

MICHELLE GUELI, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

NEW JERSEY STATE BOARD : DECISION

OF EXAMINERS, :

RESPONDENT. :

SYNOPSIS

Petitioner appealed the determination of the respondent – the State Board of Examiners (SBE) – that she had not met the requirements, as set forth in *N.J.A.C. 6A:9B-8 et seq.*, for issuance of a Teacher of Elementary School Certificate of Eligibility (CE). Specifically, petitioner did not achieve the required a cumulative grade point average of 2.75 in her baccalaureate program. Petitioner contended that she qualified for the CE under *N.J.A.C. 6A:9B-8.3(b)(2)(i)*, which – prior to September 1, 2016 – permitted an applicant with a GPA between 2.50 and 2.75 to satisfy the GPA requirement by exceeding a passing score on the appropriate state test of subject matter by ten percent or more. The SBE argued that although petitioner’s application for certification was initiated on August 30, 2016, her application was not complete until September 29, 2016, the date upon which petitioner submitted the required oath of allegiance; therefore, her application was deemed filed on the date of completion, by which time the regulations no longer permitted the exception under which petitioner claimed qualification.

The ALJ found, *inter alia*, that: petitioner asserted that pursuant to *N.J.A.C. 6A:9B-5.3(b)*, the SBE should have considered her application based on the regulations in effect until September 1, 2016, because her application was marked “received” by the New Jersey Department of Education on August 30, 2016; however, the controlling regulation states that “An application shall be deemed filed with the Office when it and all required supporting documentation has been received”; petitioner’s application was therefore not complete until the required oath of allegiance was submitted on September 29, 2016; and petitioner’s application must be considered based on the regulatory requirements in effect after September 1, 2016. Accordingly, the ALJ concluded that the SBE’s decision relative to petitioner’s application for certification was reasonable, consistent with the regulatory intent, and is entitled to deference.

Upon review, the Commissioner adopted the Initial Decision of the OAL as the final decision in this matter, for the reasons expressed therein. 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>

March 8, 2018

OAL DKT. NO. EDU 06766-17
AGENCY DKT. NO. 63-3/17

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

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed.¹ 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 (Board) did not act in an arbitrary, capricious, or unreasonable manner when it denied petitioner's application for a Teacher of Elementary School Certificate of Eligibility for failing to meet the grade point average (GPA) requirement. Applicants for a certificate of eligibility who graduated before September 1, 2016 are required to achieve a cumulative GPA of at least 2.75, and petitioner's 2.58 GPA fell short of this requirement. *N.J.A.C. 6A:9B-8 .3(b)(1)*. The regulation also provides that until September 1, 2016, a candidate with a GPA of below 2.75 but at least 2.50 who exceeds the passing score on a State test of subject matter knowledge by 10 percent may still meet the requirements. *N.J.A.C. 6A:9B-8.3(b)(2)(i)*. However, the Commissioner is in accord with the ALJ that the regulation does not apply to petitioner because her application was deemed filed after she submitted the oath of allegiance on September 29, 2016, rather than when she initiated

¹ The Commissioner was not provided with a transcript of the December 13, 2017 hearing at the OAL.

the application on August 30, 2016. *See N.J.A.C. 6A:9B-5.3(b)* (“An application is deemed filed with the Office when it and all required supporting documentation has been received.”)

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.²

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 8, 2018

Date of Mailing: March 8, 2018

² 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

OAL DKT. NO. EDU 6766-17

AGENCY DKT. NO. 63-3/17

MICHELLE GUELI,

Petitioner,

v.

NEW JERSEY STATE

BOARD OF EXAMINERS,

Respondent.

Michelle Gueli, petitioner, pro se

Geoffrey Stark, Deputy Attorney General, for respondent (Gurbir S. Grewal,
Attorney General of New Jersey, attorney)

Record Closed: December 13, 2017

Decided: January 24, 2018

BEFORE **JOHN S. KENNEDY**, ALJ:

STATEMENT OF THE CASE

Petitioner, Michelle Gueli (“Gueli”) challenges respondent’s denial of her application for the issuance of a Teacher of Elementary School Certificate of Eligibility. Respondent, New Jersey State Board of Examiners (“Board”) denied the application alleging that petitioner did not satisfy the regulatory requirements to be issued a Teacher of Elementary School Certificate of Eligibility.

