

#186-05 (OAL Decision not yet available on-line)

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

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SYNOPSIS

Petitioner appealed the decision of the respondent State Board of Examiners (SBE) to deny reinstatement of his Secondary School Teacher of Science Certificate following voluntary surrender of his certificates as part of a settlement agreement to resolve tenure charges against him, and subsequent revocation by the State Board of Examiners. Petitioner requested reinstatement of his former teaching certificate following rehabilitation pursuant to *N.J.A.C. 6:11-3.6(g)*, the regulation in effect at the time the petitioner filed his appeal.

The ALJ denied the petitioner's motion for summary decision, for the following reasons: 1) that regulations in effect at the time of the petitioner's application govern this matter, but that such regulations permit the SBE to refuse to reinstate a certificate after affording the applicant an opportunity to be heard; 2) that the petitioner cannot apply for a new Secondary School Teacher of Science certificate because the SBE can only issue endorsements authorized under the current regulations; 3) petitioner cannot receive a new science endorsement because current regulations require that at least four years must have passed since the effective date of the revocation of the previous certificate; and 4) pursuant to *N.J.A.C. 6A:9-17.10(c)(1)*, the SBE is not allowed to issue any new certificate to petitioner because he relinquished his certificates pursuant to the settlement of a tenure action against him. The ALJ granted respondent's cross motion for summary decision, and ordered the petitioner's appeal dismissed.

Upon a thorough and independent review of the record in this matter, including the Initial Decision and the parties' exception arguments, the Commissioner rejects the ALJ's analysis and conclusions and grants summary judgment to the petitioner. In so deciding, the Commissioner emphasizes that the governing regulation clearly provides for reinstatement of a revoked certificate. Moreover, there are many individuals teaching under Secondary School Teacher of Science certificates issued in the 1970's and 1980's who have *not* been required to update their licensing by applying for new certificates under new regulations. Therefore, the SBE's conclusion with respect to the petitioner's application for reinstatement of his certificate was inequitable and contrary to *N.J.A.C. 6:11-3.6(g)*.

<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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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Both parties submitted exceptions in accordance with *N.J.A.C. 1:1-18.4*, which were duly considered by the Commissioner in reaching his determination.

In his exceptions, petitioner points out that the facts in this matter are not in dispute and argues that the regulation governing reinstatement of revoked teaching certificates at the time he made his initial request for reinstatement, *N.J.A.C. 6:11-3.6(g)*, is controlling in this matter. (Petitioner’s Exceptions at 1) In support thereof, petitioner submits that *N.J.A.C. 6:11-3.6(g)* was in effect at the time the State Board of Examiners (SBE) issued its decision of November 25, 2002, wherein it was specifically stated that petitioner was “subject to the current certification requirements.” (*Id.* at 1-2)

Petitioner avers that *N.J.A.C. 6:11-3.6(g)* states that it is the revoked certificate that is to be reinstated and that the courts have held that clear and unambiguous statutes and regulations must be given their plain meaning. (*Id.* at 2) However, notwithstanding the Administrative Law Judge’s (ALJ) conclusion that the regulations in effect at the time of petitioner’s application governed in this matter, petitioner asserts, the ALJ “construed the regulation contrary to all common sense” and found that once a petitioner has demonstrated rehabilitation, the SBE then has “the discretion to determine whether the rehabilitation is worthy

of reinstatement.” (*Id.* at 2-3) Petitioner points out that this bifurcation does not appear anywhere in the statute and contends the ALJ’s interpretation that there are two types of rehabilitations, one authorizing the reinstatement of revoked certificates and another which mandates that the teacher take steps to apply for a new certificate, was not even urged by the SBE. (*Id.* at 3)

