

New Jersey Commissioner of Education

Final Decision

Robert Finlay,

Petitioner,

v.

New Jersey Department of Education,
State Board of Examiners,

Respondent.

Synopsis

Pro-se petitioner appealed the determination of the respondent New Jersey State Board of Examiners (SBE) denying his request for a third extension of time to satisfy the requirements of New Jersey’s Alternate Route teacher certification program. Specifically, in 2023, petitioner sought an additional two-year extension of his provisional certificate as a Teacher of Business: Finance/Economics, after having been granted extensions in 2019 and 2021. The SBE filed a motion to dismiss the petition.

The ALJ found, *inter alia*, that: petitioner was issued his first provisional certificate in September 2017; the certificate was renewed in 2019; in 2021, petitioner’s application for renewal of his provisional certificate was denied; petitioner appealed and was granted a renewal of his provisional certificate based on his specific circumstances; further, petitioner admitted that he has still not completed all of the academic coursework associated with the Alternate Route program, which he entered into more than six years ago. The ALJ concluded that petitioner has already been granted two renewals of his provisional certificate, which is the maximum permitted by law. Accordingly, the ALJ granted the SBE’s motion to dismiss the petition.

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

195-24

OAL Dkt. No. 09353-23

Agency Dkt. No. 229-8/23

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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 concurs with the Administrative Law Judge (ALJ) that petitioner has already been granted two renewals of his provisional certificate, the maximum permitted by law.

Accordingly, the Initial Decision is adopted as the final decision in this matter. The State Board of Examiners' motion to dismiss is granted, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.¹


ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 15, 2024

Date of Mailing: May 16, 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

GRANTING MOTION TO DISMISS

OAL DKT. NO. EDU 09353-23

AGENCY DKT. NO. 229-8/23

ROBERT FINLAY,

Petitioner

v.

NEW JERSEY DEPARTMENT OF EDUCATION,

STATE BOARD OF EXAMINERS,

Respondent.

Robert Finlay, pro se

**David Kalisky, Deputy Attorney General, for respondent (Matthew J. Platkin,
Attorney General of New Jersey, attorney)**

Record Closed: April 5, 2024

Decided: April 9, 2024

BEFORE: MATTHEW G. MILLER, ALJ

STATEMENT OF THE CASE

Appellant, Robert Finlay appeals the June 29, 2023 denial of his third renewal request of his provisional teaching certificate that had first been issued in 2017, then renewed for two years in July, 2019 and then for an additional year on October 28, 2021.

PROCEDURAL HISTORY

In 2017, petitioner, Robert Finlay, was issued a provisional teacher's certificate. That certificate was renewed in July, 2019. During its meeting of October 28, 2021, the New Jersey Board of Examiners renewed his provisional certificate for one year. This decision was ratified on December 16, 2021. In 2023, Mr. Finlay requested another renewal of his provisional certificate. That request was denied, and his appeal of that decision was denied during the meeting of June 29, 2023. That decision was ratified on August 4, 2023.

On August 24, 2023, Mr. Finlay emailed a Petition for Appeal to the State Department of Education's Office of Controversies & Disputes ("OCD"). After supplying proof of service on respondent the following day, on August 29, 2023, that appeal was transmitted to the Office of Administrative Law ("OAL") where it was received on September 18, 2023 for a hearing as a contested case. N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

Prior to the matter being forwarded to the OAL, on September 14, 2023, in reply to the filing, the State Board of Examiners filed a Motion to Dismiss in Lieu of Answer.

An initial conference was held on October 3, 2023 at which time, after a detailed discussion of the case, a briefing schedule was set with Mr. Finlay being given until November 8, 2023 to either find an attorney, file opposition to the Motion to Dismiss or withdraw his appeal. Since that telephone conference, Mr. Finlay has not communicated with the Court, nor did he reply to a December 14, 2023 email from respondent requesting that its Motion be considered unopposed.

Having given Mr. Finlay more than sufficient time in which to communicate with the Court and having not heard from him, the record was formally closed on April 5, 2024.

