

99-23
State Board of Examiners Dkt. No. 1920-110
OAL Dkt. No. EDE-1212-2020
Agency Dkt. No. 10-12/22A

New Jersey Commissioner of Education

Final Decision

In the Matter of the Certificates of
Theresa Guerriere, State Board of Examiners,
New Jersey Department of Education.

Order of Revocation by the State Board of Examiners, December 9, 2022

For the Respondent-Appellant, Oded Weinstock, Esq.

For the Petitioner-Respondent, State Board of Examiners, Sadia Ahsanuddin,
Deputy Attorney General (Matthew J. Platkin, Attorney General of New Jersey)

The Commissioner has reviewed the record and the papers filed in connection with appellant Theresa Guerriere's appeal of the Order of the State Board of Examiners (Board), dated December 9, 2022, revoking her Teacher of Health and Physical Education Certificate, Teacher of Handicapped Certificate, and Teacher of Driver Education Certificate.

Appellant and her husband, Harry Guerriere, have been the co-owners of a home located at 201 St. Paul Ave, Apt 1H, Jersey City, New Jersey (hereinafter "the Jersey City property") since 1999. Appellant and her husband are also the owners of a home located at 295 35th Street South, Brigantine, New Jersey (Brigantine property), which they have owned since 2002. On October 29, 2012, Hurricane Sandy (Sandy or "the storm") slammed into the eastern shore of New Jersey, devastating the shore communities, and causing a massive amount of property damage. To assist those affected by the storm, the New Jersey Department of Community Affairs

(DCA) created, among other programs, the Homeowner Resettlement Program (RSP) and the Renovation, Reconstruction, Elevation, and Mitigation (RREM) program. To be eligible for assistance under either program, the property had to: have suffered a specific amount or type of damage; be located in one of the nine communities most affected by Sandy; and be used as the claimant's primary residence. The RREM program also included an income restriction.

On May 27, 2013, appellant filled out an application for RSP assistance. In the application, appellant indicated that the Brigantine property was her and her husband's primary residence when Sandy hit. As part of the application, appellant executed a document titled "Resettlement Program Self-Certification" which states that "any person who knowingly or willingly makes a false or fraudulent statement ... may be subject to termination of assistance and civil and criminal penalties." Attached to the application was a copy of appellant's driver's license, which was issued on December 12, 2012 and lists the Brigantine property as her address. Appellant's RSP application was accepted on July 27, 2013, and thereafter appellant executed a Grant Agreement and Promissory Note. Under the Grant Agreement, appellant made the following affirmative representations: "At the time of Superstorm Sandy, I (We) owned and occupied as my/our primary residence the above-designated IMPACTED RESIDENCE." Additionally, the agreement required that appellant agreed to maintain the Brigantine property as her residence for a minimum of three years after receiving the grant money. On August 20, 2013, appellant received and cashed the grant check in the amount of \$10,000.

On June 18, 2013, appellant made an application for assistance through the RREM program. As with the RSP application, appellant certified that the Brigantine property was her and her husband's primary residence. However, while this application was being processed, the

DCA became aware of information that led them to believe that the Brigantine property was not appellant's primary residence. Specifically, the DCA learned that a driver's license issued to appellant on October 24, 2013, listed the Jersey City property as appellant's address. Further, the Motor Vehicle Services address change history showed the Jersey City property as appellant's residential address and mailing address when Sandy hit and that these addresses were changed to the Brigantine address shortly after the storm. Appellants' vehicle registration listed Jersey City as their primary address prior to Sandy. Prior to Sandy, appellant was registered to vote in Jersey City and only changed her voter registration in 2013 after the storm. Additionally, the investigation revealed that tax records for the Brigantine property were mailed to the Jersey City property prior to the storm. As a result, the RREM application was denied and the RSP grant was retroactively denied.

