

**New Jersey Commissioner of Education**

**Decision**

Nicholas Cilento,

Petitioner,

v.

Board of Education of the Township of  
Woodbridge, Middlesex County,

Respondent.

**Synopsis**

Petitioner appealed the decision of the respondent Board of Education (Board) to terminate his employment as a teacher after the State Board of Examiners (Board of Examiners) suspended his teaching certificates. Petitioner sought reinstatement to his tenured teaching position with back pay, benefits and emoluments; alternatively, petitioner requested that this matter be placed on the inactive list at the Office of Administrative Law (OAL) pending the disposition of petitioner's appeal of the Board of Examiners' suspension of his teaching certificates. This matter stems from the filing of tenure charges against petitioner by the respondent Board following two incidents of consuming alcohol on school premises while on duty in May 2019.

The ALJ found, *inter alia*, that: there are no material facts at issue here, and the matter is ripe for summary decision; petitioner, formerly a tenured teacher in the respondent Board's school district, was discovered drinking alcohol while on the job in May 2019; the Board brought tenure charges against petitioner and removed him from employment; after an independent arbitrator recommended against petitioner's dismissal, respondent reinstated him; subsequently – and notwithstanding the decision of the arbitrator – the State Board suspended petitioner's teaching certificates for a period of two years; once petitioner's certification was suspended, the Board terminated him from his tenured teaching position consistent with the requirements of *N.J.S.A. 18A:26-2* and *N.J.A.C. 6A:9B-5.1(c)*; the law is clear that a school board cannot permit a teacher to teach without certification, and as of October 28, 2021, petitioner lost his certification. The ALJ concluded that the Board acted appropriately and in accordance with the law when it removed petitioner from his tenured teaching position, because petitioner did not have a valid teaching certificate at the time of the Board's decision. Accordingly, the ALJ granted the Board's motion for summary decision and dismissed the petition.

Upon review, the Commissioner concurred with the findings and conclusion of the ALJ and adopted the Initial Decision as the final decision in this matter. 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.

35-23

OAL Dkt. No. EDU 01414-22

Agency Dkt. No. 249-12/21

## New Jersey Commissioner of Education

### Decision

Nicholas Cilento,

Petitioner,

v.

Board of Education of the Township of  
Woodbridge, Middlesex County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by the petitioner. The Woodbridge Board of Education (Board) did not file a reply.

In this matter, petitioner – a tenured teacher – challenges the Board’s decision to terminate him after the New Jersey State Board of Examiners (Board of Examiners) suspended his teaching certificate. By way of background, the Board filed tenure charges against petitioner following two incidents of consuming alcohol on school premises while on duty, on May 20 and May 21, 2019. The arbitrator assigned under *N.J.S.A. 18A:6-16* to conduct the tenure hearing determined that petitioner engaged in unbecoming conduct and suspended his employment for a period of three months, but determined that petitioner’s conduct did not warrant termination. Thereafter, on October 28, 2021, the Board of Examiners found that petitioner’s unbecoming conduct warranted a two-year suspension of his teaching certificate.

The Commissioner upheld the suspension, and an appeal of that decision is currently pending in the Appellate Division. On November 9, 2021, the Board terminated petitioner's employment, effective the date that the Board of Examiners suspended his certificate. Petitioner subsequently filed this appeal challenging his termination.

On a motion for summary decision, the Administrative Law Judge (ALJ) concluded that the Board acted in accordance with the law when it terminated petitioner as he did not have a valid teaching certificate at the time he was removed from his position. The ALJ also found that there is no reason to delay this matter while the appeal in the Appellate Division is pending, because: "[t]he question here is not whether the action of the [Board of Examiners] was legal, it is whether the action of [the Board] in November 2021, made in reliance on the decision of the [Board of Examiners], was legal." (Initial Decision at 7).

In his exceptions, petitioner argues that the ALJ ignored the procedural dilemma faced by petitioner when he was forced to initiate this challenge of his termination due to the 90-day filing deadline, while his appeal of the Board of Examiners' suspension of his certificates is still pending in the Appellate Division. Petitioner also contends that the ALJ failed to decide claims alleged in the verified petition, specifically whether the Board of Examiners' Order of Suspension was arbitrary, capricious, unreasonable and contrary to law. According to petitioner, he has a property right in his tenured teaching position, which was taken from him without due process. Petitioner contends that the ALJ erred in finding that petitioner would be able to bring an action against the Board of Examiners for damages to address the violation of petitioner's property and due process rights if the Appellate Division finds that the Board of Examiners' suspension was invalid; in fact, the Commissioner does not have authority to award

monetary damages and the relief that petitioner seeks is reinstatement to his position. Petitioner maintains that this matter should have been placed on the inactive list at the OAL pending the outcome of the appeal in the Appellate Division, since it will affect the outcome of this matter. As such, petitioner urges the Commissioner to reject the Initial Decision.