Petitioner submits that the only issue before the Commissioner is the construction of *N.J.A.C.* 6:11-3.6(g), the regulation which governed reinstatement of revoked teaching certificates at the time petitioner made his request. Citing *Eastampton Center v. Planning Board of the Township of Eastampton*, 354 *N.J. Super.* 171, 196-97 (App. Div. 2002) and *Kruvant v. Mayor and Council of Cedar Grove*, 82 *N.J.* 435, 440 (1980), petitioner asserts that the time-of-decision rule is to be narrowly construed and only applied when its modification is intended to be retroactive to pending cases and points out that the courts have stated that the equities to the parties must be balanced in applying the time-of-decision rule as the ultimate objective is fairness to both the public and the individual parties. (*Id.* at 4) Petitioner avers that the time-of-decision rule should not apply in this instance because, *inter alia*, there is nothing in the regulatory scheme which indicates that the regulation was intended to be applied retroactively and such application would be a disservice to petitioner, who submitted appropriate evidence of rehabilitation, which was accepted by the SBE as proof of his rehabilitation. (*Ibid.*) Petitioner thus concludes that the new regulation, which was not in effect at the time he submitted his proof of rehabilitation, should not now apply. (*Ibid.*) Petitioner, therefore, submits that the ALJ’s determination should be rejected and that his revoked certificate should be reinstated as mandated by the regulation in effect in November 2002, and even as late as April 2003, when the SBE made its second determination in this matter. (*Id.* at 5)

In its exceptions, the SBE notes that the ALJ found that the SBE was not required to reinstate petitioner’s revoked certificate in that the regulation in place at the time petitioner

applied for certification after revocation did not require the SBE to automatically reinstate a revoked certificate once rehabilitation had been established. (SBE Exceptions at 1-2) Notwithstanding the ALJ's conclusion that the time of decision rule was inapplicable and the matter was thus subject to the regulations in place at the time of petitioner's application, the SBE points out that the ALJ then decided this matter as if governed by the current regulations. (*Id.* at 2) Upon analysis under the current regulations, the ALJ found that a revoked certificate cannot be reinstated, but an individual may apply for a new certificate. (*Ibid.*) The SBE further observes that the ALJ also determined that petitioner was not eligible for a Biological Science endorsement, the equivalent of a Secondary School Teacher of Science Certificate under the current regulations, because the requisite time since revocation had not passed, and that, moreover, petitioner is ineligible for a new certificate, pursuant to *N.J.A.C.* 6A:9-17.10(c), in that his forfeiture was part of a settlement of tenure proceedings. (*Id.* at 2-3)

Since the conclusions in the Initial Decision were based on two different sets of regulations, the SBE states that its purpose in submitting exceptions is to clarify its position should the matter be decided upon the regulations in effect at the time petitioner applied for certification upon revocation. (*Id.* at 3) In this regard, the SBE argues, *inter alia*, that the language in *N.J.A.C.* 6:11-3.6(g) does not mandate reinstatement of a revoked certificate upon proof of rehabilitation, claiming that the phrase "without providing the petitioner an opportunity to be heard," simply qualifies the language "shall not refuse to reinstate a revoked certificate" and, thus, the only requirement is that the SBE provide an individual an opportunity to be heard. (*Id.* at 4, 6) The SBE avers that it satisfied the requirement specified in the regulation by providing petitioner an opportunity to be heard. (*Id.* at 7)

Additionally, the SBE claims that at the time petitioner applied for a Secondary School Teacher of Science Certificate, its policy, now codified at *N.J.A.C.* 6A:9-17.19(a), was that revocation is a finality and that once a teaching certificate is revoked it no longer exists.

*(Ibid.)* Accordingly, an individual with a revoked certificate was not applying to have the certificate reinstated, but, instead, was considered as applying for a new certificate. *(Ibid.)* Moreover, in this instance the SBE avers, it was not authorized to reinstate petitioner's Secondary School Teacher of Science Certificate because such certification did not exist under the regulations in effect at the time petitioner applied for certification. *(Id. at 8)* *N.J.A.C. 6:11-6.2 (i-ii)*, however, authorized an Instructional Certificate with an endorsement for Biological Science, Earth Science and/or Physical Science, and since a holder of an Instructional Certificate with an endorsement for Biological Science can teach biological and general science at any level, petitioner was evaluated for an Instructional Certificate with a Biological Science endorsement. *(Id. at 8-9)* In conclusion, the SBE requests a finding that it properly denied petitioner's request to reinstate his Secondary School Teacher of Science Certificate after it was revoked. *(Id. at 9)*

Upon a thorough and independent review of the record in this matter, including the Initial Decision and the parties' exception arguments, the Commissioner rejects the ALJ's analysis and conclusions and, instead, grants petitioner's motion for summary decision for the reasons set forth below.

