

New Jersey Commissioner of Education

Final Decision

Jessica Fava-Cutrona,

Petitioner,

v.

New Jersey Department of Education,
State Board of Examiners,

Respondent.

Synopsis

Petitioner challenged the respondent New Jersey State Board of Examiners (SBE) determination to deny her application for a Principal Certificate of Eligibility (Principal CE). The SBE based its decision upon petitioner's failure to satisfy *N.J.A.C. 6A:9B-12.5(a)(4)*, which requires that she "[c]omplete five years of successful educational experience under a valid provisional or standard New Jersey certificate or equivalent out-of-state certificate." Petitioner was employed from 2007 through September 2023 at a non-public parochial school where she held the positions of teacher, vice principal, and principal. However, because she never held a valid provisional or standard New Jersey certificate or equivalent out-of-state certificate, the educational experience she obtained while working at the non-public school failed to satisfy the requirements of *N.J.A.C. 6A:9B-12.5(a)(4)*. Petitioner asserted that her prior teaching experience, if fully reviewed, does meet the teaching experience standard, had it occurred under a provisional certificate. She also asserted that a full review of her teaching experience would show that she meets the requirements for the issuance of a Principal CE under *N.J.A.C. 6A:9B-12.5(a)(4)*. The SBE filed a motion to dismiss, contending that it cannot waive certification requirements.

The ALJ found, *inter alia*, that: petitioner failed to meet her burden of demonstrating, by a preponderance of evidence, that she is entitled to the Principal CE; in fact, petitioner admitted that she does not meet the regulatory requirements as written; petitioner's arguments regarding the comparability of her work experience at the non-public school to the five years of experience required under *N.J.A.C. 6A:9B-12.5(a)(4)* was without merit, as was her contention that certification requirements are a technicality that can be overlooked. The ALJ concluded that the SBE cannot waive certification requirements and therefore its decision to deny petitioner's application for a Principal CE was reasonable and consistent with governing regulations. Accordingly, the SBE's motion to dismiss was granted.

Upon review, the Commissioner, *inter alia*, concurred with the findings and conclusions of the ALJ, and adopted the Initial Decision as the final decision in this matter. In so doing, the Commissioner noted that the SBE's decision to deny her application for a Principal CE was reasonable, appropriate, and consistent with regulatory requirement; further, petitioner is not at liberty to rewrite the SBE's certification requirements, and neither is the SBE at liberty to waive them. 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>

306-24
OAL Dkt. No. EDU 09743-23
Agency Dkt. No. 225-8/23

New Jersey Commissioner of Education
Final Decision

Jessica Fava-Cutrona,

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v.

New Jersey Department of Education,
State Board of Examiners,

Respondent.

The record in this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by petitioner pursuant to *N.J.A.C. 1:1-18.4*, and the Board's reply thereto, have been reviewed and considered.

Petitioner challenges the Board's August 4, 2023, denial of her application for a Principal Certificate of Eligibility (Principal CE). She presently holds a Teacher of English Certificate of Eligibility with Advanced Standing. Petitioner worked at a non-public parochial school from 2007 until September 2023, where she held the positions of teacher, vice principal, and principal. She now seeks to work as a principal in a public school, which requires a Principal CE.

It is undisputed that petitioner meets all but one of the requirements for issuance of a Principal CE, specifically *N.J.A.C. 6A:9B-12.5(a)(4)*, which requires that she "[c]omplete five years of successful educational experience under a valid provisional or standard New Jersey certificate or equivalent out-of-state certificate." Because petitioner has never held a valid provisional or standard New Jersey certificate or equivalent out-of-state certificate, her educational experience obtained

while working at the non-public school failed to satisfy that requirement. Consequently, the Board denied her application for a Principal CE.

In response to petitioner's appeal of the Board's decision, the Board filed a motion to dismiss, asserting primarily that it cannot waive certification requirements. *N.J.A.C. 6A:5-1.3(a)(1)(i)*. Petitioner filed opposition, and the Administrative Law Judge (ALJ) heard oral argument on the motion. As detailed in the Initial Decision, the ALJ found that petitioner failed to meet her burden of demonstrating, by a preponderance of evidence, that she is entitled to the Principal CE. Indeed, the ALJ found that petitioner admits that she does not meet the regulatory requirements as written.

