

## New Jersey Commissioner of Education

### Final Decision

Jamie Sebastian,

Petitioner,

v.

New Jersey Department of Education,  
State Board of Examiners,

Respondent.

### Synopsis

*Pro-se* petitioner appealed the determination of the respondent New Jersey State Board of Examiners (SBE) that she had not met the requirements for issuance of a Learning Disabilities Teacher Consultant (LDT-C) endorsement because she lacked twenty-one (21) graduate credits needed to obtain the endorsement. Petitioner argued that her alternative education and experience satisfied a one-to-one-correspondence to the missing credits, in accordance with *N.J.A.C. 6A:9B-4.12(b)*. The SBE found that petitioner's experience was geared toward special education instruction and not to the roles and responsibilities of someone serving in the role of a consultant, which is an educational services certificate, rather than an instructional or administrative certificate.

The ALJ found, *inter alia*, that: the issue in this case is whether petitioner satisfied her 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 the LDT-C endorsement; *N.J.A.C. 6A:9B-14.10* sets forth the requirements for issuance of this certificate; the SBE determined that petitioner did not satisfy the requirements for certification because she lacks twenty-one (21) graduate credits and her alternative education and experience was not deemed equivalent to satisfy that deficiency; and petitioner failed to establish that the SBE's decision to deny her application for the LDT-C endorsement was arbitrary, capricious or unreasonable. Accordingly, the ALJ affirmed the SBE's decision and dismissed the petition.

Upon review, the Commissioner found, *inter alia*, that: the petition of appeal in this matter was filed in accordance with *N.J.A.C. 6A:3*, not *N.J.A.C. 6A:4*; 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 her 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.

<p>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.</p>
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94-23

OAL Dkt. No. EDU 01695-22

Agency Dkt. No. 11-1/22

## New Jersey Commissioner of Education

### Final Decision

Jamie Sebastian,

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 her application for a Learning Disabilities Teacher Consultant (LDT-C) certificate. The Board denied petitioner's application because she was missing twenty-one (21) graduate credits required for the endorsement. Petitioner argued that her alternative education and experience satisfied a one-to-one-correspondence to the missing credits, in accordance with *N.J.A.C. 6A:9B-4.12(b)*. The Board found that petitioner's experience was geared toward special education instruction and not to the roles and responsibilities of someone serving in the role of a consultant, which is an educational services certificate, rather than an instructional or administrative certificate. Following a motion to dismiss, the Administrative Law Judge (ALJ) found that petitioner did not meet requirements for an LDT-C Certificate pursuant to *N.J.A.C. 6A:9B-14.10*.

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 an LDT-C Certificate pursuant to *N.J.A.C. 6A:9B-14.10*. As the ALJ noted, while there are similarities between the job description for the position petitioner performed in Georgia and the requirements for an LDT-C Certificate, the Georgia job description included more teacher-related duties. The limited amount of collaboration required by the Georgia job does not rise to the level of consultant experience that would be sufficient to meet the requirements of *N.J.A.C. 6A:9B-14.10*.

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.<sup>1</sup>

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

Date of Decision: March 30, 2023  
Date of Mailing: March 31, 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**

OAL DKT. NO. EDU 01695-2022

AGENCY DKT. NO. 11-1/22

**JAMIE SEBASTIAN,**

Petitioner,

v.

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

Respondent.

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**Jamie Sebastian**, petitioner, pro se

**Sydney Finkelstein**, Deputy Attorney General, for respondent (Matthew J. Platkin, Attorney General of New Jersey, attorney)

Record Closed: January 9, 2023

Decided: February 23, 2023

BEFORE **KIM C. BELIN**, ALJ:

**STATEMENT OF THE CASE**

Petitioner, Jamie Sebastian appeals the decision to deny her application for a Learning Disabilities Teacher Consultant (LDT-C) endorsement by the State Board of Examiners (Board of Examiners or respondent). The Board of Examiners contends that the petitioner lacked twenty-one graduate credits required for the endorsement.

