

New Jersey Commissioner of Education

Final Decision

Kevin Harriman,

Petitioner,

v.

New Jersey State Board of Examiners,

Respondent.

Synopsis

In this matter, *pro-se* petitioner appealed the determination of the respondent New Jersey State Board of Examiners (SBE) that respondent improperly denied his application for certification after revocation pursuant to *N.J.A.C. 6A:9B-4.9*. Petitioner previously held a Teacher of Health and Physical Education Certificate of Eligibility with Advanced Standing, Teacher of Health and Physical Education Certificate, and a Teacher of Driver Education Certificate. In December 2015, the SBE voted to revoke Harriman’s teaching certificates as a result of his dismissal from his tenured position with the Elmwood Park School District (Elmwood Park) due to unbecoming conduct. A hearing regarding petitioner’s appeal was held on August 16, 2023.

On appeal, the ALJ found, *inter alia*, that: the legal issue here is whether petitioner has demonstrated rehabilitation from unbecoming conduct, incompetence, or other cause for the revocation of his teaching certificates since 2015, as required pursuant to *N.J.A.C. 6A:9B-4.9(b)(3)*; petitioner bears the burden to demonstrate, by a preponderance of the evidence, that the SBE improperly denied his application for certification after revocation; petitioner has not satisfied this requirement as he has failed to show that he has been rehabilitated for the unbecoming conduct that led to the revocation of his teaching certificates, and in fact continues to deny the conduct and shift blame to former coworkers; further, petitioner’s submissions in these proceedings prove that he has intentionally withheld information from current and prospective employers regarding the revocation of his teaching certificates; petitioner has continuously failed to acknowledge that his actions led to the revocation of his teaching certificates, a key component of rehabilitation; and petitioner’s failure to demonstrate rehabilitation for the unbecoming conduct is underscored by the fact that he still believes that his certificates were wrongfully revoked, and does not believe that he engaged in conduct unbecoming at all. For these reasons, the ALJ concluded that the Board’s decision denying petitioner’s application for certification after revocation must be affirmed.

Upon review, the Commissioner adopted the Initial Decision of the OAL as the final decision in this matter, for the reasons stated therein. Accordingly, the petition of appeal was dismissed.

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.

129-24
OAL Dkt. No. EDU 02542-21
Agency Dkt. No. 7-1/21

New Jersey Commissioner of Education
Final Decision

Kevin Harriman,

Petitioner,

v.

New Jersey Department of Education,
State Board of Examiners,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed and considered. The parties did not file exceptions.

Upon review, the Commissioner adopts the Initial Decision as the final decision in this matter for the reasons stated therein. The Commissioner concurs with the Administrative Law Judge that petitioner failed to demonstrate that respondent improperly denied his application for certification after revocation pursuant to *N.J.A.C. 6A:9B-4.9*. Specifically, petitioner has not satisfied the regulatory requirements as he failed to provide evidence demonstrating rehabilitation for the unbecoming conduct which resulted in the revocation of his certificates and, in fact, continues to deny that he committed unbecoming conduct or needs rehabilitation.

Accordingly, the petition of appeal is hereby dismissed.

IT IS SO ORDERED.¹



ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 8, 2024

Date of Mailing: March 11, 2024

¹ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A.* 18A:6-9.1. Under *N.J.Ct.R.* 2:4-1(b), a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU-02542-21

AGENCY DKT. NO. 7-1/21

KEVIN HARRIMAN,

Petitioner,

v.

NEW JERSEY DEPARTMENT OF EDUCATION,

STATE BOARD OF EXAMINERS,

Respondent.

Kevin Harriman, pro se

Amna Toor, Deputy Attorney General, for respondents (Matthew J. Platkin,
Attorney General of New Jersey, attorney)

Record Closed: January 19, 2024

Decided: January 29, 2024

BEFORE **JULIO C. MOREJON**, ALJ:

STATEMENT OF THE CASE

Petitioner, Kevin Harriman, appeals the decision by respondent, New Jersey Department of Education, State Board of Examiners denying his application for certification after revocation under N.J.A.C. 6A:9B-4.9.

PROCEDURAL HISTORY

Petitioner Kevin Harriman (Harriman) previously held a Teacher of Health and Physical Education Certificate of Eligibility with Advanced Standing, Teacher of Health and Physical Education Certificate, and a Teacher of Driver Education Certificate.