INITIAL FINDINGS OF UNDISPUTED FACT

The following **FACTS** of the case are not in dispute:

1. In September, 2017, appellant, Robert Finlay was issued a provisional Teacher of Business: Finance/Economics/Law Certificate by the State Board of Examiners in furtherance of his attempt to obtain full certification pursuant to the "Alternate Route" program. See N.J.A.C. 6A:9A-5.1 et seq.
2. Per N.J.A.C. 6A:9B-8.5(a), in July, 2019, Mr. Finlay's provisional certificate was renewed since he had "not yet completed the requirements for the standard certificate."
3. In 2021, Mr. Finlay applied for another two-year renewal of his certificate. That application was initially denied.
4. Mr. Finlay appealed that denial and at its October 28, 2021 meeting, that appeal was granted by the State Board of Examiners. That decision was formalized in an Order dated December 16, 2021. (Exhibit R-2.)
5. In 2023, appellant applied for a third two-year renewal of his provisional certificate. This application was considered during the Board's June 29, 2023 meeting and was denied by Order dated August 4, 2023. (Exhibit R-1.)
6. That decision was appealed by Mr. Finlay on August 25, 2023. (Exhibit R-3.)
7. To date, Mr. Finlay has yet to complete the requirements for a standard certificate.

APPEAL

In his appeal to the Board, Mr. Finlay wrote:

The New Jersey (sic) Dept. of Education State Board of Examiners has denied my application for a provisional certificate "he has not demonstrated enough effort or progress towards completion of the required alternate route program in

the nearly six years since receiving his initial provisional certificate.”

While I have not completed the required course work it isn't from lack of effort. When I originally began pursuing my Teacher of Business: Finance/Economics/Law certificate. I was enrolled through the Rutgers Alternate Route program. After completing Stage II I was informed by the administrators at Brookdale Community College that the Rutgers Alternate Route program was not the recognized alternate route program for this certification. At no point during this process did I have a mentor or anyone to officially guide me through the process. Everything was done by trial and error. And I admit there were many missteps by me during this process but at no point did I stop attempting to complete the process.

I did all I could to become the best teacher I could be. Whenever possible I took additional classes for professional development in order to improve my teaching abilities and expand my knowledge of the materials used for teaching my classes. I immersed myself in the daily life of Bloomfield High. Volunteering to supervise after school activities and coaching multiple sports. I developed a positive rapport with my students. During this time, I continued to receive above average observations from my Principal and Supervisor. I was recommended to be rehired without any hesitation and I was granted tenure on schedule, (which I foolishly assumed couldn't happen if I hadn't completed my alternate route requirements). My Principal and supervisor want me in the building as I complete this process.

Ultimately, I believe teaching is what I am good at and it is what I am supposed to be doing with my life. Teaching young people not just about Personal and Business Finance but teaching them about life. Sharing stories about my mistakes and missteps. Letting them know that if you fall down you get back up and succeed. Perseverance (sic) does payoff! Give me the opportunity to educate. Give me the opportunity to be a positive role model.

I have been in contact with Brookdale Community College and I'm prepared to continue the alternate route process without hesitation or delay.

(Exhibit R-3.)

MOTION

Respondent filed a Motion to Dismiss arguing that there is no legal basis to permit another renewal of appellant's provisional certificate and that same is explicitly barred by N.J.A.C. 6A:9B-8.5 et seq., which provides the Commissioner of Education no discretion in considering the application.

It is argued that the Motion to Dismiss is appropriate here since, per N.J.A.C. 6A:3-1.10, even if appellant's factual allegations are all found to be true, there is no legal basis for his appeal.

Mr. Finlay has not responded to the Motion. However, he did present argument in his initial appeal which will be reviewed below.

TIMELINE

A more visceral view of Mr. Finlay's provisional certificate history is best demonstrated by the following timeline:

September, 2017 – Issuance of two-year provisional certificate

July, 2019 – Grant of application for a first renewal of provisional certificate

Summer/Fall, 2021 – denial of application for a second renewal of provisional certificate

October 28, 2021 – Grant of application for second renewal of provisional certificate on appeal Spring, 2023 – Denial of application for a third renewal of provisional certificate

June 29, 2023 – Denial of appeal of the denial of the application for a third renewal of provisional certificate

August 25, 2023 – Appeal filed with Board of Examiners

LAW AND ANALYSIS

A Motion to Dismiss filed per N.J.A.C. 6A:3-1.5(g) is the functional equivalent of a Motion to Dismiss for Failure to State a Claim filed in civil court per R. 4:6-2(e). Graves v. State Operated Sch. Dist. of Newark & Cami Anderson, 2017 N.J. Super. Unpub. LEXIS 2417 (App Div., September 26, 2017). The Court stated the standard for the granting of same:

When reviewing a Rule 4:6-2(e) motion, a court must determine the adequacy of the pleading and decide whether a cause of action is "suggested" by the facts. Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989) (quoting Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988)). The court must "search[] the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary." *Ibid.* (quoting Di Cristofaro v. Laurel Grove Mem'l Park, 43 N.J. Super. 244, 252 (App. Div. 1957)).