## **PROCEDURAL HISTORY**

On December 16, 2021, the Board of Examiners denied the petitioner's application for an LDT-C endorsement. Petitioner filed a petition appealing this decision on January 14, 2022. The Department of Education (DOE) transmitted this matter as a contested case to the Office of Administrative Law (OAL) where it was filed on March 4, 2022. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

On February 24, 2022, respondent filed a motion to dismiss in lieu of an answer. N.J.A.C. 6A:3-1.5(g). During a conference call on April 25, 2022, petitioner requested and was granted until June 1, 2022, to seek legal representation. On June 1, 2022, petitioner affirmed her desire to proceed without counsel and this tribunal set a briefing schedule. Petitioner submitted her response on June 27, 2022, in accordance with the briefing schedule and the respondent filed a reply brief on July 13, 2022. The respondent's motion was denied on August 15, 2022.

A hearing was held on October 27, 2022. The record was held open for receipt of transcripts and post-hearing summations. Post-hearing summations were received on January 9, 2023, and the record closed on that date.

## **FACTUAL DISCUSSION AND FINDINGS**

The facts are not in dispute. Accordingly, I **FIND**:

1. Petitioner applied for a Learning Disabilities Teacher-Consultant endorsement on June 4, 2021. (Respondent's Motion to Dismiss<sup>1</sup>, at 2.)
  
2. Petitioner appeared before the Board of Examiners on October 28, 2021, and on December 16, 2021, the Board of Examiners denied her application. (Petitioner's petition.)

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<sup>1</sup> Hereinafter RMTD.

3. On May 15, 2022, petitioner completed the Orientation of Psychological Testing class. (Petitioner's response to the RMTD.)
4. Petitioner has an earned a master's degree in special education from Walden University. (RMTD.)
5. Petitioner has earned three semester credits in the following classes:
  - a. Teacher as Professional
  - b. Design, Curriculum, Instruction & Assessment
  - c. Strategic Teaching English as a Second Language
  - d. Leadership, Collaboration & Consultation
  - e. Special Education: Due Process
  - f. Effective Evaluation & Assessment Practice
  - g. Adaptive Instructional Evidence Strategies
  - h. Creating Effective Behavioral Interventions
  - i. Literacy Based Instructional Intervention
  - j. Action Research for Educators
  - k. Tools for Doctoral Research Demystifying Doctoral Writing (Petitioner's Response to the RMTD.)
6. Petitioner has earned five semester hour credits in the following classes:
  - a. Leading the Future in Education
  - b. Special Education: Theory & Practice
  - c. Lead Change in Special Education
  - d. Research Theory
  - e. Research for Special Education
  - f. Designing Specialized Instruction for Diverse Learners
  - g. Effective School Intervention
  - h. Effective Practices in Special Education
  - i. Capstone Project
  - j. Quantitative Reasoning
  - k. Qualitative Reasoning
  - l. Testing and Measurement

Ibid.
7. Petitioner worked as a special education resource teacher for seven years in Georgia and is currently employed as a special education teacher and

serves a member of the Intervention and Referral Service Team in the Toms River School District.

8. Petitioner was granted an emergency LTD-C certificate which is good for one year and can be extended twice.

### **Testimony**

#### **For petitioner**

**Kelly Umbach** (Umbach) has been a supervisor of special education for six years in the Toms River School District. She has oversight of the child study team (CST) and supervised the petitioner directly. Umbach stated that petitioner was qualified for the LDT-C position based upon her prior experience in Georgia. Petitioner is using the emergency certificate and is performing as a strong LDT-C. Petitioner has written strong Individualized Education Plans (IEP) and has filled all expectations. Umbach hired petitioner.