Upon review, the Commissioner agrees with the ALJ that the Board was not arbitrary, capricious, or unreasonable in terminating petitioner. Pursuant to *N.J.S.A. 18A:26-2*, “No teaching staff member shall be employed in the public schools by any board of education unless he is the holder of a valid certificate to teach[.]” Accordingly, a school district “shall remove from the position any teaching staff member who fails to maintain” the required certificate. *N.J.A.C. 6A:9B-5.1(c)*. In this matter, petitioner failed to maintain a valid certificate as of October 28, 2021, when his teaching certificate was suspended by the Board of Examiners. Therefore, the Board acted in accordance with law when it terminated petitioner from his teaching position for not possessing a valid teaching certificate.

The Commissioner is also in accord with the ALJ that a decision on this matter is not dependent on the outcome of the case at the Appellate Division. Whether the Board’s actions in November 2021 were arbitrary, capricious or unreasonable will not change if petitioner is successful in his pending appeal. As such, the ALJ appropriately declined to place this matter on the inactive list.

The Commissioner is not persuaded by petitioner’s exceptions. The “procedural dilemma” petitioner discusses does not affect the outcome of this case. Petitioner appropriately initiated the challenge of his termination within the 90-day limitations period, and it is of no moment that his appeal is still pending in the Appellate Division. Additionally, the

Commissioner disagrees with petitioner that the ALJ needed to determine whether the Board of Examiners acted contrary to law in issuing the Order of Suspension. That issue has already been decided by the Commissioner and is pending in the Appellate Division, and it is not relevant to a determination of this matter. Regarding petitioner's alleged property right in his tenured teaching position and violation of due process, the Commissioner finds that petitioner received the process that he was due in the suspension matter, the appeal before the Commissioner, and the matter herein. The Commissioner agrees with petitioner that a separate action against the Board of Examiners in the future would not result in reinstatement to his position, as petitioner seeks, but finds that the viability of a future matter does not affect this case.

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

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

  
ANGELINA ALLEN McMILLAN, Ed.D.  
ACTING COMMISSIONER OF EDUCATION

Date of Decision: February 6, 2023

Date of Mailing: February 8, 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**

**SUMMARY DECISION**

OAL DKT. NO. EDU 01414-22

AGENCY DKT. NO. 249-12/21

**NICHOLAS CILENTO,**

Petitioner,

v.

**TOWNSHIP OF WOODBRIDGE BOARD OF**

**EDUCATION, MIDDLESEX COUNTY,**

Respondent.

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**Edward A. Cridge**, Esq., for petitioner (Mellk Cridge, LLC, attorneys)

**Roshan D. Shah**, Esq., for respondent (Anderson & Shah, LLC, attorneys)

Record Closed: October 14, 2022

Decided: November 18, 2022

BEFORE **TRICIA M. CALIGUIRE**, ALJ:

**STATEMENT OF THE CASE**

Petitioner Nicholas Cilento (Cilento) appeals the decision of respondent Township of Woodbridge Board of Education (Woodbridge Board) to terminate his employment as a teacher after the New Jersey Department of Education, State Board of Examiners (State Board), suspended Cilento's teaching certificates. Petitioner seeks reinstatement to his

tenured teaching position with back pay, benefits and associated emoluments or, alternatively, petitioner requests that this matter be placed on the inactive list, pending the disposition of Cilento's appeal of the State Board's suspension of his teaching certificates.

Respondent contends that it had no choice but to terminate petitioner's employment once he lost his teaching certificates because without teaching certificates, petitioner was ineligible to work as a teacher. See N.J.S.A. 18A:26-2; N.J.A.C. 6A:9B-5.1(a).