PROCEDURAL HISTORY

The original petition of appeal was filed with the Department of Education on March 22, 2017. The Department of Education transmitted the matter to the Office of Administrative Law (OAL), where it was filed on May 11, 2017, N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. A hearing was conducted on December 13, 2017, and the record closed.

FACTUAL DISCUSSION

Petitioner testified on her own behalf. Her grade point average (GPA) for her baccalaureate degree program at Stockton University was 2.58 (P-7). She initiated the application process for a teacher of social studies on June 21, 2016 (P-1). She took the core praxis examination necessary to complete the certification process on July 15, 2016. The oath of allegiance necessary to complete the certification process for the social studies certificate was signed by petitioner on June 21, 2016 (P-8). Petitioner paid the fee and initiated the application process to obtain her elementary education certificate on August 30, 2016 (P-3). She took the elementary education examination July 8, 2016, and received a passing grade on three of the four required parts of the examination. Petitioner retook the fourth part on September 15, 2016, and received a passing grade (P-4). The oath of allegiance necessary to complete the certification process for the elementary education certificate was signed by petitioner on September 29, 2016 (R-1). The received date did not change on the state computer system even though the oath of allegiance was filed after August 30, 2016 (P-3).

Robert Higgins, Ph.D. testified on behalf of the Board. Dr. Higgins is the Director of the Office of Certification and Induction at the New Jersey Department of Education. He is also the Secretary to the State Board of Examiners. He has worked for the Board since 2001. Dr. Higgins explained the internal process of reviewing on-line applications for teacher certification. Once an application is made and the fee is paid, the application awaits other documents including test scores which are sent to them electronically from the testing entity and the signed oath of allegiance (“Oath.”) The Oath in a statutory requirement, contains questions relating to an applicant’s

criminal history and whether they have ever been certified or revoked as a teacher in another state. The application remains in the state computer system until all required documents are received. It is given to an examiner once all documents are received and the application is complete. The state computer system then marks the application “to examiner.”

Petitioner’s application for an elementary education certificate was not sent to an examiner to review until the Oath was received on September 29, 2016. Prior to September 1, 2016, state regulations permitted flexibility for individuals with GPA’s below 2.75 seeking to become certificated teachers. Because petitioner’s Oath was received by the Board after September 1, 2016, the Board could not approve her application as her GPA was below 2.75.

Based on the testimony of the witnesses and examination of the documentary evidence, I **FIND** the following **FACTS**:

On August 30, 2016, petitioner initiated the application process for a Teacher of Elementary School Certificate of the Eligibility (“Certificate.”) Respondent deemed petitioner’s application filed a few weeks later when the Office of Certification and Induction (“Office”) received her oath of allegiance/verification of accuracy form, dated September 29, 2016. The Office evaluated petitioner’s credentials and determined that she lacked the required cumulative grade point average (GPA) for a certificate. On December 9, 2016, the Board heard petitioner’s application for credentials review and held that petitioner did not satisfy the regulatory requirements in effect at the time her application was deemed filed because she had not achieved a cumulative GPA of at least 2.75 from her baccalaureate degree program at Stockton University. Prior to September 1, 2016, N.J.A.C. 6A:9B-8.3(b)(2)(i) permitted an applicant with a GPA between 2.50 and 2.75 to satisfy the GPA requirement by exceeding a passing score on the appropriate state test of subject matter by ten percent or more. Petitioner asserts that her application should have been deemed filed on August 30, 2016, because that is the date the respondent marked the application received and the Administrative Code requires that applications shall be evaluated under the requirements in effect on the date the application is received.