Id. at *7.

The rules covering the renewal of provisional teaching certificates is N.J.A.C. 6A:9B-8.5, which reads as follows:

(a) The school district may recommend a provisional teacher for renewal of the teacher's two-year provisional certificate if the candidate has not yet completed the requirements for the standard certificate within the first two years of employment, pursuant to N.J.A.C. 6A:9A-8.7.

1. A provisional teacher who meets the criteria at (a) above but is not renewed for employment within the same school district following the two-year provisional certificate may seek and accept, under the same endorsement, a position with another school district, pursuant to N.J.A.C. 6A:9B-8.4(d).

(b) Except as indicated at N.J.A.C. 6A:9B-8.8, 10, and 11¹, a candidate shall meet the following requirements to be eligible for one renewal of a provisional certificate:

1. Hold a CE or CEAS in the endorsement area required for the teaching assignment;
2. Be employed or accept an offer of employment in a position that requires an instructional certificate;
3. Complete a district mentoring program;
4. Be enrolled in or have completed a CE educator preparation program, if the candidate has a CE; and
5. Be recommended for renewal by the candidate's principal pursuant to N.J.A.C. 6A:9B-8.6.

(c) The two-year provisional certificate may be renewed twice for a maximum provisional period of six years if the candidate fulfills the renewal requirements at (b) above and one of the following criteria:

1. Holds a CE with a teacher of students with disabilities endorsement, or a CE with a bilingual/bicultural endorsement, and a CE with an endorsement appropriate to the subject or grade level to be taught; or holds a CE with an English as a second language endorsement. The duration of the CE educator preparation program and required coursework for the endorsement(s) also extends beyond the four-year provisional period; or
2. Does not receive from the school district, by July 31 of the fourth year, the annual summative rating as required for a standard certificate, pursuant to N.J.A.C. 6A:9B-8.4.

(d) A candidate issued a temporary instructional certificate, pursuant to N.J.A.C. 6A:9B-8.10, shall not be eligible for a renewal of a temporary provisional certificate in the specific endorsement area issued pursuant to N.J.A.C. 6A:9B-8.4(f)

¹ None of which apply in this instance.

It should also be noted that per N.J.A.C. 6A:9B-8.4(c):

A provisional certificate shall last a maximum of two school years and shall expire on July 31 of the second year regardless of issuance date.

PRIOR ORDERS

December 26, 2021

After the initial denial of Mr. Finlay's second renewal application, he appealed to the State Board of Examiners. This was considered during its meeting of October 28, 2021 and the appeal was granted by Order dated December 16, 2021. The substance of the Order reads as follows;

Finlay requests that the Board grant him the renewal so that he can finish the alternate route coursework required for standard certification. In his narrative statement to the Board, Finlay stated that when he started the alternate route program, he was required to repeat the pre-professional service course as the course he previously completed was not approved. He further stated that he did not restart the program due to personal and financial issues as well as hesitancy to restart during the COVID-19 pandemic. Finlay further stated that he is now working to complete the program at Brookdale Community College and hopes to be finished by the start of the 2022 school year.

Finlay was present at the Board meeting on October 28, 2021. The Board asked Finlay when he anticipated completing the alternate route coursework and he stated he would be finished by the end of this school year in June 2022.

After full consideration of Finlay's submission, the Board finds that his demonstrated progress towards completing the alternate route program despite the challenges he faced warrants the renewal of his provisional certificate for one year. As Finlay anticipates completing the program in June 2022, this will give him ample time to do so.

The Board's finding is limited to this particular set of facts and circumstances and is intended as a one-time only, limited issuance of the additional provisional. The Board reserves all rights and maintains all discretion regarding future requests for issuance of an additional provisional certificate beyond the express limitations in regulation(s).

[Exhibit R-2.] (Emphasis in original)

August 4, 2023

At or about the time of the expiration of the one-year extension, Mr. Finlay applied for another renewal of his provisional certificate. This application was considered by the Board during its meeting of June 29, 2023 and was formally denied by Order dated August 4, 2023. The substance of the Order reads as follows;

Finlay was present at the meeting on June 29, 2023, but the Board had no questions of him.