Initially, the Commissioner notes that, pursuant to *N.J.A.C. 1:1-12.5(b)* and *Contini v. Bd. of Educ. of Newark*, 286 *N.J. Super.* 106, 121-122 (App. Div. 1995) (*citing Brill v. Guardian Life Ins. Co.*, 142 *N.J.* 520 (1995)), summary decision may be granted in an administrative proceeding if there is no genuine issue of material fact in dispute and the moving party is entitled to prevail as a matter of law. In the instant matter, the parties submitted cross-motions for summary decision, agreeing that there are no material facts in dispute, and the Commissioner has concluded that petitioner is entitled to prevail as a matter of law.

Petitioner herein is appealing a determination by the SBE denying the reinstatement of his Secondary School Teacher of Science Certificate. That certificate, as well as

his Principal/Supervisor and Supervisor certificates, was revoked by the SBE on January 17, 2002 as a result of petitioner's voluntary surrender of his certificates as part of a settlement agreement to resolve tenure charges against him.<sup>1</sup> At its meeting on September 26, 2002, the SBE denied issuance of certification to petitioner, finding that insufficient time had elapsed for rehabilitation since the revocation of his certificates. The SBE subsequently vacated that decision on November 14, 2002, finding that when evaluating petitioner's conduct from the time of the conduct that resulted in tenure charges, instead of the date his certificates had been revoked, petitioner had demonstrated rehabilitation. (SBE decision of November 14, 2002, SBE Brief at 2, dated June 3, 2004 and undated memorandum to the SBE attached as Exhibit A to SBE Brief, dated June 3, 2004) By decision dated April 7, 2003, the SBE notified petitioner of its denial of petitioner's request for a Secondary School Teacher of Science Certificate, explaining that the certificate requested had not been issued since the late 1980's and that the current regulations did not include such certification. However, the SBE also indicated in that decision that petitioner could apply for certification under the current regulations.<sup>2</sup>

In reviewing this matter, it is noted that the threshold issue is which regulation is controlling, *N.J.A.C.* 6:11-3.6(g), the regulation in effect at the time petitioner applied to have his Secondary School Teacher of Science Certificate reinstated and also in effect when the SBE rejected his request to reinstate his certificate, or *N.J.A.C.* 6A:9-17.10, which was promulgated during the pendency of this matter with an effective date of January 20, 2004. Under the circumstances herein where the current regulations do not specify retroactive application, but,

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<sup>1</sup> Petitioner was charged with unbecoming conduct, insubordination, incapacity and abandonment of position. (Settlement Agreement at 1) In an affidavit submitted to the SBE, dated February 3, 2003, petitioner acknowledges that he is a recovering alcoholic whose alcoholism interfered with his job performance. (Petitioner's Affidavit at 2, No. 6) Petitioner also asserts that he has a "sobriety date of July 13, 1997," explaining that he has not had a drink since that date and continues to attend AA meetings and to speak publicly about intoxication. (*Id.* at 3, No. 11)

<sup>2</sup> As previously indicated, *N.J.A.C.* 6:11-6.2 (i-ii) authorized the holder of an Instructional Certificate with a Biological Science endorsement to teach biological science and general science at all levels.

instead, indicate in two separate sections that applicants are subject to certification requirements in effect at the time of the application, and in light of the SBE decision of November 25, 2002 which specifically states that petitioner is subject to “current certification requirements,” the Commissioner concludes that *N.J.A.C. 6:11-3.6(g)* governs this matter.