In addition, the ALJ rejected petitioner's argument that her work experience at the non-public school was comparable to the five years of experience required under *N.J.A.C. 6A:9B-12.5(a)(4)* and should, in essence, be substituted for same—even though she did not hold a provisional or standard certificate during that time as required by the regulation. The ALJ also rejected petitioner's contentions that certification requirements are a mere technicality that can be overlooked, and that she received disparate treatment from the Board as compared to out-of-state applicants. Ultimately, the ALJ found that the Board cannot waive certification requirements and that, therefore, its decision to deny petitioner's application for a Principal CE was reasonable and consistent with governing regulations. Accordingly, the ALJ granted the Board's motion to dismiss the petition of appeal.

In her exceptions, petitioner reiterates the arguments she made below that were already considered and rejected by the ALJ, i.e., that: (1) the Board "failed to look past the technicality of whether she held the provisional certification during the time that she obtained the necessary years of teaching experience"; and (2) she received disparate treatment from the Board in that "the Board afforded her less consideration than out-of-state applicants." Exceptions at 7-8. Petitioner additionally asserts, without citing any legal authority for same, that her Teacher of English Certificate

of Eligibility with Advanced Standing “further supports [her] application that she has met her teaching experience requirement for issuance of a Principal CE.” *Id.* at 8.

In response, the Board argues that the Commissioner should adopt the ALJ’s Initial Decision because the ALJ correctly concluded that the Board’s determination was consistent with the applicable statutory and regulatory provisions. The Board also asserts that petitioner’s exceptions restate the same arguments already rejected by the ALJ and emphasizes that petitioner’s mere disagreement with the outcome does not advance a cause of action.

Petitions are subject to dismissal by the Commissioner “on the grounds that the petitioner has advanced no cause of action even if the petitioner’s factual allegations are accepted as true.” *N.J.A.C.* 6A:3-1.10. This standard also appears in *New Jersey Court Rule* 4:6-2(e), which permits a motion for judgment on the pleadings for failure to state a claim upon which relief can be granted. *See Wadley v. N.J. Dep’t of Educ., Office of Student Prot.*, OAL Dkt. No. EDU 09223-22, Initial Decision at 4-5 (Mar. 10, 2023), *adopted*, Commissioner Decision No. 110-23 (Apr. 1, 2023) (assessing respondent’s motion to dismiss pursuant to *N.J.A.C.* 6A:3-1.10 under the standards used by courts when analyzing *Rule* 4:6-2 motions). The petition must contain factual “allegations, which, if proven, would constitute a valid cause of action.” *Sickles v. Cabot Corp.*, 379 *N.J. Super.* 100, 106 (App. Div. 2005) (quoting *Leon v. Rite Aid Corp.*, 340 *N.J. Super.* 462, 472 (App. Div. 2001)). Ultimately, a petition must be dismissed for failure to state a claim “if it has failed to articulate a legal basis entitling [petitioner] to relief.” *Ibid.*

Pursuant to *N.J.S.A.* 18A:6-38, the Legislature entrusted the Board with issuance of appropriate certificates to teachers, administrators, and other certificated staff. Petitioner bears the burden of proving, by a preponderance of evidence, that she satisfies the statutory and regulatory requirements for issuance of a certificate. *In re Polk License Revocation*, 90 *N.J.* 550, 561 n.1 (1982);

McQuilken v. N.J. Dep't of Educ., State Bd. of Exam'rs, OAL Dkt. No. EDU 8375-11 (Initial Decision at 7), Commissioner Decision No. 34-12 (Jan. 27, 2012). “[A] decision by the Board denying an application for a certificate is not entitled to the arbitrary, capricious or unreasonable standard of review that is afforded to appeals filed under *N.J.A.C. 6A:4*, challenging a decision of the Board revoking or suspending a certificate.” *Nimczyk v. N.J. Dep't of Educ., State Bd. of Exam'rs*, Commissioner Decision No. 98-22 (May 16, 2022), at 2. Instead, “the appropriate standard of review . . . is whether the decision is consistent with the applicable statutory and regulatory provisions.” *Id.* at 2-3.