**Dana Weber** (Weber) has been a supervisor of special education for four years and was a LDT-C for ten years with the Toms River School District. She has oversight of teachers and programs from kindergarten through grade twelve. Weber observed petitioner this past school year. Petitioner has written IEPs, done case management, re-evaluation meetings and conducted testing. Petitioner has fulfilled the role of LDT-C and has been a valuable resource, and a key person on the CST. Petitioner has given recommendations and strategies including behavioral strategies, supported the administration within the schools and worked well with others. Weber believed petitioner was fully qualified to be a LDT-C.



For respondent

**Rani Singh** (Singh) has been the Director of Certification since 2019, and also served as secretary to the Board of Examiners during that time. She has a bachelor's degree in biology from Rutgers University. She has oversight over all education certificate applications. As of May 31, 2022, a new application system was installed and implemented in which applicants submitted an application, paid a fee and signed an oath. Once all the documents were received, the case was assigned to an examiner for review. If documents were missing, the examiner contacted the applicant with a notice outlining what was still needed.

Petitioner was missing twenty-one graduate credits. Singh was not the original examiner, however, she reviewed the credential appeal packet and agreed that twenty-one graduate credits were needed. Accordingly, petitioner's application was denied, and she appealed. The Board of Examiners denied her appeal because the Board of Examiners found petitioner's experience was instructional based and not consultant based. Although petitioner completed an additional class since filing her application the additional class was not sufficient to issue a standard certificate, however, the additional class was sufficient to issue an emergency certificate. The emergency certificate was good for one year and could be renewed twice.

Because the LDT-C certificate is unique to New Jersey, there is no reciprocity with any other state. Petitioner can re-apply because applicants are given six months to complete their applications.

**Additional Findings**

The finder of the facts must determine the credibility of the witnesses before making a decision. Credibility is the value that a fact finder gives to a witness' testimony. Credibility is best described as that quality of testimony or evidence that makes it worthy of belief. "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observations of mankind can approve as probable in the circumstances." In re Estate of

Perrone, 5 N.J. 514, 522 (1950). To assess credibility, the fact finder should consider the witness' interest in the outcome, motive, or bias; the accuracy of the witness' recollection; the witness' ability to know what s/he is talking about; the reasonableness of the testimony; the witness' demeanor when testifying; the witness' candor or evasion; and the presence of inconsistent or contradictory statements. A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

The fact finder must weigh the testimony of each witness and then determine the weight to give to it. Through this process, the fact finder may accept all of it, a portion of it or none of it. Based upon the testimonial and documentary evidence, I **FIND** the following as additional **FACTS**: Petitioner testified credibly and earnestly about her teaching experience in Georgia which she believed was comparable to the duties of an LDT-C in New Jersey. In addition, she clearly articulated her passion for students with disabilities. I further **FIND** that petitioner has received numerous accolades for her job performance while in Georgia and currently in New Jersey and is a valued asset to her supervisors.

### **LEGAL ANALYSIS AND CONCLUSION**

The New Jersey State Board of Examiners has established a certificate system requiring "any person employed as a teaching staff member by a district board of education shall hold a valid and appropriate certificate." N.J.A.C. 6A:9B-5.1(a). There are three types of certificates — instructional, administrative, and educational services. N.J.A.C. 6A:9B-5.3(a). In addition to certificates, the Board of Examiners has provided for special endorsements that attach to a specific certificate. This qualifies an individual to teach in a particular area based upon the endorsement on the certificate.

A LDT-C is an endorsement under the educational services certificate. The requirements to obtain a LDT-C endorsement are outlined in N.J.A.C. 6A:9B-14.10(c) which mandates:

(b) To be eligible for the standard educational services certificate with a learning disabilities teacher-consultant endorsement, a candidate shall:

1. Hold a master's or higher degree from a regionally accredited college or university;
2. Hold a standard New Jersey or out-of-State instructional certificate; and
3. Have three years of successful teaching experience.

