

SB # 17-03

IN THE MATTER OF THE DENIAL :
OF THE ISSUANCE OF A TEACHING : STATE BOARD OF EDUCATION
CERTIFICATE TO WILLIAM J. TIERNEY. : DECISION

Decided by the State Board of Examiners, April 3, 2003

For the Petitioner-Appellant, Oxfeld Cohen, P.C. (Sanford R. Oxfeld, Esq.,
of Counsel)

For the Respondent-Respondent, Cindy Campbell, Deputy Attorney
General (Peter C. Harvey, Attorney General of New Jersey)

Appellant in this matter is appealing from a determination made by the State Board of Examiners to deny him issuance of certification as a "Secondary School Teacher of Science." That certification, as well as appellant's certification as a "Principal/Supervisor" and "Supervisor," had been revoked by the Board of Examiners on January 17, 2002 on the basis of appellant's consent to voluntarily surrender his certificates in order to resolve tenure charges filed against him by the district board that had employed him.

At its meeting on September 26, 2002, the Board of Examiners denied issuance of certification to appellant on the grounds that he could not prove that he was rehabilitated because insufficient time had elapsed since his certificates had been revoked. However, on November 14, 2002, the Board of Examiners vacated its decision of September 26, 2002, finding that when it considered appellant's conduct from the time of the conduct that had resulted in the tenure charges rather than from the

date that the Board of Examiners had revoked his certificates, appellant had proved that he was rehabilitated. Nonetheless, in a letter decision issued on April 7, 2003, the Board of Examiners notified appellant that it had voted on April 3, 2003 to deny him issuance of certification as a "Secondary Teacher of Science" because that particular certification had not been issued since the late 1980's and the current regulations do not include such certification. At the same time, the Board of Examiners indicated that appellant was eligible to apply to it for the issuance of certification under the current regulations.

After reviewing the record, we remand this matter to the Commissioner of Education so that he may determine whether the State Board of Examiners' decision of April 3, 2003 to deny issuance of certification to appellant was a proper one. In doing so we are aware that the written decision mailed to appellant by the Board of Examiners indicated that an appeal of the decision could be made to the State Board of Education pursuant to N.J.S.A. 18A:6-28. However, that statute provides that an appeal to the State Board by a party aggrieved by a determination of the Commissioner of Education must be taken within thirty days "in the manner prescribed by the rules of the board." The regulations governing appeals to the State Board provide that final decisions of the State Board of Examiners are appealable to the State Board of Education as of right, but define such decisions as "[a]ny decision of the State Board of Examiners pertaining to the revocation or suspension of a certificate." N.J.A.C. 6A:4-1.1(a)(2). Hence, as it has long been established, any appeal from a determination made by the State Board of Examiners to deny the issuance of certification must be made to and decided by the Commissioner of Education pursuant to the original jurisdiction conferred on him by

N.J.S.A. 18A:6-9 to hear and determine all controversies and disputes arising under the school laws except those governing higher education. In the absence of any change in the statutory framework that establishes the jurisdiction of the Commissioner to determine all controversies arising under the school laws or in the procedural regulations which we have adopted to govern appeals to the State Board, we find no basis that would justify departing from our comprehensive system of appeals as it has been effectuated up until this point. In re Masiello, 25 N.J. 590 (1958).

September 3, 2003

Date of mailing _____