### **PROCEDURAL HISTORY**

Petitioner's appeal was received at the Department of Education, Office of Controversies and Disputes (DOE), on December 30, 2021. The DOE transmitted this matter as a contested case to the Office of Administrative Law (OAL), where it was filed on February 22, 2022. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. The parties appeared for prehearing conferences on April 25, and July 19, 2022, and on September 7, 2022, respondent filed a motion for summary decision in its favor. On September 28, 2022, petitioner filed a brief in opposition to the motion for summary decision and cross-motion for placement on the inactive list. On October 14, 2022, respondent filed a reply in further support of its motion for summary decision and in opposition to petitioner's cross-motion to place this matter on the inactive list. No further papers were filed, and the cross-motions are now ripe for review.<sup>1</sup>

### **FACTUAL DISCUSSION**

Based on the papers filed in this matter, including the certifications of counsel and petitioner, I **FIND** the following **FACTS** undisputed:

1. The Woodbridge Board operates and manages the Woodbridge Township School District.

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<sup>1</sup> Although petitioner requested oral argument, I directed that this matter would be decided on the papers. See N.J.A.C. 1:1-12.2(d).

2. Petitioner was a teacher employed by the Woodbridge Board from September 1, 2007, until his termination on November 18, 2021 (effective October 28, 2021).
3. Following two in-school incidents in May 2019, the Woodbridge Board filed five tenure charges against petitioner with the recommended penalty of removal from employment.
4. Charge I was for unbecoming conduct and/or other just cause, including insubordination — consuming alcohol during work in violation of established standards of professional behavior.
5. Charge II was for unbecoming conduct and/or other just cause, including insubordination — consuming alcohol during work in violation of state law.
6. Charge III was for unbecoming conduct and/or other just cause, including insubordination — consuming alcohol during work in violation of municipal law.
7. Charge IV was for insubordination and unbecoming conduct and/or other just cause — violations of district policy.
8. Charge V was for a pattern or course of unbecoming conduct over a protracted period of time.
9. An arbitration hearing on the above charges was held on August 31, and September 1, 2020. The arbitrator sustained tenure charges I through IV but did not find dismissal from employment warranted. The Woodbridge Board reinstated petitioner.
10. On October 28, 2021, the State Board suspended petitioner's teaching certificates for two years, notwithstanding the decision of the arbitrator.



11. Woodbridge Board Superintendent Joseph E. Massimino notified petitioner by letter dated November 9, 2021, that he would recommend petitioner's termination to respondent at its next meeting, effective as of the date of the State Board's decision.
12. On November 18, 2021, respondent approved petitioner's termination from employment, effective October 28, 2021.
13. On December 6, 2021, petitioner appealed the State Board's decision to suspend his teaching certificates.
14. On December 30, 2021, petitioner filed this appeal on the grounds that respondent's decision "was arbitrary, capricious, unreasonable, contrary to and in violation of law, and without legal force or effect."
15. In a final agency decision dated June 23, 2022, Acting Commissioner of Education Angelina Allen-McMillen upheld the decision of the State Board.
16. On July 25, 2022, petitioner filed an appeal of the Acting Commissioner's decision with the Appellate Division of the Superior Court of New Jersey. That appeal is pending.

### **LEGAL ANALYSIS**

Summary decision may be granted when "the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." N.J.A.C. 1:1-12.5(b). The rule further provides that an adverse party must respond by affidavit setting forth specific facts showing that there is a genuine issue which can only be determined at an evidentiary hearing. Ibid. The OAL rule is modeled on New

Jersey Court Rule 4:46-2. The New Jersey Supreme Court has explained that when deciding a motion for summary judgment under R. 4:46-2,

. . . a determination whether there exists a “genuine issue” of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, 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, 540 (1995).]

I **CONCLUDE** that the parties raise no dispute with respect to material facts and the issues raised by respondent’s motion for summary decision and petitioner’s cross-motion to have this matter placed on the inactive list can be decided as a matter of law.

The decisions of local governmental bodies, such as school boards of education, carry the presumption of validity and “will remain undisturbed absent a showing of arbitrary, capricious or unreasonable action.” Palamar Constr., Inc. v. Pennsauken, 196 N.J. Super. 241, 250 (App. Div. 1983). The burden of proving the action of the governmental agency was arbitrary and capricious lays with the petitioner. J.M. by his guardian D.M. v. Hunterdon Central Regional High School Dist., 96 N.J.A.R. 2d 415, 419 (December 4, 1995), Comm’r. (January 18, 1996).

In terminating petitioner, respondent acted in compliance with the requirements of N.J.S.A. 18A:26-2, which states that “[n]o teaching staff member shall be employed in the public schools by any board of education unless he is the holder of a valid certificate to teach[.]” See also N.J.A.C. 6A:9B-5.1(a) (“any person employed as a teaching staff member by a district board of education shall hold a valid and appropriate certificate”); and N.J.A.C. 6A:9B-5.1(b) (a district “shall remove . . . any teaching staff member who fails to maintain” required certifications). As a local school board, the Woodbridge Board has “the duty to enforce rules promulgated by the State Board.” Parsippany-Troy Hills Educ. Assn. v. Bd. of Educ. of Parsippany-Troy Hills, 188 N.J. Super. 161, 166 (App. Div. 1983), citing N.J.S.A. 18A:11-1.