LEGAL ANALYSIS AND CONCLUSION

The Board is responsible for the issuance and revocation of certificates to teach in New Jersey Public Schools. N.J.S.A. 18A:6-38. To be eligible for an elementary education certificate, an applicant must hold a bachelor's or advanced degree from a regionally accredited college or university, meet the minimum requirements for citizenship, age, physiology, hygiene and substance abuse, pass the appropriate State tests of subject matter knowledge, achieve a minimum score on a Commissioner approved test of basic reading, writing, and mathematic skills, and demonstrate knowledge of basic pedagogical skills. N.J.A.C. 6A:9B-8.3(a). N.J.A.C. 6A:9B-8.3(B)(1) states that:

To be eligible for a Certificate of Eligibility candidates graduating before September 1, 2016, shall achieve a cumulative GPA of at least 2.75 when a GPA of 4.00 equals an A in a baccalaureate degree program, higher degree program, or a Commissioner-approved post-baccalaureate certification program with a minimum of 13 semester-hour credits. Effective until September 1, 2016, a candidate with a GPA that is below 2.75, but at least 2.50 when a GPA of 4.00 equals an A grade, and whose score on the appropriate State test of subject matter knowledge exceeds the passing score by 10 percent or more shall meet the eligibility requirements. N.J.A.C. 6A:9B-8.3(B)(2)(i).

In this matter, petitioner graduated from Stockton University before September 1, 2016, with a GPA below 2.75 but at least 2.50. Petitioner asserts that pursuant to N.J.A.C. 6A: 9B-5.3(b), the Board should consider her application based on the criteria in effect until September 1, 2016, because her application was filed and marked "received" by the state on August 30, 2017. N.J.A.C. 6A: 9B-5.3(b) states that:

the Board shall issue the appropriate certificate upon the candidate's completion of all certification requirements in effect at the time the Office receives the application. Requirements include, but are not limited to, coursework, degree, tests, fees, GPA, and all certificate rules pursuant to N.J.A.C. 6A:9B-8 through 13. **An application shall be deemed filed with the Office when it and all required**

supporting documentation has been received.
(emphasis added)

It is clear the petitioner's application could not be deemed filed or received until September 29, 2016, which is the date the last required supporting document was provided to the Board, namely, petitioner's signed oath of allegiance. Simply because the state website did not revise the date the application was received when all required supporting documentation was filed does not change the fact that petitioner's application was not complete until after September 1, 2016. Therefore, I **CONCLUDE** that petitioner's application must be considered based on the regulatory requirements in effect after September 1, 2016.

Petitioner carries the burden of demonstrating by a preponderance of the credible evidence that she is entitled to the certification she seeks. Farrar v. State Bd. of Exam'rs, EDU 13763-08, Final Decision (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. Farrar, supra, EDU 13763-08 (citing Fisher v. State Bd. of Exam'rs, 96 N.J.A.R.2d (EDU) 58). N.J.A.C. 6A:4-4.1 provides that:

In determining appeals from decisions of the State Board of Examiners or the School Ethics Commission pursuant to this chapter, 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 that the Board or the Commission acted in a manner that was arbitrary, capricious or contrary to law.

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). Based on the above, I **CONCLUDE** that petitioner has not met her burden of demonstrating that the

Examiners' decision was arbitrary, capricious and unreasonable, and that the petition of appeal must be dismissed.

I **CONCLUDE** that the Examiners' decision relative to petitioner's application for certification is reasonable, consistent with the regulatory intent and is entitled to deference.

ORDER

It is hereby **ORDERED** that the Board of Examiners' denial of petitioner's application for the issuance of a Teacher of Elementary School Certificate of Eligibility is **AFFIRMED** and the petition of appeal is **DISMISSED**.

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.



January 24, 2018
DATE

JOHN S. KENNEDY, ALJ

Date Received at Agency:

January 24, 2018

Date Mailed to Parties:

JSK/jdw/lam

APPENDIX

LIST OF WITNESSES

Petitioner

Robert Higgins, Ph.D. – Director of the Office of Certification and Induction

LIST OF EXHIBITS

For Petitioner

- P-1 Teacher Certification Information System Screen relating to petitioner's applications
- P-2 Teacher Certification Information System Screen relating to petitioner's application for Social Studies Certificate
- P-3 Teacher Certification Information System Screen relating to petitioner's application for Elementary Education Certificate
- P-4 Examination Description for State tests taken by petitioner
- P-5 Board of Examiners Decision, dated January 19, 2017
- P-6 Order Denying Summary Decision
- P-7 Petitioner's Stockton University transcript
- P-8 Oath of Allegiance for application for teacher of Social Studies Certificate, dated June 21, 2016

For Respondent

- R-1 Oath of Allegiance for application for Elementary Education Certificate, dated September 29, 2016