

118-18

JENNY NEUHOFF, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 NEW JERSEY STATE BOARD OF : DECISION
 EXAMINERS, :
 :
 RESPONDENT. :
 _____:

SYNOPSIS

Pro-se petitioner appealed the decision of the respondent State Board of Examiners (SBE) denying her application for a standard certificate as a Teacher of Theater. Petitioner acknowledged that she lacked 6 of the required 30 semester hour credits in theater courses, but requested credit for other educational courses to satisfy the requirements for issuance of the standard certificate. The SBE filed a motion to dismiss.

The ALJ found, *inter alia*, that: the SBE's motion to dismiss was considered as a motion for summary decision; there is no genuine issue as to material fact here, and the matter is ripe for summary decision; petitioner contended that English courses and a music course are appropriate to satisfy the requirements of *N.J.A.C.* 6A:9B-9.1, and that the English courses should have been accepted by the SBE because a theater minor is available through the English department of the college she attended; further, the music course should have counted toward her theater credits because the Praxis exam for theater teachers may test knowledge of vocal production, along with dramatic literature and major playwrights; the SBE exercised its discretion pursuant to *N.J.A.C.* 6A:9B-4.12(b) when it found that the courses offered by petitioner as alternative education were not the one-to-one equivalent of theater courses; likewise, the SBE thoughtfully and reasonably chose to give credit to the petitioner for her alternative experience in community theater; the SBE exercised its discretion honestly and upon due consideration in this matter; and the SBE's refusal to accept petitioner's alternate coursework in lieu of the six additional credits required for her standard certification as a Teacher of Theater was not arbitrary, capricious, or otherwise contrary to the law. Accordingly, the ALJ granted the respondent's motion for summary decision.

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

April 13, 2018

OAL DKT. NO. EDU 11780-17
AGENCY DKT. NO. 134-7/17

JENNY NEUHOFF, :
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 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 NEW JERSEY STATE BOARD OF : DECISION
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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.

Upon such review, the Commissioner agrees with the Administrative Law Judge (ALJ) that the New Jersey State Board of Examiners did not act in an arbitrary, capricious, or unreasonable manner when it denied petitioner’s application for a Teacher of Theater Standard Certificate, as she lacked 6 of the 30 semester-hour credits in theater courses required under *N.J.A.C. 6A:9B-9.1*.

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

IT IS SO ORDERED.¹

ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 13, 2018

Date of Mailing: April 13, 2018

¹ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36* (*N.J.S.A 18A:6-9.1*).



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 11780-17

AGENCY DKT. NO. 134-7/17

JENNY M. NEUHOFF,

Petitioner,

v.

NEW JERSEY STATE BOARD

OF EXAMINERS,

Respondent.

Jenny M. Neuhoff, petitioner, pro se

Eric L. Apar, Deputy Attorney General, for respondent, (Gurbir S. Grewal,
Attorney General, attorney)

Record Closed: January 23, 2018

Decided: March 6, 2018

BEFORE **ELAINE B. FRICK**, ALJ:

STATEMENT OF THE CASE

The New Jersey Department of Education, State Board of Examiners (the Board) denied petitioner's request for the issuance of a Teacher of Theater standard

certification, because she lacked the required semester hour credits in theater courses. Petitioner appeals the Board's decision and requests credit for other educational courses to satisfy the required semester hour credits to be issued the certification.

PROCEDURAL HISTORY

The Board rendered its written decision May 12, 2017, denying petitioner's request. The petitioner filed a petition with the Bureau of Controversies and Disputes on July 11, 2017. Respondent's counsel filed a motion to dismiss on August 8, 2017. The matter was transmitted to the Office of Administrative Law (OAL) and filed on August 16, 2017, to be heard as a contested case as per N.J.S.A. 52:14B-1 to 15 and N.J.S.A. 52:14F-1 to 13.