Upon review, the Commissioner concurs with the findings and conclusions of the ALJ. Even assuming the facts as alleged by petitioner are true, she has failed to articulate a legal basis for the relief she seeks. Because it is uncontested that petitioner does not possess “five years of successful educational experience under a valid provisional or standard New Jersey certificate or equivalent out-of-state certificate” as is required by *N.J.A.C. 6A:9B-12.5(a)(4)*, the Board’s decision to deny her application for a Principal CE was reasonable, appropriate, and consistent with regulatory requirements. Petitioner is not at liberty to rewrite the Board’s certification requirements, and the Board is not at liberty to waive them. See *Hutchinson v. New Jersey State Board of Examiners*, OAL Dkt. No EDU 16373-12, Initial Decision (April 5, 2013), adopted, Commissioner Decision No. 177-13 (May 15, 2013) (holding that the Board is not at liberty to waive applicable regulatory requirements when deciding whether to issue certificates and endorsements).

Petitioner’s exceptions lack merit. As explained above, the Board is simply not permitted “to look past the technicality” of the regulatory requirement found at *N.J.A.C. 6A:9B-12.5(a)(4)*. Furthermore, petitioner’s contention that the Board gave less consideration to petitioner’s application than it would have given an out-of-state applicant is speculative at best. Moreover, her

assertion that her Teacher of English Certificate of Eligibility with Advanced Standing supports her position that she has met her teaching experience requirement for issuance of a Principal CE is unsupported by the relevant regulations. As stated, *N.J.A.C. 6A:9B-12.5(a)(4)* mandates that the requisite five years of successful education experience be obtained “under a valid provisional or standard New Jersey certificate or equivalent out-of-state certificate.” A Teacher of English Certificate of Eligibility with Advanced Standing is neither a valid provisional nor a standard New Jersey certificate. See *N.J.A.C. 6A:9-2.1* (distinguishing between a certificate of eligibility, a provisional certificate, and a standard certificate).

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the Board’s motion to dismiss the petition of appeal is granted.

IT IS SO ORDERED.¹



ACTING COMMISSIONER OF EDUCATION

Date of Decision: August 23, 2024
Date of Mailing: August 26, 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
RESPONDENT'S MOTION TO
DISMISS

OAL DKT. NO.: EDU 09743-23

AGENCY DKT. NO. 225-8/23

JESSICA FAVA-CUTRONA,

Petitioner,

v.

NEW JERSEY DEPARTMENT OF EDUCATION,

BOARD OF EXAMINERS,

Respondents.

Daniel E. Dugan, Esq., for petitioner (Stewart Lee Karlin Law Group. P.C.,
attorneys)

Amna T. Toor, Deputy Attorney General for respondent (Matthew J. Platkin,
Attorney General of New Jersey, attorneys)

Record Closed: April 3, 2024

Decided: July 10, 2024

BEFORE **WILLIAM COURTNEY**, ALJ:

FACTUAL DISCUSSION

Petitioner Jessica Fava-Cutrona worked at Immaculate Conception High School (“ICHS”), a non-public parochial school, from 2007 through September of 2023 when ICHS closed due to lack of enrollment. While employed at ICHS she served in the positions of teacher, vice principal and principal. Petitioner holds a New Jersey teacher of English certificate of eligibility with advanced standing and obtained a master’s degree in education leadership. After ICHS closed petitioner was offered and accepted a leadership position in a public school. She is now seeking to pursue a position as principal in a public school which requires an applicant to possess a Principal Certificate of Eligibility (“Principal CE”).

N.J.A.C. 6A:9B-12.5 (a)(1)-(4) requires that a candidate seeking a Principal CE must hold a master’s degree, complete a 300-hour internship, pass a Department-approved examination, and relevant here, complete “five years of successful educational experience under a valid provisional or standard New Jersey certificate or equivalent out-of-State certificate.” Upon review of her application, the Department¹ found that petitioner satisfied the regulatory requirements for obtaining a Principal CE, except for the requirement under N.J.A.C. 6A:9B-12.5 (a)(4) that she complete five years of successful educational experience under a valid provisional or standard certificate.

Petitioner’s application was denied by the Board on August 4, 2023. In its decision, the Board noted that petitioner’s employer was not required to apply for provisional certification for her and provide a pathway to standard certification, which includes participation in a Department-approved mentoring program, a non-public school may still choose to provide a mentoring program pursuant to N.J.A.C. 6A:9B-8.9. If petitioner anticipated that she would one day seek a position as the principal in a public school, she could have requested her employer participate in a Department -approved mentoring

¹ The Office of Certification and Induction within the Department of Education initially reviews and evaluates information relating to an applicant’s eligibility for certification.

program and apply for her provisional certification so that she would have completed five years of successful educational experience under a provisional or standard certificate.