Appellant asserts that after learning of the denial, she entered into a repayment plan for the RSP grant while at the same time filing an appeal of the decision with the DCA (DCA matter). The appeal was treated as contested and was transferred to the Office of Administrative Law (OAL) and heard by the Hon. Todd Miller, Administrative Law Judge (ALJ). In his decision, Judge Miller noted that it was undisputed that the property was located in one of the nine affected communities, that the property sustained sufficient damage to qualify for the grants, and that appellant and her husband's annual adjusted gross income met the income requirement of the RREM program. As a result, Judge Miller found that the only issue before him was appellant's claim that the Brigantine property was her primary residence. *IMO Theresa Guerriere v. Department of Community Affairs*, OAL Docket No. CAF 11204-15.

Judge Miller found that appellant and her husband were employed full time in Jersey City. The Jersey City property was located a few minutes away from their places of work. The Brigantine property was located over 100 miles away from their places of work and represented a two-hour commute each way. Appellant's 2011 taxes, which were filed in 2012, identified the Jersey City property as her address. Appellant's driver's license and motor vehicle registration identified the Jersey City property as her primary address on the date of the storm. In fact, Judge Miller found that all of appellant's vital documents identified Jersey City as her primary address as of the date of the storm. Further, Judge Miller found that these documents were changed after the storm and that the change appeared "too convenient and self-serving" to be credible. Judge Miller concluded that appellant did not meet her burden of establishing that the Brigantine property was her primary address as of the date of the storm.

After the hearing, the DCA made a potential fraud referral to the Atlantic County Prosecutor's Office, whose investigation further revealed that appellant's bank accounts all listed the Jersey City Property as appellant's address during the relevant time period. As a result of the investigation, appellant and her husband were indicted for various alleged crimes, including theft by deception, and making unsworn false statements to authorities. Appellant applied for and was accepted into the Pre-Trial Intervention program (PTI). As part of the conditions for PTI, appellant was required to complete 25 hours of community service, pay restitution in the amount of \$7,900.00 (the balance due after appellant's partial repayment), pay mandatory fines and penalties, and complete 12 months of probation. Pursuant to the rules, appellant was not required to admit guilt or make any allocution of the facts as condition of admission into PTI.

After completing her community service and paying the fines and restitution, appellant's request to terminate probation early was granted.

As a result of the foregoing, on December 13, 2019, the Board of Examiners issued an Order to Show Cause why all of appellant's certificates and credentials should not be revoked. Appellant filed her answer on January 17, 2020. Since there appeared to be material facts in dispute, the matter was transmitted to the OAL for hearing as a contested case. The Hon. Tama B. Hughes, ALJ, was assigned to hear the matter. The parties engaged in written discovery and thereafter each side filed motions seeking summary disposition in their favor pursuant to *N.J.A.C. 1:1-12.5*.

Judge Hughes issued her written opinion on January 26, 2022, finding that appellant had engaged in conduct unbecoming a teacher; the decision revoked all of appellant's teaching certificates. Specifically, Judge Hughes incorporated all of Judge Miller's findings and credibility determinations in the DCA matter and held that appellant was collaterally estopped from arguing that the Brigantine property was her primary residence and that her unsworn statements on the RSP and RREM applications constituted material misrepresentations of fact. Judge Hughes rejected appellant's contention that the Board was required to prove that appellant made the material misrepresentation knowingly or purposefully, finding that this was "an attempt to place an enhanced burden of proof on the State." Judge Hughes further found that, in making material misrepresentations, appellant engaged in conduct unbecoming a teacher, and revocation was the only appropriate sanction.

On February 2, 2022, appellant filed exceptions to the Initial Decision. The Deputy Attorney General representing the Board filed their response on March 11, 2022. The Board

considered the arguments and adopted the Initial Decision on December 9, 2022. The Board found that appellant was collaterally estopped from contesting the facts established at the hearing on the DCA matter before Judge Miller. Further, the Board found that appellant's intent was not relevant to the determination that she claimed the Brigantine property as her primary residence and sought and obtained relief funds based upon that claim. The Board also affirmed Judge Hughes' revocation of appellant's teaching certificates. The present appeal to the Commissioner of Education followed.