A briefing schedule was set regarding the respondent's pending motion to dismiss, to be considered as a motion for summary decision. Petitioner filed a letter response on November 16, 2017. Respondent's request for an extension of time to file a reply was granted, but nothing further was submitted, and the record closed on January 23, 2018. Oral argument was not requested.

This decision is being rendered on the papers submitted: respondent's letter brief dated August 7, 2017; petitioner's letter response dated November 9, 2017; and the petition by petitioner, received by Controversies and Disputes on July 11, 2017, and transmitted to the OAL on August 16, 2017. The petitioner did not submit an affidavit with her letter response for purposes of this motion, but she executed her petition as an affidavit, and thus it was considered for this motion decision.

FACTUAL DISCUSSION

Petitioner seeks the issuance of a Teacher of Theater certificate. Petitioner is aware one of the requirements to attain the certificate is to have completed thirty semester hour credits in theater courses. (Petition paragraph 1).

When petitioner was advised she needed nine additional semester credits to satisfy the thirty-credit requirement, she requested that the Board credit her for her experience in Community Theater. The Board did approve that experience for three semester credits. (Respondent's letter brief page 2).

Petitioner also requested credit for English courses she completed in college, because that college offers a minor in theater through the English department. She sought credit for "ENG 325 Shakespeare" and "ENG 225 Literary Genres: Drama & Poetry". (Petition paragraph 1). She also requested credit for a course offered through the music department, "MUS 112 Beginning Vocal Skills I." Id. She contends that the theater teacher Praxis examination may test an applicant on knowledge of vocal production and technique, dramatic literature, and major playwrights, such as Shakespeare, so her alternate English courses and music course should be credited as theater courses. (Petition paragraph 2). The Board did not accept those alternative education courses, finding they were not adequate substitutes for the subject of theater.

I **FIND** as **FACTS** the following: petitioner lacks six of the required thirty semester credits in theater courses to satisfy a requirement to be issued a Teacher of Theater certificate; the courses the petitioner wants the Board to approve as alternate semester credits are two English courses and one music department course; and the Board chose not to accept those courses as the one to one equivalent of theater courses.

LEGAL ANALYSIS AND CONCLUSION

In an administrative law action, summary decision "may be rendered if 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 non-moving party will prevail if they are able to "set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding." Id.

This standard is also set forth in New Jersey Court Rule 4:46-2, regarding a motion for summary judgment, which is the equivalent to an administrative law summary decision motion. In Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520 (1995), the New Jersey Supreme Court stated:

[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 at 540.

The “judge’s function is not . . . to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” Brill at 540, citing Anderson v Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). Summary judgment, like summary decision, “is designed to provide a prompt, businesslike and inexpensive method of disposing of any case which a discriminating search of the merits in the pleadings, depositions and admissions on file, together with the affidavits submitted on the motion clearly shows not to present any genuine issue of material fact requiring disposition at trial.” Brill at 530, citations omitted. “An evidentiary hearing is mandated only when the proposed administrative action is based on disputed adjudicatory facts.” Contini v. Board of Education of Newark, 286 N.J. Super. 106, 120 (App. Div. 1995), cert. denied, 145 N.J. 372 (1996), citations omitted.

An applicant seeking to be issued an instructional teaching certification pursuant to N.J.A.C. 6A:9B-8, must satisfy the requirements outlined in N.J.A.C. 6A:9B-9.1. One of the requirements is that the applicant shall:

1. Complete one or more of the following coursework requirements for the subject area in which the candidate is seeking the endorsement:

- i. Complete an undergraduate major in the subject area . . . ;
- ii. Hold a graduate degree in the subject area; or
- iii. Complete at least 30 credits in a coherent sequence of courses appropriate to the subject area as documented by an official transcript from a regionally accredited college or university, of which 12 semester-hour credits must be at the advanced level of study, including junior-, senior-, or graduate-level study as documented by the official transcript of a four-year, regionally accredited college or university . . .

