

New Jersey Commissioner of Education
Final Decision

Philip Brady,

Petitioner,

v.

New Jersey Department of Education, State Board
of Examiners,

Respondent.

The record of 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 respondent's reply thereto, have been reviewed and considered.

This matter involves the State Board of Examiners' (Board) denial of petitioner's application for a Teacher of Marketing Certificate of Eligibility (CE). The Legislature authorized the Board to issue teaching certificates, including CEs, to successful applicants. *N.J.S.A. 18A:6-38*. A "certificate of eligibility" is "a certificate with lifetime validity issued by the State Board of Examiners to candidates who meet degree, academic, and applicable test requirements for teacher certification." *N.J.S.A. 18A:26-2a*. Among other requirements, a candidate for a CE must satisfy the endorsement requirements established by *N.J.A.C. 6A:9B-9*, including "completing the required subject-area course requirements." *N.J.A.C. 6A:9B-8.3(a)(4)*.

In particular, the candidate must either complete an undergraduate major in the subject area, hold a graduate degree in the subject area, or complete "at least 30 credits in a coherent sequence

of courses appropriate to the subject area as documented by an official transcript from an accredited college or university, of which 12 semester-hour credits must be at the advanced level of study, including junior-, senior-, or graduate-level study as documented by the official transcript of an accredited college or university.” *N.J.A.C. 6A:9B-9.1(a)(1)*.

If an application for certification is deemed deficient, the candidate may provide the Board with “evidence of alternative education and/or experience that the candidate considers equivalent to any area(s) of deficiency.” *N.J.A.C. 6A:9B-4.12(b)*. “In this instance, the Board does not waive requirements, rather, it determines if the experience and/or study presented is equivalent to the requirements for issuance of the [requested] certificate.” *Hutchinson v. N.J. State Bd. of Exam’rs*, EDU 16373-12, Initial Decision at 13 (Apr. 5, 2013), *adopted*, Commissioner Decision No. 177-13 (May 15, 2013). Specifically, the Board has discretion to determine whether the alternative experience “establishes a one-to-one correspondence” with the requirements for certification. *Ibid.* “The burden is on the applicant to present the information necessary to establish the ‘one-to-one correspondence’ of experience/alternate education to the licensing deficiencies.” *Ibid.*

Petitioner earned a Bachelor’s degree in Liberal Arts, a Graduate certificate in Executive Leadership, and a Master’s degree in Management with a specialization in Organizational Leadership from Regis University. The Board initially denied his application for a Teacher of Marketing CE because he lacked the 12 advanced-level credits in marketing required by *N.J.A.C. 6A:9B-9.1(a)(1)(iii)*. In response, petitioner asked the Board to consider alternative education and work experience as equivalent to the missing coursework pursuant to *N.J.A.C. 6A:9B-4.12(b)*. He asserted that his management courses overlapped with those required for a degree in marketing. Upon review of his submissions, including official transcripts, the Board determined that the leadership and

management courses were not equivalent to the content covered by 12 credits of advanced-level marketing courses.

However, the Board granted petitioner 6 credits in marketing based upon a letter from his former employer, A&S Financial, which stated that he served as the Vice President of Marketing from 1990 through 1996 and led the company's telemarketing and advertising campaign for life and group health insurance. The Board declined to grant any additional credit based upon information petitioner submitted regarding several inventions and his efforts to market them. It cited the fact that the information did not include evidence of sales figures or other information to prove his ability to successfully market his inventions. This meant that although petitioner's appeal was partially granted, he was still 6 credits short of the 12 advanced-level credits required by *N.J.A.C. 6A:9B-9.1(a)(1)(iii)*.

Petitioner contends on appeal that the Board should have granted him the additional 6 credits based upon his alternative coursework, inventions, tradeshow experience, infomercials, and non-profit work. The Board moved to dismiss the petition on the grounds that none of the materials relied upon by petitioner establish that he successfully marketed any inventions or products. Following oral argument, the Administrative Law Judge (ALJ) granted the Board's motion to dismiss upon concluding that the Board's decision was not inconsistent with applicable statutory and regulatory provisions.