*N.J.A.C. 6:11-3.6(g)* provides:

Where an applicant for certification indicates that he or she previously held a certificate issued by the State Board of Examiners, which certificate was revoked, the Board of Examiners may require the applicant to set forth the pertinent circumstances relating to the revocation, and require the applicant to demonstrate to the Board rehabilitation which warrants *reinstatement of the revoked certificate*. The Board shall not refuse to *reinstatement a revoked certificate* without providing the petitioner an opportunity to be heard. (emphasis supplied)

Notwithstanding the SBE’s claim that its policy at the time of petitioner’s application was that revocation is a finality and that once a teaching certificate is revoked it no longer exists, the SBE did not provide a copy of the policy to which it refers nor did it provide any explanation as to how such policy comports with *N.J.A.C. 6:11-3.6(g)*, which, as emphasized above, clearly refers to reinstatement of the revoked certificate. In the instant matter, the SBE found petitioner to be rehabilitated, but instead of reinstating his certificate, it forwarded to him an evaluation form to apply for an Instructional Certificate with an endorsement for Biological Science. In that there are many individuals teaching under Secondary School Teacher of Science Certificates issued in the 1970’s and 1980’s who have not been required to update their certifications by applying for new certificates under new regulations and, given the language in the regulation clearly providing for reinstatement of a revoked certificate, the Commissioner finds the SBE’s conclusion with respect to petitioner’s application for reinstatement of his certificate both inequitable and contrary to *N.J.A.C. 6:11-3.6(g)*.

With respect to the SBE's claim that finding an individual rehabilitated does not mandate the reinstatement<sup>3</sup> of a revoked certificate, the Commissioner finds it instructive to consider the history of *N.J.A.C. 6:11-3.6(g)*. When *N.J.A.C. 6:11-3.6(g)* was proposed for amendment in 1990, it originally read:

Where an applicant for certification indicates that he or she previously held a certificate issued by the State Board of Examiners, which certificate was revoked, the Board of Examiners may require the applicant to set forth the pertinent circumstances relating to the revocation, and require the applicant to demonstrate to the Board rehabilitation *or other evidence that he or she no longer poses a threat to children that are entrusted in his or her care.* (emphasis supplied) 22 *N.J.R.* 1879

As a result of public comment, the language highlighted above was changed prior to adoption by the State Board as noted below:

COMMENT: Proposed *N.J.A.C. 6:11-3.6(g)* requires persons whose certificates have been revoked to present evidence that "he or she no longer poses a threat to children..." It is not clear that all revocations are the result of the certificate holder having posed a "threat to children."

RESPONSE: The Department agrees and has made the following change upon adoption. [or other evidence that he or she no longer poses a threat to children who are entrusted to his or her care] **which warrants reinstatement of the revoked certificate. The Board shall not refuse to reinstate a revoked certificate without providing the petitioner an opportunity to be heard.** (emphasis in text) 22 *N.J.R.* 3242

Given this information with respect to the evolution of the language that appears in the final sentence of *N.J.A.C. 6:11-3.6(g)*, whereby the State Board of Education seeks to ensure both a thorough review of an individual's application for reinstatement of a revoked certificate and protection of the applicant's rights to a review, the Commissioner concludes that *N.J.A.C. 6:11-3.6(g)* provides the authority for the SBE to require the applicant to set forth the circumstances related to his/her revocation and to demonstrate rehabilitation, and emphasizes

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<sup>3</sup> As noted above, the SBE claims that the revoked certificate does not exist and, therefore, it characterizes a request for reinstatement as an application for issuance of certification.



that the SBE cannot refuse to reinstate a revoked certificate without providing the individual seeking reinstatement an opportunity to be heard. There is no allegation in the record that petitioner is guilty of a disqualifying offense, pursuant to *N.J.S.A.* 18A:6-7.1, and the SBE has not expressed any concerns arising from the circumstances related to the revocation of petitioner's certificate or his rehabilitation which would preclude the reinstatement of his teaching certification. Moreover, contrary to the SBE's assertion that it does not have the authority to reinstate a certificate that it has not issued since the late 1980's, such authority flows from *N.J.A.C.* 6:11-3.6(g), which was duly promulgated and adopted by the State Board of Education and authorizes the reinstatement of a revoked certificate.

Accordingly, the Commissioner finds that the SBE improperly denied petitioner's request for reinstatement of his Secondary School Teacher of Science Certificate. Summary decision is, therefore, granted to petitioner.

IT IS SO ORDERED.<sup>4</sup>

COMMISSIONER OF EDUCATION

Date of Decision: May 24, 2005

Date of Mailing: May 24, 2005

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<sup>4</sup> This decision may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6A:4-1.1 *et seq.*