On appeal, appellant asserts that Judge Hughes and the Board erred in their application of the doctrines of res judicata and collateral estoppel, arguing that the issues before Judge Miller and the DCA were markedly different than the issues before Judge Hughes. Appellant further contends that Judge Hughes erred in finding that appellant was attempting to impose a higher burden of proof on the Board. Appellant argues that Judge Hughes erred in finding that appellant failed to provide any new evidence that was unavailable at the prior proceeding. Additionally, appellant contends that Judge Hughes erred by revoking appellant's certificates without a finding that she committed fraud. Finally, in the alternative, appellant argues that Judge Hughes erred in revoking her teaching certificates summarily without providing an opportunity for appellant to present mitigating evidence.

In reviewing appeals from decisions of the Board, the Commissioner may not substitute her judgment for that of the Board so long as the appellant received due process and the Board's decision is supported by sufficient credible evidence in the record. Further, the Board's decision should not be disturbed unless the appellant demonstrates that it is arbitrary, capricious, or

contrary to law. *N.J.A.C.* 6A:4-4.1(a). The Commissioner may reject or modify conclusions of law but shall clearly state the reasons for so doing. *N.J.A.C.* 1:1-18.6(b).

Upon review, the Commissioner concludes that Judge Hugues and the Board correctly applied the doctrines of res judicata and collateral estoppel with respect to all conclusions of law, findings of fact, and credibility determinations made by Judge Miller in the DCA matter. Res judicata and collateral estoppel (i.e., issue preclusion) are equitable doctrines asserted to prevent parties from re-litigating an issue decided by a prior court. *Winters v. North Hudson Reg. Fire*, 212 *N.J.* 67, 85 (2012). Res judicata and collateral estoppel have been held to apply to administrative agency litigation. *Mansoldo v. State*, 187 *N.J.* 50, 60 (2006). Collateral estoppel applies if:

(1) the issue to be precluded is identical to the issue decided in the prior proceeding; (2) the issue was actually litigated in the prior proceeding; (3) the court in the prior proceeding issued a final judgment on the merits; (4) the determination of the issue was essential to the prior judgment; and (5) the party against whom the doctrine is asserted was a party to or in privity with a party to the earlier proceeding.

See Hennessey v. Winslow Twp., 183 *N.J.* 593, 599 (2005).

The limited issue of whether or not the Brigantine property constituted appellant's primary residence is central to both the instant matter as well as the previous matter. In the DCA matter, Judge Miller found as a fact that the Brigantine property was not appellant's primary residence. As a result, appellant is precluded from relitigating this issue.

It is well settled that conduct unbecoming a teacher or other public employee includes "conduct which adversely affects the morale or efficiency" of the public entity or "which has a tendency to destroy public respect for [public] employees and confidence in the operation of

[public] services.” *In re Emmons*, 63 N.J. Super. 136, 140 (App. Div. 1960) (internal citation omitted). Contrary to appellant’s assertion, the Board is not required to demonstrate that appellant violated any specific statute or engaged in criminal activity; rather, the Board must show that appellant engaged in conduct that violated the implied standard of conduct for teachers.

The Commissioner finds that there is sufficient evidence in the record to conclude that appellant misrepresented her primary residence for the purpose of obtaining relief funds she was not entitled to receive. The Second Restatement of Contracts defines a misrepresentation as “an assertion that is not in accord with the facts.” *Restatement (Second) of Contracts* § 159 (1981). The Second Restatement of Contracts also states that “[a] misrepresentation is material if it would be likely to induce a reasonable person to manifest his assent, or if the maker knows that it would be likely to induce the recipient to do so.” *Restatement (Second) of Contracts* § 162 (1981). In the DCA matter, Judge Miller found that the RSP and REM programs required, as a condition for receiving relief, that the damaged property be appellant’s primary residence. As a result, appellant’s assertion on her applications that the Brigantine property was her primary residence was a material misrepresentation.