Regarding petitioner's alternative coursework in leadership and management, the ALJ found that the course descriptions and transcripts submitted did not establish a one-to-one equivalency to marketing coursework even if there was some overlap between the subject areas. The ALJ reiterated that petitioner never received any degree or certificate in marketing. As for his inventions, the ALJ determined that petitioner "is a very personable and creative designer/inventor who has failed to demonstrate that he has the capacity to either have those products made, or if they are made, to sell

them.” Initial Decision at 11. In particular, the ALJ found that during oral argument, petitioner “essentially admitted that he has never successfully, either by himself or through others, marketed a product.” *Id.* at 12.

While recognizing that petitioner has met with potential investors and endorsers, the ALJ concluded that “there is simply no evidence that he has ever (save for [a] single item from a quarter century ago about which next to no detail has been provided) successfully transformed one of those meetings into the licensing, production and/or sales of a product.” *Id.* at 12-13. Concerning his experience at two trade shows, the ALJ found that the evidence presented was vague. With respect to his non-profit work, the ALJ found that while commendable, it was not a marketing job.

In his exceptions, petitioner continues to express disagreement with the Board’s reasoning in failing to grant him the outstanding 6 advanced-level credits. Without citing any legal authority to support his position, he asserts that the Board’s bias and lack of understanding of current marketing practices, concepts, and trends led them to unfairly and arbitrarily discredit his alternative coursework, inventions, tradeshow experience, infomercials, and non-profit work. He claims that the Board’s bias violated his due process rights and further alleges “potential age discrimination” by the Board.

In response, the Board argues that petitioner does not dispute the facts but rather repeats the same arguments he advanced before the ALJ. It maintains that its decision was reasonable and consistent with applicable statutory and regulatory provisions. It emphasizes that only the Board has authority to determine what alternative education or experience it considers equivalent to missing coursework under *N.J.A.C. 6A:9B-4.12(b)*. It reiterates that petitioner did not demonstrate knowledge of how to market products or inventions in the retail market.

Upon review, the Commissioner holds that the Board’s decision is consistent with applicable statutory and regulatory provisions. At the outset, “[i]t is important to recognize that 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. State Bd. of Exam’rs*, Commissioner Decision No. 98-22 at 2 (May 16, 2022). Instead, “the appropriate standard of review . . . is whether the [Board’s] decision is consistent with the applicable statutory and regulatory provisions.” *Id.* at 3.¹

It is undisputed that petitioner lacks the “12 semester-hour credits . . . at the advanced level of study, including junior-, senior-, or graduate-level study as documented by the official transcript of an accredited college or university” that are required for the Marketing endorsement. *N.J.A.C. 6A:9B-9.1(a)(1)(iii)*. While the record reflects that he took a course titled Sales Concepts and Practices, the course description was not supplied and petitioner does not assert that it was an advanced-level course taken while he was a junior, senior, or graduate student.

Moreover, petitioner failed to provide sufficient evidence of a one-to-one correspondence between his alternative coursework and experience and the remaining licensure deficiency—6 advanced-level marketing credits. Although one of petitioner’s graduate-level courses, “Persuasion, Influence and Motivation,” may have touched upon persuasion in advertising and marketing, its broad objective was “to enable students to learn and practice powerful persuasion communication skills that will enhance both personal and professional success,” according to documents contained

¹ To the extent the ALJ cited *N.J.A.C. 6A:4* and discussed the arbitrary, capricious, or unreasonable standard of review alongside the appropriate standard of review, that portion of the Initial Decision is modified to clarify that the only appropriate standard of review in this instance is whether the Board’s decision is consistent with the applicable statutory and regulatory provisions. *N.J.A.C. 6A:4* is not relevant to this matter, which was filed pursuant to *N.J.A.C. 6A:3*.

in the record. The evidence presented fails to establish that the Persuasion, Influence and Motivation course was equivalent to an advanced-level marketing course.