On December 10, 2015, the New Jersey Department of Education, State Board of Examiners (the Board) voted to revoke Harriman's teaching certificates as a result of his dismissal from his tenured position with the Elmwood Park School District (Elmwood Park) due to unbecoming conduct, which included conduct that was deceptive and untruthful; inappropriate, defiant and insubordinate conduct; failure to follow administrative directives; failure to enroll in anger management classes; and disregard of corrective action plans.¹

On April 23, 2020, Harriman applied for certification after revocation under N.J.A.C. 6A:9B-4.9. (R-1). On June 26, 2020, the Board denied Harriman's application because it determined that Harriman had failed to satisfy the regulatory criteria set forth in N.J.A.C. 6A:9B-4.9 to receive new certificates. (R-2).

On August 18, 2020, Harriman filed a petition with the Commissioner of Education (Commissioner), appealing the June 2020 Board's denial of his application (R-3). Because the petition included information that was not presented to the Board at the time of its decision, the Board requested, with Harriman's consent, that the matter be remanded to the Board to consider the new information along with the information presented at the time of the Board's June 26, 2020 decision. Ibid. In light of that request, the August

¹ See, In the Matter of the Tenure Hearing of Kevin Harriman, Docket No. 50-3/12 (Comm'r decision, Oct. 12, 2012), affirmed, In re Harriman, No. A-1386-12T3 (App. Div. March 12, 2014).

2020 petition was marked “withdrawn”, and the matter was closed by the Office of Controversies and Disputes. Ibid.

On October 29, 2020, the Board again considered Harriman’s April 23, 2020, application for certification with all the information he submitted with his petition of appeal to the Commissioner, which included two letters from mental health professionals, as well as various letters of recommendation and references. Id.

On December 10, 2020, after reviewing the additional information provided by Harriman, the Board found no basis to overturn its initial determination of June 2020, and issued a decision which again denied Harriman’s application for certification after revocation. Ibid. at pp. 5-6.

On January 15, 2021, Harriman filed a notice of appeal of the Board’s December 10, 2020, decision with the Office of Controversies and Disputes . On February 4, 2021, the Board filed its answer. After submission of the Board’s answer, Harriman filed a brief in support of his notice of appeal, and the matter was transmitted to the Office of Administrative Law (OAL) as a contested case, where it was filed on February 23, 2021.

An initial telephone status conference was held on April 7, 2021, and several status conference calls were held thereafter through July 13, 2023. Pre Hearing Orders were then issued on June 28, 2021, March 31, 2022, June 27, 2022, December 20, 2022, and April 18, 2023.

An in person hearing was held on August 16, 2023. Request was made to obtain a hearing transcript and submit post-hearing submissions. On or about October 19, 2023, the post-hearing summations were submitted. The record closed on January 19, 2024.

ISSUE

The legal issue is whether Harriman has demonstrated rehabilitation from unbecoming conduct, incompetence, or other cause for the revocation of his teaching certificates since October 2015, as required pursuant to N.J.A.C. 6A:9B-4.9.

FACTUAL DISCUSSION AND FINDINGS

Except for the ultimate finding of whether or not Harriman has established sufficient rehabilitation pursuant to N.J.A.C. 6A:9B-4.9, the facts are largely undisputed. The hearing in this matter was held on August 16, 2023. At the hearing, Harriman testified, and Rani Singh (Singh), Secretary of the Board, testified on behalf of the Board. The following is a summary of their respective testimony, which I **FIND** as **FACT** herein:

Testimony of Rani Singh

Singh is the Director of the Office of Certification within the New Jersey Department of Education, and the Secretary of the Board of Examiners. As director of the Office of Certification, Singh is responsible for all certifications issued to public school educators in the State. In her role as secretary for the Board, Singh is tasked with ensuring that all rules, regulations, and policies are met when the Board reviews matters, and must ensure that there is a quorum at every meeting.

Singh testified that on April 23, 2020, Harriman filed an application for certification after revocation. She explained that under N.J.A.C. 6A:9B-4.9, an individual who has had any certificate revoked may apply for certification again. But in order to be eligible for new certificates the applicants must meet the requirements set forth in N.J.A.C. 6A:9B-4.9, including making a demonstration that they satisfy the criteria for issuance of the certificate that are in effect at the time of the application; that at least four years have passed since the date of the revocation of the certificate(s); and showing evidence demonstrating rehabilitation for the unbecoming conduct or other cause for the revocation.