In December, 2021, the Board granted Finlay an additional provisional renewal beyond the limits in N.J.A.C. 6A:9B-8.5(c) because he needed time to complete the alternate route program and he anticipated completing the program in 2022. In his current request, Finlay requests an additional provisional renewal as he still has not completed the alternate route program. He admits that he procrastinated in restarting the program and offers no explanation why he was unable to complete the program within the anticipated time frame he gave to the Board when he was granted his last provisional renewal.

The Board notes that Finlay was initially granted a provisional certificate in September, 2017. The Board finds that Finlay has exceeded the limits on issuance of a provisional certificate and he has not demonstrated enough effort or progress towards completion of the required alternate route program in the nearly six years since receiving his initial provisional certificate. As such, another renewal of his provisional certificate is unjustified.

[Exhibit R-1.]

As detailed above, Mr. Finlay has already been granted two renewals of his provisional certificate, which, per N.J.A.C. 6A:9B-8.5, is the maximum permitted by law. Further, his provisional certificate has covered six school years (2017-18, 2018-19, 2019-20, 2020-21, 2021-22 and 2022-23), also the maximum permitted by the Code. In its December 16, 2021 Order, the Board granted him a one-year extension of his provisional certificate. Interpreting the Order in light of N.J.A.C. 6A:9B-8.4(c), Mr. Finlay's renewed certificate was now valid through July 31, 2023, which would "give him ample time" to complete his required alternate route educational program. (Exhibit R-2.)

However, he did not complete that program and in June, 2023, he returned to the Board having had his application for a third renewal of his provisional certificate denied. This time, the Board found that he had "exceeded the limits on issuance of a provisional certificate and he has not demonstrated enough effort or progress towards completion of the required alternate route program in the nearly six years since receiving his initial provisional certificate." (Exhibit R-1.)

There is next to no case law concerning this issue. However, it was addressed in Cash v. New Jersey Dept. of Educ.; OAL Dkt. No. EDU 01325-23 (Initial Decision, July 18, 2023). In Cash, the appellant alleged that he was misinformed by his district employer regarding the necessity for completing various requirements to obtain full certification under the same alternate route program under which Mr. Finlay is seeking certification. His initial provisional certification was issued in August, 2018. After being granted an initial extension through August, 2022, his application for a second extension was denied by the Board the following month.

The Court found that despite Mr. Cash's accomplishments and the fact that he had completed many of the requirements to obtain a full certificate, he simply did not meet the requirements for a second extension. It was noted that neither the judge nor the Board "have the discretion to consider the totality of the circumstances to extend/renew his status." Id. at 5. This decision was affirmed by the Board in Cash v. New Jersey Dept. of Educ., 2023 N.J. Agen. LEXIS 422 (August 22, 2023).

Here, the factual scenario facing Mr. Finlay is even less favorable than that facing appellant in Cash. Whether he was qualified for the second extension or not, Mr. Cash at least had a viable administrative pathway to obtain it. Here, Mr. Finlay has already exhausted both of the options afforded by the Code. I agree with respondent's counsel that given the limitations on the number and duration of the extensions, even if Mr. Finlay had demonstrated good cause for an extension (and, frankly, he has not), as noted in Cash, there is "(no) discretion to consider the totality of the circumstances to extend/review his status."

Given the above, I **FIND** that Mr. Finlay is ineligible for a third extension of his provisional certificate. Ultimately, I **CONCLUDE** that given the respondent's decision to deny appellant's request for the third extension was appropriate and that no facts have been presented to demonstrate that it was unreasonable, arbitrary or capricious.

ORDER

Based on the foregoing, it is hereby **ORDERED** that respondent's Motion to Dismiss be and is hereby **GRANTED** and;

It is further **ORDERED** that Mr. Finlay's appeal be and is hereby **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.



April 9, 2024

DATE

MATTHEW G. MILLER, ALJ

Date Received at Agency:

April 9, 2024

Date Mailed to Parties:
sej

April 9, 2024

APPENDIX

EXHIBITS

FOR APPELLEE:

None

FOR RESPONDENT:

- R-1 Board of Examiners decision (August 4, 2023)
- R-2 Board of Examiners decision (December 16, 2021)
- R-3 Appellant's Petition of Appeal