

215-17

DAVID GREENE, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

NEW JERSEY STATE BOARD OF : DECISION

EXAMINERS, :

RESPONDENT. :

SYNOPSIS

Petitioner challenged the denial of his application for issuance of a Teacher of Elementary School certificate and a Teacher of Students with Disabilities certificate by the respondent New Jersey State Board of Examiners (SBE). The petition was filed in the Office of Administrative Law (OAL) as a contested case in January 2017. The parties filed cross motions for summary decision in May 2017.

The ALJ found, *inter alia*, that: there were no material facts at issue in this matter, and the case was ripe for summary decision; the certification sought by petitioner from the Board was the Teacher of Elementary Education with Advanced Standing (CEAS); in order to receive a CEAS, an applicant must satisfy specific requirements set forth in *N.J.A.C. 6A:9B-8.2*; one of these requirements is the completion of an educator preparation program; it is undisputed that petitioner never completed an educator preparation program of any kind; petitioner’s argument that this is not a requirement for issuance of a Teacher of Elementary Education CEAS is without merit; as petitioner is ineligible for the certificates he seeks based on the foregoing, it is not necessary to address petitioner’s remaining arguments. Accordingly, the ALJ concluded that the petitioner has not met the requirements for a CEAS; accordingly, the Board’s motion for summary decision was granted and the petitioner’s cross motion was denied. The petitioner’s appeal was dismissed with prejudice.

Upon review, the Commissioner concurred with the ALJ’s findings, and adopted the Initial Decision of the OAL as the final decision in this matter. The Commissioner noted that there is nothing prohibiting petitioner from filing a new application for a Certificate of Eligibility (CE) without advanced standing.

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.

August 4, 2017

OAL DKT. NO. EDU 01344-17
AGENCY DKT. NO. 306-12/16

DAVID GREENE, :
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 PETITIONER, :
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 V. : COMMISSIONER OF EDUCATION
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 NEW JERSEY STATE BOARD OF : DECISION
 EXAMINERS, :
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 RESPONDENT. :
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C.* 1:1-18.4 by petitioner, and the reply thereto filed by the New Jersey State Board of Examiners (Board).

In his exceptions, petitioner argues that the Board mistakenly reviewed petitioner's application as one for a Certificate of Eligibility with Advanced Standing (CEAS), rather than a Certificate of Eligibility (CE), for which petitioner applied. Petitioner argues that although the Board suggests that petitioner amended his applications for Teacher of Elementary School CE and Teacher of Students with Disabilities CE to applications for Teacher of Elementary School CEAS and Teacher of Students with Disabilities CEAS, the fact is in dispute as petitioner never amended his application. Petitioner also disputes the Administrative Law Judge's (ALJ) finding that petitioner did not take an educator preparation course and urges the Commissioner to find that the requirement was satisfied because the George Washington University master's program included the elements required for licensure in New Jersey. Petitioner further asks that the Commissioner find that he earned 60 liberal arts credits from a

regionally accredited university. As such, petitioner contends that he is entitled to a CE and alternatively is entitled to a CEAS.¹

In reply, the Board argues that the ALJ properly held that petitioner does not meet the regulatory requirements for issuance of a Teacher of Elementary School CEAS or a Teacher of Students with Disabilities CEAS because he did not complete an education preparation program. As such, the ALJ appropriately did not need to reach the issue of whether petitioner had 60 credit hours in liberal arts, and petitioner's exceptions on that issue should be disregarded. Further, the Board points out that petitioner clearly amended his applications for CE to applications for CEAS; therefore, neither the ALJ nor the Board evaluated petitioner's application in the context of a Teacher of Elementary School CE or a Teacher of Students with Disabilities CE.

Initially, the Commissioner points out that there is a difference between the regulatory requirements for a CE and those for a CEAS. The requirements for the CEAS are set forth at *N.J.A.C. 6A:9B-8.2*, while the requirements for the CE are delineated at *N.J.A.C. 6A:9B-8.3*. Upon review, the Commissioner agrees with the ALJ that petitioner does not meet the regulatory requirements for issuance of a Teacher of Elementary School CEAS or a Teacher of Students with Disabilities CEAS. It is undisputed that petitioner did not complete an educator preparation program, and as such – pursuant to *N.J.A.C. 6A:9B-8.2* and *N.J.A.C. 6A:9B-11.4* – petitioner is ineligible for a Teacher of Elementary School CEAS or a Teacher of Students with Disabilities CEAS.