The Board asserted that it cannot waive certification requirements (*citing* N.J.A.C. 6A:5-1.13(a)(1)(i)), instead informing Ms. Fava-Cutrona that her option for obtaining a Principal CE would be to repeat five years of successful educational experience by seeking employment under her Teacher of English CEAS, securing a provisional certificate, and eventually a standard certificate, to secure five years' experience under a provisional or standard certificate.

Petitioner maintains she is not arguing ignorance of the requirements for the issuance of a Principal CE as the basis for setting forth a viable cause of action as the Board asserts. Instead, as she asserted in her application and on appeal, her prior teaching experience, if fully reviewed, does meet the teaching experience standard had it occurred under a provisional certificate. She also asserts that a full review of her teaching experience would show that she meets the requirements for the issuance of a Principal CE under N.J.A.C. 6A:9B-12.5(a)(4).

LEGAL ANALYSIS

The standards for granting or denying a motion to dismiss for failure to state a claim in an administrative proceeding are identical to those governing similar motions in the Superior Court. Compare N.J.A.C. 6A:3-1.10 with R. 4:6-2(e); See also Sloan v. Klagholtz, 342 N.J. Super. 385, 393-94 (App. Div., 2001).

When reviewing a motion to dismiss pursuant to R. 4:6-2(e), the court's inquiry is "limited to examining the legal sufficiency of the facts alleged on the face of the complaint." Printing Mart - Morristown v. Sharp Electronics Corp., 116 N.J. 739, 746 (1989). the petitioner is required to plead facts and give detail of a cause of action. Once filed, "a complaint may be dismissed for failure to state a claim if it fails to articulate a legal basis

entitling plaintiff to relief.” Hoffman v. Hampshire Labs, Inc. 405 N.J. Super.105 (App. Div., 2009) quoting Sickles v. Cabot Corp., 379 N.J. Super. 100 (App. Div. 2005).

While a complaint may be entitled to liberal reading, it must allege facts that give rise to to a legal cause of action; mere conclusions cannot suffice. Pressler and Venero, N.J. Court Rules, cmt.1 on R. 4-5-2 (2022) citing Glass v. Suburban Restoration Co., 317 N.J. Super. 574, 582 (App. Div., 1998). Although the standard is a “generous one” for a plaintiff, a pleading will be dismissed if it states no basis for relief and discovery will nor provide one. Green v. Morgan Props., 215 N.J. 431, 451 (2011); Rezem Family Associates, L.P., v. Borough of Millstone, 423 N.J. Super. 103, 113 (App. Div., 2011). A party cannot satisfy its obligation to identify a cognizable claim with conclusory or vague allegations. Delbridge v. Office of the Public Defender, 238 N.J. Super. 288, 314 (App. Div., 1989).

In the case at bar, there is no dispute that the petitioner meets all of the requirements for the Principal CE with the exception of N.J.A.C. 6A:9B-2.5(a)(4) which requires that she complete 5 years of successful educational training under a valid provisional or standard certificate. There is also no dispute that petitioner’s educational training took place in a parochial school that lacked the required provisional or standard certificate.

The gravamen of petitioner’s argument on appeal is that this tribunal should view the education training she received in the non-certified parochial school program as comparable to the training she would have received if she had worked in a school that held the required standard or provisional certificate. In support of this contention, the petitioner points to the Board’s finding that the petitioner’s years of experience as a teacher and a principal in the non-public school to be noteworthy. The Board did however indicate, that while they were they were sympathetic to her position, they could not waive the certificate requirement.²

² The Board cited N.J.A.C. 9B-8.9 which sets forth the requirements needed to be met in order for a non - public school to provide a mentoring program for novice teachers.

I agree with respondent's argument that petitioner has failed to proffer any information that was not considered by the Board or any argument as to why the Board's denial application was inconsistent with the governing statutory provisions.

Petitioner points out that she could not have applied for a provisional certificate while she worked at ICHS because it is the choice of the non-public school whether to provide a mentoring program pursuant to N.J.A.C. 6A:9B-8.9. She then concludes that because ICHS was not required to apply for a provisional certification and thus provide a pathway to certification, she maintained that the Board, in its decision, improperly shifted that responsibility and makes the denial of petitioner's application arbitrary and capricious. I disagree.

