Order to Show Cause or taken any action concerning respondent's teaching certificate. Accordingly, for purposes of this motion, accepting all of the facts alleged by petitioner as true, they remain "palpably insufficient to support a claim upon which relief can be granted."

To the extent that petitioner believes that respondent engaged in improper conduct or disagrees with the way in which the school's administrators, or the Board of Education handled the HIB, she should consider other avenues which she may have to pursue, if any.

Accordingly, for the reasons set forth herein, I **CONCLUDE** that respondent's motion to dismiss should be **GRANTED**.

**ORDER**

It is hereby **ORDERED** that the respondent's motion to dismiss is **GRANTED**; and petitioner's 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.

December 12, 2022

DATE



**SUSAN L. OLGATI, ALJ**

Date Received at Agency:

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Date Mailed to Parties:

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SLO/as

**APPENDIX**

**PAPERS RELIED ON**

**For petitioner**

- Letter in response to the motion

**For respondent**

- Letter brief in support of motion to dismiss and supporting certification of Frischman
- Supplemental letter brief in support of the motion