¹ Petitioner also requests that the Commissioner clarify that, at the time the Board issued its March 29, 2016 letter denying petitioner's application for CE for lacking 57 liberal arts credits, it had not reviewed petitioner's undergraduate transcript from Excelsior College. Such a clarification is unnecessary. The Initial Decision already makes clear that petitioner first provided the Board with a copy of his official transcript during petitioner's appeal in September 2016. Further, the Board's November 7, 2016 decision indicates that upon submission of the Excelsior College transcript, the Board found that 12 credits from that transcript would count toward the total liberal arts requirement.

For the first time, petitioner argues in his exceptions that there is a material issue of fact as to whether petitioner amended his applications for a Teacher of Elementary School CE and Teacher of Students with Disabilities CE to applications for a Teacher of Elementary School CEAS and Teacher of Students with Disabilities CEAS. Although the Board relied on the fact that petitioner amended his applications in its cross-motion for summary decision, petitioner failed to dispute that fact in his submissions. Moreover, in filing his motion for summary decision, petitioner asserted that no material facts were in dispute. Indeed, the petition of appeal filed in this matter requested that the Board issue petitioner a Teacher of Elementary School CEAS and a Teacher of Students of Disabilities CEAS, and the petition made no mention of an application for a CE. Accordingly, as petitioner failed to assert any disputed fact and the petition in this matter did not address an application for a CE, the Commissioner agrees with the ALJ that this matter was ripe for summary decision and that petitioner did not meet the requirements for a Teacher of Elementary School CEAS or a Teacher of Students of Disabilities CEAS.

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.²

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: August 4, 2017

Date of Mailing: August 4, 2017

² Nothing in this decision should be interpreted as prohibiting petitioner from filing a new application for a Teacher of Elementary School CE and a Teacher of Students of Disabilities CE.

³ 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 01344-17

AGENCY REF. NO. 306/12-16

DAVID J. GREENE,

Petitioner,

vs.

**NEW JERSEY DEPARTMENT OF EDUCATION,
STATE BOARD OF EXAMINERS,**

Respondent.

Russell Bloch, Esq. for Petitioner

Nicole T. Castiglione, Deputy Attorney General for Respondent (Christopher S. Porrino, Attorney General of New Jersey, attorneys)

Record Closed: June 16, 2017

Decided: June 20, 2017

BEFORE **THOMAS R. BETANCOURT**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner challenges the denial of his application for issuance of a Teacher of Elementary School certificate and a Teacher of Students with Disabilities certificate, by Respondent or the Board. The Department of Education transmitted the matter to the Office of Administrative Law (OAL), where it was filed on January 30, 2017 as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

A prehearing conference was held on February 23, 2017, and a prehearing Order was entered by the undersigned on February 24, 2017.

Petitioner submitted a request via email on March 9, 2017 for the undersigned to “intervene” and compel discovery. Petitioner and Respondent were advised that the request would be treated as a motion to compel discovery. Respondent filed its reply brief dated March 15, 2017. Petitioner submitted a response thereto dated March 17, 2017. A telephone conference on Petitioner’s motion was held on March 23, 2017, wherein it was agreed by the parties that Respondent has complied with Petitioner’s discovery request and that the motion to compel discovery is now moot. An order dismissing the motion as moot was issued on March 23, 2017.

Russell Bloch, Esq., entered his appearance on behalf of Petitioner with the filing of a motion for summary decision on May 19, 2017. Respondent filed a cross motion for summary decision on May 19, 2017. Petitioner filed a reply brief on May 31, 2017. Respondent filed a reply brief on June 7, 2017. Petitioner filed a sur-reply brief on June 16, 2017. Respondent filed a sur-reply brief on June 16, 2017.

FINDINGS OF FACT

The following facts are not in dispute:

1. Petitioner applied to the Board for a Teacher of Students with Disabilities Certificate of Eligibility (CE) on November 5, 2015. (Exhibit A Respondent’s brief)

2. The Board advised Petitioner that a Teacher of Students with Disabilities CE was not a standalone certificate and that Petitioner needed to apply for an instructional certificate that corresponded with the subject or grade level he wished to teach. (Exhibit B Respondent's brief)
3. Petitioner then applied to the Board for a Teacher of Elementary School CE on March 13, 2016. (Exhibit C Respondent's brief)
4. Petitioner submitted to the Board a Verification of Program Completion (VOPC) from George Washington University relative to his master's degree. (Exhibit D Respondent's brief)
5. The VOPC form indicated that Petitioner had not completed George Washington University's state approved educator preparation program and that he was not eligible for certification in the District of Columbia because his individualized master's degree program was not approved for licensure. (Exhibit D Respondent's brief)
6. The Board, via letter dated March 29, 2016, notified Petitioner of deficiencies in his application. (Exhibit E Respondent's brief)
7. The Board, via letter dated June 3, 2017, notified Petitioner that he was ineligible for a Teacher of Students with Disabilities CE as he was ineligible for a Teacher of Elementary School CE. (Exhibit F Respondent's brief)
8. Petitioner appealed both the March 29, 2016 and June 3, 2016 Board decisions, and also amended his applications to request a Teacher of Elementary School CEAS and a Teacher of Students with Disabilities CEAS. (Exhibit G Respondent's brief)
9. The Board heard the appeal on September 16, 2016, at which time Petitioner provided the Board with a copy of his official transcript from Excelsior College. (Exhibit H and Exhibit I Respondent's brief)
10. The Board denied Petitioner's applications for a Teacher of Elementary School CEAS and a Teacher of Students with Disabilities CEAS by its decision dated November 1, 2016. (Exhibit I Respondent's brief)