Singh testified as to the content of Harriman's application for certification after revocation. (R-1). Singh testified that Harriman claimed in his application that he meets all the criteria for issuance of the new certificates and he stated that he does not have a criminal background; that he continued teaching over the last seven years in two schools; that he has lost six consecutive coaching positions due to people Googling his name; that he was harassed, intimidated, and bullied; that no crime was committed; and that there was no rehabilitation needed because he did not engage in conduct unbecoming of a teacher. Id.

Singh testified that after reviewing Harriman's submission, the Board denied Harriman's application for certification after revocation on June 26, 2020. (R-2). Singh explained that in reaching its decision, the Board found that Harriman failed to provide or show evidence of rehabilitation for his unbecoming conduct because he continues to deny the behavior that was found to have occurred and stated in his application that he does not need rehabilitation.

Singh testified that Harriman then filed a petition with the Commissioner, appealing the Board's June 26, 2020 decision. (R-3). Singh explained that since Harriman's petition included additional information and new evidence that was not submitted with his April 23, 2020 application, the Board requested that the matter be remanded back to the Board to consider the new information. Id. Singh stated that the Commissioner returned the matter to the Board. Singh testified that the additional information Harriman had provided included an undated letter from Dr. Igor Gefter, a psychiatrist, and a letter from Dr. A. Nanjiani, dated July 23, 2020, and various letters of recommendation dated from 2013, 2016, and 2018.

Singh testified that after the Board considered these additional documents, on December 10, 2020, the Board again issued a decision denying Harriman's application for certification after revocation. In reaching its decision, Singh explained that that the Board did not give much weight to the letter submitted by Dr. Gefter because it was undated, and it just referenced a conversation with Harriman and an evaluation that was

done but provided no information or evidence about the nature or results of the evaluation. With respect to the letter by Dr. Nanjiani, Singh testified that the letter was drafted three months after Harriman's initial application and the contents of the letter focused more on what would be beneficial for Harriman as opposed to addressing the underlying conduct that led to his certificates being revoked and how he has rehabilitated from that conduct.

Singh further testified that the burden is on the applicant to demonstrate evidence of rehabilitation for the conduct that resulted in the revocation of the applicant's certificates. Singh testified that every case is different, and the Board does not specify to an applicant the "type" of rehabilitation required to demonstrate compliance with the regulation. T160:25 – T161:1-19.

Testimony of Kevin Harriman

Harriman did not present direct testimony. All of his testimony was in response to cross-examination questions by the Board. Harriman testified that he submitted an application for certification after revocation (application) dated April 23, 2020 (R-1). Harriman testified regarding the contents of his application.

Regarding the answer contained in paragraph 2 of the application (R-1), Harriman read the same into the record:

Yes. Four miserable years have passed since the illegal revocation took place December 15th to December 19th. Luckily none of my two current principals knew I was revoked during that time or you would have cost me another two teaching positions. They had no reason to research me, but I did lose six consecutive coaching positions to date by the school districts who did have to Google my name to background check a new coach.

[T172:1-172:17]

When asked on cross-examination why he stated in his application that “it was an illegal revocation?”, Harriman responds:

- A. Because it was done by arbitrarily and capricious by Mr. Higgins. Because if it was don with bias as you treated nobody else the way you treated me.
- Q. Sorry, sir. Just to clarify who is you?
- A. You and the Board.
- Q. You as in the Board?
- A. The board has never treated anybody in past precedent cases which are listed on line, thousands of decision that I’ve read, you’ve never treated anybody like that. Okay. So that’s with bias, that you’re deliberately trying to hurt me.

[171:19-173:6]

Harriman further stated that the Board’s decision is “way out of [its] statute of limitations;” that they “voted without a quorum;” and that the revocation of his teaching certificates was a “wrongful revocation without a doubt.” (T173:2-15).

Harriman testified that as part of his application there was no requirement for his rehabilitation as he has “never done anything unbecoming of a teacher ever,” and that “[a]ll charges and storylines are fictitious and compulsive lying [sic].” (T173:22-25 – T174:1-9). Regarding this point, Harriman testified:

This is the God’s honest truth. Mr. Sabor [sic] was simply jealous of the elementary gym teacher. You can’t make this stuff up. He was the evil one . . . He was removed from his principal position in the spring of 2018 due to sexual harassment of his female teachers. Someone called me from Elmwood Park and told me about this, a teacher. When he went back to Tomko to see how he could get rid of me back then, Tomko pre-mediated and orchestrated a plan for he and Mrs. Alison Jackter to harass, intimidate and bully me by writing me up over frivolous things any time I went to their school. My third principal, Dominic Silla because I worked for all three schools at the same time, he refused to get involved in the entire team by telling Tomko to his face, leave me out of that, I never had a problem with Kevin. Mr. Silla is also my mentor for my masters degree, so Tomko knew that it would not be able to be justified to

use him, so he gave directives to two of three, Sabor [sic] and Jackter to do this to me[.]²

[T174:9-25 - T175:1-3].

