

New Jersey Commissioner of Education**Final Decision**

Nware Burge,

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 his provisional teaching certificates, which were first issued in 2016. The SBE filed a motion to dismiss, arguing that there is no legal basis to permit another renewal of petitioner's provisional certificates and that such action is explicitly barred by *N.J.A.C. 6A:9B-8.5 et seq.*

The ALJ found, *inter alia*, that: petitioner was issued his first provisional certificate in 2016; it was then renewed for two years in August 2018 and again, in October 2020, for another two years; the last renewal expired in July 2022; petitioner requested another renewal of his provisional certificate in 2023, which was rejected by the SBE in January 2024; after filing the within appeal, petitioner appeared for an initial conference but then failed to appear for two subsequent telephone conferences and further failed to offer any explanation for his failure to appear; he also failed to oppose the SBE's motion to dismiss; the SBE noted in its order denying petitioner's request for a third renewal that a full certificate had not been granted under his previous provisional certificates because petitioner had failed to earn sufficient "effective" or "highly effective" ratings in the evaluation process; and *N.J.A.C. 6A:9B-8.5(c)* states that "The two-year provisional certificate may be renewed twice for a maximum provisional period of six years...". The ALJ concluded that the SBE's decision to deny petitioner's request for a third extension was not arbitrary, capricious, or unreasonable. 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.

436-24
OAL Dkt. No. 08755-24
Agency Dkt. No. 171-5/24

New Jersey Commissioner of Education

Final Decision

Nware Burge,

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 concurs with the Administrative Law Judge 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: November 21, 2024
Date of Mailing: November 22, 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

DISMISSAL

OAL DKT. NO. EDU 08755-24

AGENCY DKT. NO. 171-5/24

NWARE BURGE,

Petitioner

v.

NEW JERSEY DEPARTMENT OF EDUCATION,

STATE BOARD OF EXAMINERS,

Respondent.

Nware Burge, pro se

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

Record Closed: October 11, 2024

Decided: October 23, 2024

BEFORE: **MATTHEW G. MILLER, ALJ**

STATEMENT OF THE CASE

Appellant, Nware Burge appeals the March 1, 2024 denial of his third renewal request of his provisional teaching certificates that had first been issued in 2016, then

renewed for two years in August, 2018 and then for an additional two years in October, 2020.

PROCEDURAL HISTORY

In October 2016, petitioner, Nware Burge, was issued provisional teacher's certificates in Social Studies and Students with Disabilities. Those certificates were first renewed by the New Jersey State Board of Examiners in August 2018 and then again in October 2020, with that renewal expiring in July 2022. In 2023, Mr. Burge requested another renewal of his provisional certificates. That request was denied during the meeting of January 19, 2024 and that decision was ratified on March 1, 2024.

On May 29, 2024, Mr. Burge emailed a Petition for Appeal to the State Department of Education's Office of Controversies & Disputes ("OCD"). That appeal was transmitted to the Office of Administrative Law ("OAL") where it was received on June 26, 2024 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 June 16, 2024, 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 August 15, 2024 at which time, after a detailed discussion of the case, a briefing schedule was set with Mr. Burge being given until September 19, 2024 to either hire an attorney, file opposition to the Motion to Dismiss or withdraw his appeal. A follow-up telephone conference was scheduled for September 19, 2024 and Mr. Burge failed to appear or contact the Court. The matter was scheduled for another telephone conference on October 11, 2024 and Mr. Burge similarly failed to appear or contact the Court.

Having given Mr. Burge more than sufficient time in which to communicate with the Court and having not heard from him, the record on the Motion was formally closed on October 21, 2024.

INITIAL FINDINGS OF UNDISPUTED FACT

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

1. In October 2016, appellant, Nware Burge was issued provisional Teacher of Social Studies and Teacher of Students with Disabilities (“TOSD”) certificates by the State Board of Examiners as well as Certificates of Eligibility with Advanced Standing (“CEAS”) in both areas.
2. Per N.J.A.C. 6A:9B-8.5(a), in August 2018 and October 2020, Mr. Burge’s provisional certificates were renewed since he had not yet completed the requirements for the standard certificates. The last renewal expired in July, 2022.
3. During the 2016-17, 2017-18 and 2018-19 school years, Mr. Burge was employed by the Camden School District. In the 2019-20 and 2020-21 school years, he worked at the LEAD Charter School in Newark. After taking a break from working in the public school system, Mr. Burge was hired by Barringer High School in Newark as a substitute teacher.
4. On or about December 20, 2023, Mr. Burge applied for another two-year renewal of his certificates. That application was initially denied since he had failed to earn two consecutive summative evaluations of “effective” or “highly effective”.
5. Mr. Burge appealed that denial and at its January 19, 2024 meeting, that appeal was denied by the State Board of Examiners. That decision was formalized in an Order dated March 1, 2024. (Exhibit R-2.)
6. That decision was appealed by Mr. Burge on or about May 29, 2024. (Exhibit R-3.)

7. To date, Mr. Burge has yet to complete the requirements for standard certificates and he has failed to oppose the Board's Motion to Dismiss.

APPEAL

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

My name is Nware R. Burge and I am sending in another appeal because I did not disclose the direct affect and reasons for the ineffective and partial effective evaluation ratings. From 2016 to 2022, I have been in a constant and consistent court battle for custody of my children as well as divorce proceedings. So much so that I enclosed a letter from a New York State Senator who gave me support during these trying times. To add, as an educator and documentary filmmaker, I recently completed a film titled: "For Mothers who won't let Fathers see their Children" which discusses some of the lows that fathers endure due to such tragedy. I will add the link to documentary for record evidence. During this period, this stressful ordeal directly affected my attendance as well as evaluations, reviews, and meetings. I have added some of the judicial documentation as evidence and records.