11. The basis for the denial was the Board's determination that Petitioner did not satisfy the regulatory requirements for a Teacher of Elementary School CEAS as he did not complete an educator preparation program in elementary education and that he lacked sixty semester hour credits in liberal arts. (Exhibit I Respondent's brief)
12. The Board also denied Petitioner's application for a Teacher of Students with Disabilities CEAS as he was ineligible for a Teacher of Elementary School CEAS. (Exhibit I Respondent's brief)
13. The Board awarded a total of fifteen credits, towards the sixty required for a CEAS, after a review of the credentials submitted by Petitioner. (Exhibit I Respondent's brief)
14. Petitioner received a bachelor's degree from Yeshiva College in 2006. (Exhibit A Greene affidavit)
15. Petitioner received a Masters of Education and Human Development degree from George Washington University Graduate School of Education in 2007. (Exhibit A Greene affidavit)
16. Petitioner enrolled at Excelsior College and received a B.S. in Judaic Studies. (Exhibit B Greene affidavit)
17. Excelsior College accepted sixty credits earned at Yeshiva College. (Exhibit B Greene affidavit)
18. Excelsior College utilized the National College Credit Recommendation Service (NCCRS) to determine which credits earned at Yeshiva College should be accepted at Excelsior College. (Greene affidavit ¶10 and ¶11 and Exhibit D Greene Affidavit)
19. Yeshiva College is a non-accredited institution.
20. Excelsior is a regionally accredited institution. (Greene affidavit ¶10)
21. Petitioner has worked as a teacher in private elementary and middle schools teaching mathematics, English, reading, social studies, science, Jewish studies and special education. (Greene affidavit ¶18 and Exhibit B Greene affidavit)

22. Petitioner holds a License A from the National Board of License for Teachers and Supervisors in North American Jewish Schools. (Exhibit B Greene affidavit)
23. Petitioner has never completed an educator preparation program in elementary education.

LEGAL ANALYSIS AND CONCLUSION

Standard for Summary Decision

A motion for summary decision may be granted if the papers and discovery presented, as well as any affidavits which may have been filed with the application, show that there is no genuine issue of material fact and the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b). If the motion is sufficiently supported, the non-moving party must demonstrate by affidavit that there is a genuine issue of fact which can only be determined in an evidentiary proceeding, in order to prevail in such an application. Ibid. These provisions mirror the summary judgment language of R. 4:46-2(c) of the New Jersey Court Rules.

The motion judge must “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 fact finder to resolve the alleged disputed issue in favor of the non-moving party.” Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995). And even if the non-moving party comes forward with some evidence, this forum must grant summary decision if the evidence is “so one-sided that [the moving party] must prevail as a matter of law.” Id. At 536 (citation omitted).

In the instant matter each party seeks summary decision.

Teacher Certification

The Board has the authority to issue certificates to teach in New Jersey public schools. N.J.S.A. 18A:6-38.

Petitioner sought from the Board a certification as a Teacher of Elementary Education with Advanced Standing (CEAS). In order to receive a CEAS an applicant must satisfy the requirements set forth in N.J.A.C. 6A:9B-8.2, which states in pertinent part:

(a) Except as indicated in N.J.A.C. 6A:9B-10 and 11, the candidate shall meet the following criteria to be eligible for a CEAS in instructional areas:

1. Hold a bachelor's or an advanced degree from a regionally accredited college or university;

2. Meet all minimum requirements in N.J.A.C. 6A:9B-5, including, but not limited to, citizenship, minimum age, and the examination in physiology, hygiene, and substance abuse.

3. Achieve a cumulative GPA of at least 3.00 when a GPA of 4.00 equals an A grade for candidates graduating on or after September 1, 2016, in a baccalaureate degree program, higher degree program, or a State-approved post-baccalaureate certification program with a minimum of 13 semester-hour credits.

i. Candidates whose college transcripts demonstrate completion of all requirements for graduation prior to September 1 in any year, but whose baccalaureate or higher degree was conferred between September 1 and December 31 of the same year, shall be deemed to have graduated prior to September 1 of the same year.

ii. If the candidate does not meet the 3.00 GPA requirement, he or she shall meet the exception criteria in (c) below.