Harriman responded in the affirmative that he did not engage in “unbecoming conduct and that there was no rehabilitation needed as a result” and that he still believed that he did not engage in unbecoming conduct. (175:16-176:5). Finally, in defense of the Board’s decision that he did not provide the Board with proof of rehabilitation, Harriman stated that “..I needed to be told what type of rehabilitation needless to say. (T191:4-6).

LEGAL ANALYSIS AND CONCLUSIONS

The New Jersey Legislature has designated the Board as the body responsible for the issuance and revocation of appropriate certificates to teach or to administer, as well as the direction or supervision of the teaching, instruction or educational guidance of students in public schools. N.J.S.A. 18A:6-38. A certificate that has been revoked cannot be reinstated, but an individual may file an application for a new certificate with the Board. N.J.A.C. 6A:9B-4.9 (governing applications for certification after revocation), which provides in part:

- (a) A certificate that has been revoked for any of the grounds set forth in this chapter shall not be reinstated. An individual who has had a certificate revoked may file an application for a new certificate with the Board of Examiners.

The Board cannot issue a new certificate to an individual whose certificate(s) has been revoked unless they meet the requirements set forth in N.J.A.C. 6A:9B-4.9. See N.J.A.C. 6A:9B-4.9(b) (setting forth the conditions that must be met for issuance of a new

² In his application for certification after revocation, Harriman states that he was “harassed, intimidated and bullied by the now Superintendent in the Belleville School District, the notorious Richard D. Tomko, Gilbert Ave School principal, the late David A. Saper and Gantner Ave School Allison Jackter in Elmwood Park.” See R-1.

certificate). N.J.A.C. 6A:9B-4.9(c) (setting forth the circumstances when the Board cannot issue a new certificate). The most relevant provision herein is N.J.A.C. 6A:9B-4.9(b)(3), which requires that an applicant provide “evidence demonstrating rehabilitation for the unbecoming conduct, incompetence, or other cause for the revocation.”

When a petitioner challenges a finding by the Board denying a request for the issuance of a certificate, the Board’s decision may be reviewed to determine “whether the decision is consistent with applicable statutory and regulatory provisions.” Jessica Walder v. St. Bd. of Exam’rs, Commissioner’s Decision No. 503-14, dated December 29, 2014 (noting that in making this determination, the Commissioner is not mandated to give deference to her staff); see Jaroslaw Nimczyk v. St. Bd. Of Exam’rs, Comm’r Decision No. 98-22 (May 16, 2022) (citing Br. of Trust. Of the Passaic Cty. Elks Cerebral Palsy Cntr. V. Office of Fiscal Account. and Compliance, Comm’r Decision No. 334-14 (Aug. 14, 2014)); see N.J.A.C. 6A:4-1.3(b)(1) (providing that appeals of decisions of the Board denying issuance of a certificate shall proceed as contested cases in accordance with N.J.A.C. 6A:3). Consequently, a determination is required to determine if the Board’s decision was legally appropriate. Ibid.

Here, it is Harriman’s burden to demonstrate, by a preponderance of the evidence, that the Board improperly denied his application for certification after revocation. See McQuilken v. St. Bd. of Exam’rs, OAL Dkt. No. EDU 8375-11, Initial Decision (Dec. 13, 2011), https://njlaw.rutgers.edu/collections/oal/html/initial/edu8375-11_1.html, adopted Comm’r (January 27, 2012) (citing Farrar v. St. Bd. of Exam’rs, OAL Dkt. No. EDU 13768-08, Initial Decision (Sept. 9, 2009), adopted, Comm’r (July 26, 2010) (finding that the “petitioner carries the burden of demonstrating by a preponderance of the credible evidence that she is entitled to the endorsement she seeks”)). I **CONCLUDE** that Harriman has not satisfied this requirement as he cannot carry this burden because he has not met the requirements needed for the issuance of a certificate under N.J.A.C. 6A:9B-4.9.