It is undisputed that: petitioner obtained tenure prior to May 2019; in May 2019, petitioner was discovered drinking alcohol while on the job; respondent brought five tenure charges against petitioner and removed him from employment; when an independent arbitrator recommended against dismissal, respondent reinstated petitioner; notwithstanding the decision of the arbitrator, the State Board revoked petitioner's teaching certificates; once petitioner lost his certification, respondent terminated him from his tenured teaching position consistent with the requirements of the above law, regulations, and caselaw.

By his petition, petitioner seeks to reverse the decision of respondent to remove him from his tenured teaching position. He concedes that the present appeal is separate and apart from his challenge to the action of the State Board. At the same time, however, petitioner recognizes that until and unless the decision of the State Board to revoke his teaching certificates is reversed in another forum, he cannot prevail in this one.<sup>2</sup> Petitioner argues that the decision of the Appellate Division (or the Supreme Court of New Jersey, should either party pursue that appeal) will be dispositive. In short, if the decision of the State Board to revoke petitioner's teaching certificates is upheld, so too will be the decision of respondent to terminate him for failure to hold the requisite certification. On the other hand, if the State Board is reversed, and petitioner's certificates are returned to him, then the decision of respondent must also be reversed. Therefore, petitioner argues, fairness and the need to conserve judicial resources compels me to hold off on a decision and simply place this matter on the inactive list until the higher court(s) act.

Respondent, however, contends that even if the action of the State Board is later vacated by the Appellate Division, that will not change the basis by which respondent acted in 2021. "The Appellate Division's future decision, whichever way it goes, cannot retroactively deem the Woodbridge BOE's decision to be arbitrary and capricious." Reply Brief of Respondent in Further Support of Motion for Summary Decision (October 14, 2022), at 4 (emphasis in original). Therefore, there is no need to wait to decide whether respondent's decision to terminate petitioner's employment was arbitrary, capricious and

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<sup>2</sup> Petitioner could not wait for the Appellate Division to act on his appeal of the State Board's action, however, because of the ninety-day statute of limitations to appeal the decision of the Woodbridge Board.

unreasonable. It was not; the law is clear that a school board cannot permit a teacher to teach without certification. As of October 28, 2021, petitioner lost his certification. The decision of respondent to terminate him was correct at the time it was made.

Petitioner further argues that he has a “protectible property right in his tenured position,” and there must be “a remedy by suit or action at law where that right is invaded.” Letter Brief of Petitioner in Opposition to Motion for Summary Decision and in Support of Cross-Motion to Place Case on the Inactive List (September 27, 2022), at 5. Here, petitioner not only challenges the loss of his tenured position, but of “the lawfulness” of the actions of the State Board and Acting Commissioner of the DOE. Ibid. He then contends that a ruling here in respondent’s favor must be preceded by a finding that the actions of the State Board and Acting Commissioner were in fact legal. Id. at 7. I disagree.

The question here is not whether the action of the State Board was legal, it is whether the action of respondent in November 2021, made in reliance on the decision of the State Board, was legal. There is no reason to delay a decision on the latter issue to account for circumstances that may change years after the Woodbridge Board acted. I **CONCLUDE** that respondent acted appropriately and in accordance with the law to remove petitioner from his tenured teaching position as petitioner did not have a valid teaching certificate at the time of respondent’s decision. As respondent notes, any violation of petitioner’s property and/or due process rights may be addressed by an action against the State Board for damages and other appropriate relief if the action of the State Board is found to be invalid.

### **ORDER**

For the reasons cited above, I **ORDER** that the motion of respondent Township of Woodbridge Board of Education for summary decision in its favor is hereby **GRANTED**, the cross-motion of petitioner Nicholas Cilento to place this matter on the inactive list is hereby **DENIED** and the appeal of petitioner is hereby **DISMISSED**.

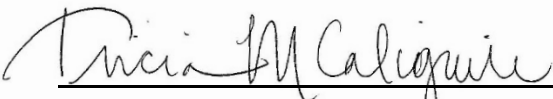
I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

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.

November 18, 2022

DATE



TRICIA M. CALIGUIRE, ALJ

Date Received at Agency:

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Date Mailed to Parties:

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TMC/nn