N.J.A.C. 6A:9B-9.1(a).

The Board of Examiners is responsible for determining if an instructional teaching certificate may be issued to an applicant. N.J.S.A. 18A:6-38. If an applicant for a teaching certificate has been advised of a deficiency in their certification requirements, they “may provide the Board of Examiners with evidence of alternative education and/or experience that he or she believes is equivalent to the area(s) of deficiency.” N.J.A.C. 6A:9B-4.12(b). The Board is not permitted to waive any requirements, but can consider alternative education if the petitioner demonstrates, by a preponderance of the credible evidence, that the alternative education is the one-to-one equivalent with the statutory requirements. Hutchinson v. New Jersey State Board of Examiners, EDU16373-12, Initial Decision (April 5, 2013), aff’d, Commissioner (May 15, 2013), <<http://njlaw.rutgers.edu/collections/oal/>>.

When a decision by the Board has been appealed, the Commissioner “shall ascertain whether the decision is supported by sufficient credible evidence in the record and shall not disturb the decision unless the appellant has demonstrated the State Board of Examiners . . . acted in a manner that was arbitrary, capricious, or contrary to law.” N.J.A.C. 6A:4-4.1(a). “Arbitrary and capricious action of administrative bodies means willful and unreasoning action, without consideration and in disregard of circumstances. Where there is room for two opinions, action is not arbitrary or

capricious when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached.” Bayshore Sewerage Co. v Dep’t of Environmental Protection, 122 N.J. Super. 184, 199 (App. Div. 1973), citations omitted.

The issue presented here is whether there is a genuine issue of material fact in dispute that the Board’s decision was arbitrary and capricious, when it chose not to accept the petitioner’s proposed alternative education courses to satisfy the semester credits in theater courses she needs to receive a Teacher of Theater certificate. N.J.A.C. 6A:9B-9.1(a). The facts are viewed most favorably to the non-moving party. The petitioner does not have the required credits in theater to be issued the certificate. She proffered English courses and a music course to be alternative education courses to satisfy the requirements of N.J.A.C. 6A:9B-9.1.

The petitioner contends that the English courses should have been accepted by the Board because a theater minor is available at the college she attended, through the school’s English department. She further offers that the English courses and music course should have been the equivalent of theater courses because the Praxis examination for theater teachers may test one’s knowledge of vocal production, dramatic literature, and major playwrights. The Board exercised its discretion pursuant to N.J.A.C. 6A:9B-4.12(b), and found that the courses offered as alternative education, were not the one-to-one equivalent of theater courses.

Petitioner has not alleged any “willful and unreasoning action without consideration and in disregard of circumstances” by the Board. Bayshore, 122 at 199. Simply because the English department of a college offers a theater minor, does not make all their English courses the equivalent of theater courses. Similarly, just because the Praxis examination may test an applicant on vocal production, dramatic literature, and playwrights, does not convert English courses and a music course to the equivalent of theater courses. The Board exercised its discretion honestly and upon due consideration. It thoughtfully and reasonably chose to give credit to the petitioner for her

alternative experience in community theater. Likewise, the Board thoughtfully and reasonably chose not to give credit to the petitioner for her alternative English courses and music course, to replace the statutorily required theater courses.

I **CONCLUDE** that the motion for summary decision shall be granted. Upon a review of the papers submitted, looked upon most favorably to the petitioner, there is no genuine issue of material fact in dispute that the Board's decision was arbitrary and capricious, or otherwise contrary to the law.

ORDER

Based upon the foregoing, I hereby **ORDER** that respondent's motion for summary decision shall be **GRANTED**.

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.



March 6, 2018

DATE

ELAINE B. FRICK, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

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APPENDIX

EXHIBITS

For petitioner:

Petition signed by petitioner and notarized July 10, 2017

Petitioner's letter response to the motion, dated November 9, 2017

For respondent:

Respondent's letter brief dated August 7, 2017