Appellant’s claim that she believed and continues to believe that the Brigantine property was her primary residence prior to the storm is not credible. The facts as found by Judge Miller and supplemented by the documents submitted by the parties in their cross motions for summary decision show that on October 29, 2012, appellant had owned two properties, one located in Jersey City and the other located in Brigantine, for over 10 years. The Jersey City property is located within a few minutes of appellant’s work address, while the Brigantine

property is located over 100 miles away. Further, at the time of the storm, all of appellant's vital records identified the Jersey City property as her primary address. After the storm, appellant sought relief funds totaling \$20,000.00 through the RSP and RREM program. Each of these programs required that appellant certify that the Brigantine property was her principal residence. Further, the application required that appellant submit some documentation of her primary address, with a driver's license identifying the property as her address being the preferred method of proving primary residence. After the storm, appellant changed the address on her driver's license and submitted the changed driver's license with her applications as proof of primary residence. Appellant also changed her vital records, including her voter registration, vehicle registration and address where she received the property tax information to the Brigantine Address. Finally, after submitting the applications, appellant changed the address on her driver's license back to the Jersey City property. There is simply no legitimate explanation for these document changes. The record clearly and unequivocally demonstrates that appellant was intentionally creating documents after the fact to support a claim for relief that she knew she was not entitled to receive.

This matter is very similar to *I/M/O Certificate of David Toler*, EDE 5946-02, State Bd. of Exam'rs (October 28, 2004). In that case, it was alleged that Toler had provided personal information to a psychologist who used the information to file insurance claims for services that had not been provided. It was also alleged that the Toler received payment from the psychologist. As in this matter, Toler was admitted to PTI and, after his completion of the PTI program, he did not have a criminal record. The Board of Examiners found that participation in a scheme to obtain benefit payments constituted conduct unbecoming a teacher. *See also*

I/M/O Credential of Shauna E. Morgan, Dkt. No. 1314-190, State Bd. of Exam’rs (June 28, 2019) (finding that knowingly providing false information to an employer for the purpose of obtaining improper insurance benefits constituted conduct unbecoming a teacher). Appellant’s participation in a scheme to obtain grants from the RSP and RREM programs – relief programs for which she was not eligible – constitutes conduct unbecoming a teacher.

With regard to the penalty determination, the Board’s decision to revoke appellant’s certificates is consistent with the factors identified in *In re Fulcomer*, 93 N.J. Super. 404 (App. Div. 1967). The decision to revoke appellant’s certificates is also consistent with revocations in *I/M/O Credential of Shauna E. Morgan*, Dkt. No. 1314-190, State Bd. of Exam’rs (June 28, 2019); *I/M/O Certificate of David Toler*, EDE 5946-02, State Bd. of Exam’rs (October 28, 2004); and *I/M/O the Certificate of Suzanne Amabile*, Agency Dkt. No. 625-04/01-306, State Bd. of Exam’rs (April 3, 2003) (revoking certificate of a former school business administrator for the misappropriation of entrusted property).

Accordingly, the Commissioner finds no basis upon which to disturb the penalty decision of the State Board of Examiners.¹ The Decision of the Board is affirmed.²


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

Date of Decision: April 3, 2023
Date of Mailing: April 5, 2023

¹ On March 17, 2023, appellant filed a motion to stay the Board of Examiners’ decision pending the outcome of this appeal. Appellant’s motion is rendered moot by the decision herein and is therefore denied.

² 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.

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS
THERESA GUERRIERE : ORDER OF REVOCATION
_____ : DOCKET NO: 1920-110

At its meeting of November 1, 2019, the State Board of Examiners (Board) reviewed information received from the Office of Student Protection (OSP) and the New Jersey Superior Court – Atlantic County Vicinage regarding Guerriere.

In August 2018, Guerriere was indicted for Theft by Deception – False Impression (3rd degree), Conspiracy – Agree/Engage in Conduct Constituting a Crime (3rd degree), and Unsworn Falsification (4th degree) after she received disaster relief funds by falsely claiming a property as a primary residence.

On July 11, 2019, Guerriere received an Order of Postponement and was entered into PreTrial Intervention Program for a period of 12 months and was required to complete 25 hours of community service and make restitution in the amount of \$7,900.

Guerriere holds a Teacher of Health and Physical Education, Teacher of Handicapped, and Teacher of Driver Education certificates. On December 13, 2019, the Board issued Guerriere an Order to Show Cause as to why her certificates should not be revoked.

The Board sent Guerriere the Order to Show Cause by regular and certified mail. The Order provided that Guerriere's Answer was due within 30 days. Guerriere filed her Answer on January 17, 2020.