Just because the Board pointed out to petitioner that there was a way for ICHS to obtain the provisional certificate while she worked there and that she always had the option of obtaining her 5 years of experience in a public school setting, I **FIND** that this observation does not amount to an improper shifting of any burden or responsibility to the petitioner. As respondent correctly asserts, It is the petitioner's burden to demonstrate by a preponderance of the evidence that she is entitled to the certificate she is entitled to the certificate she seeks. McQuilken v. St. Bd. of Examiners, OAL Dkt. No. EDU 08375-2011, 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). Petitioner has not only failed to meet this burden, but she also acknowledges that she does not meet the requirements for a Principal CE. Accordingly, the Board's decision to deny petitioner's application is not, as petitioner maintains, arbitrary and capricious.

I also **FIND** that compliance with the certification requirements is not, as petitioner suggests, a mere technicality that can be overlooked. The Board cannot waive certification requirements. See N.J.A.C. 6A:5-1.3(a)1(i) (declaring the "[c]ertification requirements of N.J.S.A. 18A:26-2 shall not be violated").

Petitioner also challenges the Board's refusal to consider whether her five years of teaching experience at ICHS was equivalent to the teaching experience she would have received had she been working under a provisional or standard certificate. Petitioner maintains that a full review of her teaching experience at ICHS under what she claimed to be the "equivalent of a provisional certificate" satisfies the requirement under N.J.A.C. 6A:9B-12.5(a)(4) that she complete those five years of successful educational experience under a provisional or standard New Jersey certificate or "**equivalent out-of-state certificate**". *Id.* [emphasis added]. She also argues that it would be improper to consider the equivalency of an out-of-state applicant's education training and not consider the equivalency of the training she received at a parochial school within New Jersey.

After a full review of the comparison petitioner is making between herself and out-of-state applicants, I **FIND** her assertions of disparate treatment to be unfounded. Under N.J.A.C. 6A:9B-12.5(a)(4), if an out-of-state applicant did not obtain their five years of educational experience under an equivalent out-of-state certificate, the five years of experience would not satisfy the regulation's requirement. There has also been no evidence offered to prove New Jersey would independently evaluate whether the out-of-state applicant's five years of teaching experience in a non-certified setting was the equivalent to that received under a standard or provisional New Jersey certificate. New Jersey's willingness to accept the educational experience of an out-of-state applicant takes place under a Principal certification program equivalent to that of New Jersey's is based on the equivalency of the other state's program to that of New Jersey's and is not a case-by-case determination as to whether a non-certified program meets the requirements of a provisional or standard certificate. There has been no credible evidence presented in this case that supports petitioner's assertion that being taught under "the equivalent of a provisional certificate" satisfies the requirement under N.J.A.C. 6A:9B-12.5(a)(4) that the required educational experience be obtained under a provisional or standard New Jersey certificate or "equivalent out-of-state certificate".

For the reasons set forth above, I **CONCLUDE** that petitioner has failed to meet her burden to show by the preponderance of the evidence that the Board improperly denied her Principal CE. I further **CONCLUDE** that the Board's decision to deny petitioner's application was reasonable and consistent with its governing regulations. Because the petitioner has failed to advance a cause of action that the Board's decision was otherwise inconsistent with applicable statutory and/or regulatory provisions, I **CONCLUDE** that petitioner's appeal should be dismissed.

ORDER

Accordingly, it is **ORDERED** that Respondent's motion to dismiss is **GRANTED** and this matter 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.



July 10, 2024

DATE

WILLIAM COURTNEY, ALJ

Date Received at Agency:

Date Mailed to Parties:

db

APPENDIX

List of Moving Papers

1. August 4, 2023 Decision of the New Jersey Dept. of Educ. Bd. of Examiners Denying petitioner's Application for a Principal CE
2. September 15, 2023 Brief in Support of Respondent's Motion to Dismiss
3. November 26, 2023 Brief in Opposition to Motion to Dismiss
4. January 4, 2024 Brief in Reply to Petitioner's Opposition to Motion to Dismiss
5. Oral argument of the parties on Motion to Dismiss April 3, 2024