(c) A candidate who satisfies (b) above also shall complete one of the following:

1. A Department-approved graduate program for the preparation of learning disabilities teacher-consultants;
2. A consultant-level master's degree in educational disabilities from a nationally accredited program; or
3. A minimum of 24 semester-hour graduate credits chosen from the areas listed below. The candidate shall complete the requirements in (c)3i through ix below and may take elective credits in any area in (c)3i through x below.

i. Education of students with disabilities, including study in history of the development of educational services for children in each area of exceptionality; study of present services, research, and professional ethics dealing with the characteristics of children who differ from the norm intellectually, physically, socially, and emotionally; evaluation of present practices in the education of students with disabilities; study of the relationship of educational practices and their environmental settings; and cultural and linguistic diversity;

ii. Learning theory, including study in motivation and its effect on learning; leading theories of learning; rewards and incentives; and interests and climate for learning;

iii. Remediation of basic skills, including study in research-based corrective methods and materials as related to specific diagnostic findings, NJSL requirements, and the school and classroom environment;

iv. Physiological bases for learning, including study of the neurological development and physical readiness of the normal child for learning; abnormal health

conditions that contribute to educational disability; and metabolic and infectious disorders that affect learning;

v. Orientation in psychological testing, including study of an overview of tests applicable to educational psychology; interpretation of psychological reports as applied to tests administered; the appropriate use of tests and the potential misuse of test results; and test construction theory;

vi. Diagnosis of learning problems, including study of the nature and cause of learning problems; formulating an evaluation plan for educational assessments; administering and interpreting technically sound and culturally responsive standardized instruments and functional assessment procedures to determine educational levels, underlying deficits, and learning style; methods of arriving at a diagnosis based on evidence available from each child study team (CST) member; and ways of reporting diagnostic findings;

vii. Accommodations and modifications as a method of providing service to children with learning problems, including utilization of validated methods for adapting instruction for diverse learning needs; technology for students with disabilities; understanding of accommodations and modifications in curriculum, materials, methods, classroom structures, and assessment; utilization of the individualized education plan (IEP) and the NJSLS accommodation and modification; methods to enhance social relationships and positive behavior methods; focus on the inclusive classroom environment; legal issues related to the CST's responsibilities, including the requirements of a free appropriate public education, least restrictive environment, the determination of eligibility, and IEP development;

viii. Collaboration theory and practice, including theory and process of conducting collaborations; establishing collaborative partnerships between general and special educators, with parents and families, and with paraprofessionals; methods of co-teaching, including in-class support and classroom consultation; preparation for participating in a multidisciplinary CST setting with opportunities for modeling and participation in team staffings and parent conferences; opportunities to observe, rehearse, and present results from evaluations in practice sessions;

ix. A college-supervised, consultant-level practicum in diagnosis and remediation of educational disabilities in school and clinical situations. The definition and nature of this practicum, and the courses in which it will be provided, should be clear in the program description. The practicum shall provide for a minimum of 90 clock hours of college-supervised experience. The practicum shall not be a student-teaching experience; and

x. Elective study chosen from areas such as group dynamics; methods and materials for teaching students with disabilities; curriculum development in the teaching of students with disabilities; teaching of reading; assistive/adaptive technology; interviewing and counseling; educational psychology; and community resources.

Here, it is uncontroverted that petitioner held a master's degree from a regionally accredited college or university, held a New Jersey or out-of-state instructional certificate and had three years of successful teaching experience. However, the Board of Examiners determined that petitioner lacked twenty-one of the twenty-four graduate credits required. In its denial, the Board of Examiners stated that petitioner:

did not establish a compelling one-to-one correspondence between the LDT-C requirements and her experience and education. The LDT-C [endorsement] is an education service certificate rather than instructional or administrative and it authorizes its holder, specifically, to serve as a consultant rather than a classroom teacher. (R-2 at 2.)

The Board of Examiners acknowledged petitioner's "extensive experience and education" but stated "it was primarily geared towards special education instruction. The Board finds that she would benefit from the coursework geared to the roles and responsibilities of one serving in the role of consultant rather than instructor." Id.