4. Satisfy the endorsement requirements and exceptions pursuant to N.J.A.C. 6A:9B-9 through 11, including, but not limited to, passing the appropriate State test(s) of subject matter knowledge and completing the

required subject-area course requirements;

5. Be recommended for State licensure by a New Jersey educator preparation program approved pursuant to N.J.A.C. 6A:9A-3, or an out-of-State program approved by the state in which it is located and pursuant to the out-of-State program rules in (b)2 through 5 below;

i. The New Jersey educator preparation program and out-of-State program shall submit the recommendation on an Office-provided form; and

6. Pass a Commissioner-approved performance-based assessment of teaching if graduated on or after September 1, 2017.

(b) To be eligible for a CEAS in instructional fields, the candidate shall complete one of the following educator preparation programs that shall include supervised clinical practice:

1. A New Jersey college program, graduate or undergraduate, approved by the Department for the preparation of teachers pursuant to N.J.A.C. 6A:9A-3;

2. A college preparation program included in the interstate certification reciprocity system of NASDTEC;

3. An out-of-State educator preparation program approved by NCATE, TEAC, or any other national professional education accreditation body recognized by the Council on Higher Education Accreditation or approved by the Commissioner;

4. An educator preparation program approved for certification by the Department in one of the states party to the NASDTEC Interstate Contract, provided the program was completed on or after January 1, 1964, and the state in which the program is located would issue the candidate a comparable endorsement; or

5. An out-of-State college educator preparation program approved by the department of education in the state in which the program is located.

Petitioner also sought from the Board a certification as a Teacher of Students with Disabilities with Advanced Standing (CEAS). In order to receive a CEAS as a Teacher of Student with Disabilities an applicant must satisfy the requirements set forth in N.J.A.C. 6A:9B-11.4(a), which states in pertinent part: A candidate for a CE or CEAS with a teacher of students with disabilities endorsement shall complete the certification requirements pursuant to N.J.A.C. 6A:9B-8. Further, to obtain Teacher of Students with Disabilities CEAS an applicant is required to an educator preparation program. N.J.A.C. 6A:9B-11.4(b).

It is undisputed that Petitioner has never completed an educator preparation program of any kind. Petitioner argues that this is not a requirement for issuance of a Teacher of Elementary Education CEAS. I disagree. The plain language of N.J.A.C. 6A:9B-8.2 mandates that a candidate for a Teacher of Elementary Education CEAS complete of an educator preparation program. A recommendation is also required. N.J.A.C. 6A:9B-8.2(a)5 states: “Be recommended for State licensure by a New Jersey educator preparation program approved pursuant to N.J.A.C. 6A:9A-3, or an out-of-State program approved by the state in which it is located and pursuant to the out-of-State program rules in (b)2 through 5 below”. Petitioner has neither the requisite program completion nor the requisite recommendation.

As it is clear that Petitioner is not eligible for either a Teacher of Elementary School CEAS, or a Teacher of Students with Disabilities CEAS, due to his lack of the required recommendation and completion of an educator preparation program, it is not necessary to determine whether or not the Board erred in granting Petitioner credit for his previous undergraduate and graduate work at Yeshiva College, George Washington University and Excelsior College.

Based upon the above, I **CONCLUDE** that Petitioner's motion for summary decision be **DENIED**; and that Respondent's motion for summary decision be **GRANTED**.

ORDER

Based upon the forgoing, Petitioner's motion for summary decision is **DENIED**; and Respondent's cross motion for summary decision is **GRANTED**; and Petitioner's appeal is **DISMISSED** with prejudice.

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.

June 20, 2017



DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency:

Date Mailed to Parties:

db

APPENDIX

List of Moving Papers

For Petitioner:

Notice of Motion for Summary Decision filed May 19, 2017

Brief in support of motion

Affidavit of David Greene

Attorney Affirmation with Exhibits A through E

Certification of Service

Reply brief filed May 31, 2017

Sur-reply brief filed June 16, 2017

For Respondent:

Cross Motion for Summary Decision filed May 18, 2017

Brief in support of Cross Motion for Summary Decision

Certification of Counsel with Exhibits A through J

Certification of Service

Reply brief filed June 7, 2017

Certification of Counsel with Exhibit K (Certification of Robert R. Higgins, Ph.D.)

Certification of Service

Sur-reply brief filed June 16, 2017

Certification of Counsel with Exhibit L and Exhibit M