In that Answer, Guerriere admitted that she was indicted for 3rd degree theft by deception, 3rd degree conspiracy to commit theft by deception, and 4th degree unsworn falsification. *See* Answer at ¶ 3. Guerriere, however, denied that she engaged in any of the alleged conduct or wrongdoing. *Id.* She asserted that she permanently resided in Brigantine, New Jersey at all times

relevant; she paid taxes there and used that address on her driver's license. *Id.* Furthermore, Guerriere admitted that she entered into PTI for 12 months, but she did not enter a guilty plea to any criminal charges. *Id.* at ¶ 4. She further offered 2 separate defenses.

Since there were material facts in dispute, on January 20, 2020, the Board transmitted the matter to the Office of Administrative Law (OAL) for hearing as a contested case. On January 26, 2022, Administrative Law Judge (ALJ) Tama B. Hughes (Judge Hughes) issued an Initial Decision in the case. *In the Matter of the Certificates of Theresa Guerriere*, Dkt. No. EDE 01212-20 (Initial Decision, January 26, 2022).

In the matter at OAL, the Board filed a motion for summary decision, asserting that there were no material facts in dispute as Guerriere's residency was determined at a hearing before the Honorable W. Todd Miller, ALJ (*IMO Theresa Guerriere v. Department of Community Affairs*, OAL Docket No. CAF 11204-15). Guerriere filed a cross motion indicating that the Board has no evidence that Guerriere knowingly submitted a fraudulent application to the State in order to receive Sandy relief funds.

Judge Hughes found that Judge Miller's ruling, as adopted by the Department of Community Affairs, is "controlling upon this tribunal on the issue of respondent's primary residence as of October 29, 2012, and her application for Sandy recovery funds for her Brigantine residence." *Id.* at p. 12-13. ALJ Hughes further found that it did not matter that the Board was not a party to the litigation before Judge Miller, but rather Guerriere had a "full and fair opportunity to litigate the issue and received a final judgment on the merits." *Id.* at p. 13. Accordingly, Judge Hughes determined that Guerriere is collaterally estopped from relitigating the issue of her residency as of October 29, 2012.

Based upon the determination that collateral estoppel applies, the Board argued that summary decision is warranted because Guerriere was found to have “material misrepresentations as to her primary residence to secure Sandy relief funds.” *Id.* Judge Hughes therefore found that Guerriere engaged in conduct unbecoming a teacher, such that revocation is appropriate. *Id.* at p. 13-16.

On February 2, 2022, Guerriere filed Exceptions to the Initial Decision. In those Exceptions, Guerriere argues that collateral estoppel and res judicata are not applicable in this matter because the issue before Judge Hughes is different than the issue decided by Judge Miller involving the DCA. *See* Exceptions at p. 19. First, the criminal charges in this matter were issued after Judge Miller’s hearing and ruling, so res judicata or collateral estoppel does not apply. *Id.* at p. 23. Further, the alleged criminal conduct involved purposeful or intentional conduct. *Id.* Accordingly, Guerriere states that the Board must prove that she intentionally made a material misrepresentation. *Id.* at p. 24. There is no evidence that her conduct was purposeful or intentional. Rather, based upon discussions and representations, Guerriere “reasonably believed that she qualified for the relief funds.” *Id.* Judge Miller’s determination is limited to the fact that Guerriere was not legally entitled to the relief funds for which she applied. *Id.* at p. 25.

Guerriere also argues that summary judgment should not be granted where the matter requires a determination of a state of mind or intent. *Id.* at p. 25. The Board’s motion should have been denied as a matter of law. *Id.* at p. 26.

Additionally, Guerriere argued that Judge Hughes incorrectly stated that she was arguing the Board had a higher burden of proof in this matter than the matter before Judge Miller. Guerriere asserts that this demonstrates that Judge Hughes did not understand Guerriere’s arguments. *Id.* at p. 27. Additionally, Guerriere states that Judge Hughes erroneously found that she presented no

new evidence and failed to permit Guerriere to offer character evidence or evidence in mitigation of the penalty. *Id.* at p. 30-33.