Conversely, the petitioner contends that her work experience consisting of seven years as a special education teacher in Georgia, her current employment with the Toms River School District and academic coursework substantiate that she fulfilled responsibilities as a consultant, as well as a teacher for the past ten years and thus she

is qualified for the LDT-C endorsement. (Petitioner's Appeal Petition.) In addition, since the date of the Board of Examiners denial, she completed a class in psychological testing which supplements her educational achievement list, collaborated with a licensed LDT-C, and worked as an "interventionist to support the staff with the implementation of modifications and accommodations" for the students. (Petitioner's response to the Respondent's Motion to Dismiss.)

Petitioner carries the burden of demonstrating by a preponderance of the credible evidence that she is entitled to the certifications she 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/>>. The Commissioner will "not disturb the decision [of the Examiners] unless the appellant has demonstrated that the Board [of Examiners] or the Commissioner acted in a manner that was arbitrary, capricious or contrary to law." N.J.A.C. 6A:4-4.1; Farrar, supra, EDU 13763-08 (citing Fisher v. State Bd. of Exam'rs, 96 N.J.A.R.2d (EDU) 58). Where there is room for two opinions, action is not considered arbitrary or capricious when exercised honestly and upon due consideration, even though the court may believe that an erroneous conclusion has been reached. Bayshore Sewerage Co. v. Dep't of Env't'l Prot., 122 N.J. Super. 184, 199 (App. Div. 1973). Petitioner has not offered any additional evidence that was not considered by the Board, nor has she alleged any facts establishing that the Board of Examiners clearly erred in denying her application for the LDT-C endorsement after review of those documents. She simply disagrees with the conclusion drawn by the Board of Examiners after exercising its discretion. Hutchinson v. Bd. of Examiners, EDU 16373-12, 2013 N.J. AGEN LEXIS 73, \*15.

A review of the Georgia and New Jersey job descriptions show similarities in duties; however, the Georgia job description included more teacher related duties such as "maintain[ing] lesson plans, compil[ing], maintain[ing] and submit[ing] accurate paperwork within designated timelines, demonstrates prompt and regular attendance." (R-1.) Although the Georgia job description required petitioner to collaborate with general education teachers and other staff, the Board of Examiners was not persuaded that petitioner engaged in sufficient consultation duties. I must defer to the expertise of the

Board of Examiners absent a showing that the decision was arbitrary, capricious and unreasonable.

Accordingly, I **CONCLUDE** that petitioner has not met her burden of demonstrating that the Board of Examiners' decision was arbitrary, capricious and unreasonable, and that the petition of appeal must be dismissed. It is regrettable that petitioner was led to believe that her application would be approved with just the submission of her transcripts, however, the Board of Examiners is the entity authorized to issue or refuse to issue certificates.<sup>2</sup> N.J.A.C. 6A:9B-3.2(a).

### **ORDER**

Based upon the foregoing, I hereby **ORDER** that the State Board of Examiners' denial of the petitioner's LDT-C endorsement is **AFFIRMED**.

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.

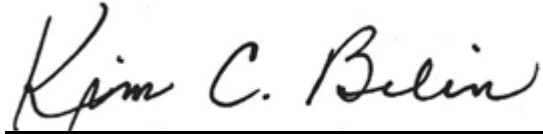
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<sup>2</sup> It is noted that petitioner is not precluded from re-applying for the LDT-C endorsement or requesting an additional review by the Board of Examiners considering her additional experience working under the emergency certificate.

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.

February 23, 2023

DATE



KIM C. BELIN, ALJ

Date Received at Agency:

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Date Mailed to Parties:

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KCB/am



**APPENDIX**

**WITNESSES**

**For petitioner**

Kelly C. Umbach

Dana Weber

**For respondent**

Rani Singh

**EXHIBITS**

**For petitioner**

P-1 Letter of reference, dated December 17, 2021

P-2 Unofficial transcripts, from Walden University

P-3 Denial letter, dated August 24, 2021

**For respondent**

R-1 Credential Review Packet

R-2 State Board of Examiners' Decision, dated December 16, 2021