I did not wish to disclose this information for the initial State appeal due to the private and personal nature of this matter. I also did not disclose these records as I felt that my resume, bio and years of experience and accomplishments as an educator in urban schools, programs, and high ed., would serve as good merits. Because of my time away from teaching in High School, to work as an Adjunct Professor, I did not have access to any former records. To add there was a lack of correspondence for records as I consistently sent emails and made calls for records with no correspondence. The only records I found was a copy of an effective rating that I luckily and randomly copy and posted from an old computer.

Since 2021 I have gained valuable teaching knowledge as I continue to teach, work and live in an urban setting. I am also in a better mental space regarding my child custody and divorce. If given a successful appeal and a provisional certificate so that I can eventually earn my standard certificate, I will only receive effective rating which will in turn allow me to continue teaching and serving communities of need. I hope that the committee understands the severity of the evidence given and how it directly impacts my evaluations.

(Exhibit P-1.)

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. Burge 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. Burge's provisional certificate history is best demonstrated by the following timeline:

October, 2016 – Issuance of two-year provisional certificates

August, 2018 – Grant of application for a first renewal of provisional certificates

October, 2020 – Grant of application for a second renewal of provisional certificates

July, 2022 – Expiration of second renewal of provisional certificates

December 20, 2023 – Application for a third renewal of provisional certificates

January 19, 2024 – Denial of application for a third renewal of provisional certificates

March 1, 2024 – Formal decision denying the third renewal of provisional certificates

May 29, 2024 – 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., Sept. 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.

¹ None of which apply in this instance.

(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)

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.

MARCH 1, 2024 ORDER

On or about December 20, 2023, more than a year following the expiration of his second two-year extension in July, 2022, Mr. Burge applied for another renewal of his provisional certificates. This application was considered by the Board during its meeting of January 19, 2024 and was formally denied by Order dated March 1, 2024. In that Order, the Board cited the relevant administrative code provisions and noted that the Office of Certification's records reflect the following summative ratings;

- 2016-2017 school year: Partially Effective
- 2017-2018 school year: Effective
- 2018-2019 school year: Ineffective
- 2019-2020 school year: Partially Effective
- 2020-2021 school year: Ineffective

The Board noted his two prior provisional certificate renewals (in August, 2018 and October, 2020), with a full certificate not being granted given his failure "to earn a second effective or highly effective rating" in the relevant time period.

The substance of the Order reads as follows;

While Burge does not address his ratings directly in his submission, he included his effective rating from Camden for the 2017-2018 school year as well as favorable observations and evaluations as an adjunct professor at Essex County College, Kean University, and the City University of New York. As the observations and evaluations as an adjunct professor do not constitute formal ratings as a K-12 public school setting, the Board cannot consider them to meet the regulatory requirement in N.J.A.C. 6A:9B-8.6(b). Furthermore, the Board notes that Burge has exceeded the limitation of two renewals of his provisional certificates set forth in N.J.A.C. 6A:9B-8.5(c).

As Burge only earned one effective rating during his five years of teaching in public schools and has already been given two renewals of his provisional certificates which gave him sufficient time to earn the required ratings, the Board will not grant Burge an additional renewal of his provisional Teacher of Social Studies and TOSD certificates.

[Exhibit R-1.]

As detailed above, Mr. Burge 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 (2016-17, 2017-18, 2018-19, 2019-20, 2020-21 and 2021-22), also the maximum permitted by the Code.

While there is little relevant law concerning this issue, it was addressed in Cash v. New Jersey Dept. of Educ.; OAL Dkt. No. EDU 01325-23 (Initial Decision, July 18, 2023), *aff'd*. Comm'r, 2023 N.J. Agen. LEXIS 422 (Aug. 22, 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 alternate route program. 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 Commissioner in Cash v. New Jersey Dept. of Educ., 2023 N.J. Agen. LEXIS 422 (Aug. 22, 2023). See also Finlay v. New Jersey Dept. of Educ., OAL Dkt. No. EDU 09353-23 (Initial Decision, Apr. 9, 2024), aff’d Comm’r, 2024 N.J. Agen. LEXIS 226 (May 15, 2024).

In his appeal to the Board, Mr. Burge advises that he “did not disclose the direct affect and reasons for the ineffective and partial effective evaluation ratings” that he received. Those included a divorce and a child custody dispute, evidence of which he has supplied. These issues “directly affected (his) attendance as well as evaluations, reviews, and meetings.” He also claimed to have been unable to access “any former records”, except, perhaps not coincidentally, the only “effective” summative review rating he received.

Finally, he argues that since 2021, he has “gained valuable teaching knowledge...in an urban setting” and the outside stressors in his life have eased. He truly believes that if given the opportunity, he would “only receive effective ratings”, which would allow him “to continue teaching and serving communities of need.”

Here however, the factual scenario facing Mr. Burge 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, similar to the appellant in Finlay, Mr. Burge has already exhausted all 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. Burge 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. Burge 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 or that it was inconsistent with the applicable statutory and regulatory provisions. Walder v. New

Jersey Dept. of Educ., St. Bd. of Exam'rs, 2014 N.J. Agen. LEXIS 1259 at *4-*5 (Dec. 29, 2014)

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. Burge'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.



October 23, 2024

DATE

MATTHEW G. MILLER, ALJ

Date Received at Agency:

October 23, 2024

Date Mailed to Parties:
sej

October 23, 2024

APPENDIX

EXHIBITS

FOR APPELLEE:

None

FOR RESPONDENT:

- R-1 Board of Examiners decision (March 1, 2024)
- R-2 Petitioner's Credential Review Summary Appeal Packet (December 20, 2023)
- R-3 Petitioner's Petition of Appeal (May 29, 2024)