On March 11, 2022, the DAG representing the Board filed a reply to Guerriere's exceptions. The reply states that Judge Hughes properly applied the criteria for determination of collateral estoppel. *See Reply* at p. 9. First, the issue in both the DCA proceeding and in this matter are the same – whether Guerriere's primary residence was in Brigantine, New Jersey at the time of Hurricane Sandy. *Id.* Judge Miller determined that Guerriere received disaster relief by falsely claiming a property as primary residence. *Id.*

Additionally, in determining whether the matter decided by Judge Miller was the same as that before Judge Hughes, courts should look for significant overlap of evidence or argument, among other factors. *Id.* at p. 10. The fact finder in Judge Miller's matter and the instant matter would have considered the exact same testimony, evidence and arguments. *Id.* at p. 10-11. Moreover, Guerriere had a full opportunity to litigate the matter before Judge Miller. *Id.* at p. 12.

The DAG also asserts that the Board does not have to prove Guerriere violated the criminal code or that she had the requisite *mens rea*. *Id.* at p. 14. The Board had to prove by a preponderance of credible evidence that Guerriere misrepresented her primary residence as Brigantine when she applied for Sandy funds. *Id.* at p. 15. Finally, the DAG asserted that there are numerous cases where revocation of certificate is appropriate in instances of fraudulent claims. *Id.* at p. 18-19.

The Board must now determine whether to adopt, modify or reject the Initial Decision in this matter. At its meeting of October 28, 2022¹, the Board reviewed the Initial Decision,

¹ There were delays in the Board's consideration of the Initial Decision in this matter resulting from Board member recusals and lack of quorum, as well as consideration of proposals to resolve this matter short of the initial decision.

Exceptions and Reply Exceptions. After full and fair consideration of the Decision and other submissions, the Board voted to adopt the Initial Decision.

“Teachers ... are professional employees to whom the people have entrusted the care and custody of ... school children. This heavy duty requires a degree of self-restraint and controlled behavior rarely requisite to other types of employment.” *Tenure of Sammons*, 1972 S.L.D. 302, 321. Unfitness to hold a position in a school system may be shown by one incident, if sufficiently flagrant. *Redcay v. State Bd. of Educ.*, 130 N.J.L. 369, 371 (Sup. Ct. 1943), *aff'd*, 131 N.J.L. 326 (E & A 1944). In this case, Judge Hughes correctly noted that the facts underlying Guerriere’s conduct were established at the DCA hearing before Judge Miller and, pursuant to collateral estoppel, govern the Board’s decision-making here. Judge Miller found that Guerriere received Sandy relief funds after she falsely claimed Brigantine was her primary residence. Guerriere’s intent behind the filing is not relevant to the determination that she claimed the property as a primary residence and sought and obtained relief funds based upon that claim. Furthermore, the Board agrees with Judge Hughes that Guerriere’s behavior constituted unbecoming conduct which warrants a severe penalty, consistent with the Board’s precedential case law relating to submission of fraudulent claims. *See IMO Certificates of Eloise Stewart*, 10796-16, State Bd. of Exam’rs (July 27, 2017); *IMO Certificates of Shauna E. Morgan*, Dkt. No. 1314-190, State Bd. of Exam’rs (June 28, 2019); and *IMO Certificate of David Toler*, EDE 5946-02, State Bd. of Exam’rs (October 28, 2004). Consequently, the Board finds that revocation is the appropriate response in this matter and therefore adopts the Initial Decision.

Accordingly, on October 28, 2022, the Board voted to adopt the Initial Decision and ordered to revoke Guerriere’s certificates. On this 9th day of December 2022, the Board formally adopted its written decision to adopt the Initial Decision, and it is therefore ORDERED that

Theresa Guerriere's Teacher of Health and Physical Education, Teacher of Handicapped, and Teacher of Driver Education certificates are hereby revoked, effective immediately. It is further ORDERED that Guerriere return her certificates to the Secretary of the State Board of Examiners, Office of Certification and Induction, P.O. Box 500, Trenton, NJ 08625-0500 within 30 days of the mailing date of this decision.



Rani Singh, Secretary
State Board of Examiners

RS/KAG/cf

Date of Mailing:
via certified and regular mail

Appeals may be made to the Commissioner of Education pursuant to *N.J.S.A.* 18A:6-38.4.