Specifically, the record shows that Harriman has failed to show that he has been rehabilitated for the unbecoming conduct that led to the revocation of his teaching certificates, as required under N.J.A.C. 6A:9B-4.9(b)(3). For example, in his April 23, 2020 application, (R-1) Harriman claimed that he satisfies all criteria for issuance of new certificates; yet he also stated four years have passed since the “illegal revocation” and that “there was no rehabilitation needed as [he] NEVER did ANYTHING unbecoming of a teacher EVER.” See R-1 (emphasis in original); (172:9-25; T173:22-25 – T174:1-9).

Furthermore, Harriman stated that he was harassed, intimidated and bullied by various personnel from Elmwood Park. Ibid. As a result of Harriman’s responses in his application, that he did not need to provide evidence of rehabilitation because he did not feel that he engaged in unbecoming conduct, the Board denied his application for certification after revocation on June 26, 2020 (R-2). In reaching its decision, the Board found that Harriman had not provided any proof of rehabilitation and instead continues to deny the conduct and shift the blame to other coworkers. Ibid. I agree.

There is also the concerning proof provided herein and to the Board that Harriman has intentionally withheld information from his current and prospective employment of the revocation of his certificates. This conduct is completely opposed to the concept that Harriman has been rehabilitated, when he admits that he fails to disclose factual information that his certificates are revoked.

The record shows that after Harriman submitted new information that was not provided to the Board at the time of its first decision, the Board once again reviewed his application for certification in light of the additional material (R-3 and R-4), but the Board ultimately found the additional documentation, including letters from mental health professionals and other various reference letters, to be inconsistent with the statements made by Harriman in his April 23, 2020 application (R-4, at p. 5). Even if Harriman believes his certificates were wrongfully revoked, does not demonstrate behavior of someone that has been rehabilitated.

Harriman's testimony in this matter further illustrates that he has not accepted responsibility for his actions, and that he instead continues to place blame on others. For example, Harriman testified that various personnel from the Elmwood Park district lied and/or created fictitious storylines. In particular, he testified they were "simply jealous of the elementary gym teacher," and that they had "pre-meditated and orchestrated a plan" to "harass, intimidate, and bully" him by writing him up for "frivolous things." (T174:9-25 - T175:1-3). Harriman further testified that he believes that his certificates were "illegally revoked", without providing proof. (T172:9-25). Harriman still continues to believe that he has not engaged in conduct unbecoming of a teacher. Simply put, these are not the statements of someone who has even accepted responsibility for their own actions, let alone ones consistent with having been rehabilitated.

I **CONCLUDE** that Harriman has not met the requirements needed for issuance of a new certificate under N.J.A.C. 6A:9B-4.9, as he has continuously failed to acknowledge that his actions led to the revocation of his teaching certificates, a key component of rehabilitation. In addition, I **CONCLUDE** that Harriman's failure in demonstrating rehabilitation for the unbecoming conduct is underscored by the fact that he still believes that his certificates were wrongfully revoked, and he does not believe that he engaged in conduct unbecoming at all.

Consequently, I **CONCLUDE** that Harriman has failed to meet his burden to show by a preponderance of the evidence that the Board improperly denied his application for certification after revocation under N.J.A.C. 6A:9B-4.9. For the foregoing reasons, I **CONCLUDE** that the Board's decision denying Harriman's application is **AFFIRMED**.

ORDER

It is **ORDERED** that the decision by the New Jersey Department of Education, State Board of Examiners of December 10, 2020, denying Kevin Harriman's application for certification after revocation is **AFFIRMED**.

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 29, 2024
DATE

Julio Morejon
JULIO C. MOREJON, ALJ

Date Received at Agency:

January 29, 2024

Date E-Mailed to Parties:

January 29, 2024

JCM/lr

APPENDIX

WITNESSES

For petitioner

Rani Singh, Secretary of the Board

For respondent

Kevin Harriman

EXHIBITS

Petitioner

- P-4 Dr. Nanjlani letter
- P-5 Dr. Geftter letter
- P-6A Kevin Harriman letter
- P-6B Letter of 5-14-2015
- P-7 Letter to NJDOE
- P-8 Letter to NJDOE
- P-10 Attorney's answer
- P-12 Letter

Respondent

- R-1 Application 4-23-2020
- R-2 Decision of the Board
- R-3 Application
- R-4 Second Decision of the Board