Furthermore, the regulations provide that the Marketing endorsement sought by petitioner “authorizes the holder to teach marketing occupations including sales, advertising and retailing, global marketing, entrepreneurship, and exploration of related business occupations” (emphasis added). *Spotts v. State Bd. of Exam’rs*, EDU 04807-20, Initial Decision at 19 (Nov. 26, 2021) (citing *N.J.A.C. 6A:9B-9.4(a)(1)(vii)*), *adopted*, Commissioner Decision No. 1-22 (Jan. 5, 2022). Although he has many creative ideas, the evidence supplied by petitioner fails to establish that he successfully marketed any inventions or products in the retail space. While petitioner maintains that he had a different objective, *i.e.*, to find companies willing to license his products and use their resources to bring them to market so that he may collect royalties, that does not change the fact that the Board has the discretion to decide whether his work experience is equivalent to the requisite licensure requirements. *Hutchinson*, Initial Decision at 13. In this case, the Board decided that it was not.

Although petitioner believes that the Board’s decision was biased because the Board’s understanding of marketing practices and concepts is outdated, there is no evidence in the record to support this contention. In addition, the Commissioner finds that this alleged bias did not infringe upon petitioner’s due process rights. He exercised his right to appeal the Board’s decision and had the opportunity to attend its meeting on January 19, 2024. The Board partially granted his appeal by awarding him 6 of the 12 requisite credits. He then appealed to the Commissioner regarding the remaining 6 credits, filed written opposition to the Board’s Motion to Dismiss, submitted additional evidence for the ALJ to consider that was not supplied to the Board, and was heard by the ALJ at oral argument. He filed exceptions to the Initial Decision, which were fully considered. Throughout the

proceedings, he has received due process. Petitioner's "potential age discrimination claim" is likewise unsupported by the record.

In summary, the Commissioner finds that the Board's determination that petitioner's alternative coursework and work experience was not equivalent to the remaining 6 credits of advanced-level coursework necessary to obtain a Marketing CE is consistent with applicable statutory and regulatory provisions.

Accordingly, the Initial Decision is adopted, with modification, as the final decision in this matter, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.²



ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 30, 2025
Date of Mailing: January 31, 2025

² 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 05372-24

AGENCY DKT. NO. 61-3/24

PHILIP BRADY,

Petitioner,

v

NEW JERSEY DEPARTMENT OF

EDUCATION, STATE BOARD OF EXAMINERS,

Respondent

Philip Brady, petitioner, pro se

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

Record Closed: November 1, 2024

Decided: November 8, 2024

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

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, Philip Brady, seeks the reversal of the State Board of Examiners decision denying his 2023 application for a Certificate of Eligibility (CE) in Marketing.

That application was denied in full by the State Board of Examiners on or about September 14, 2023 and on or about November 12, 2023, Mr. Brady appealed that denial.

On January 11, 2024, the Secretary of the Board authored a memo outlining the facts of the denial and the basis of Mr. Brady's appeal. On January 19, 2024, the Board granted Mr. Brady's appeal in part and denied it in part, giving him credit* for six of the twelve necessary educational hours "in light of his documented work experience" in marketing. This decision was formalized in an Order dated March 1, 2024.

On or about March 12, 2024, Mr. Brady emailed a Petition for Appeal to the State Department of Education's Office of Controversies & Disputes ("OCD") and on April 19, 2024, that appeal was transmitted to the Office of Administrative Law ("OAL") for a hearing as a contested case and assigned Docket No. EDU 05372-24. N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

In the interim, on April 18, 2024, the Board had filed a Motion to Dismiss in lieu of an answer with the Commissioner.

In response to said Motion to Dismiss, petitioner filed a Motion for Emergent Relief with the Commissioner, dated April 26, 2024. The OCD transmitted the Motion for Emergent Relief to the OAL, where it was filed on April 30, 2024. That Motion was denied on May 7, 2024 by the Hon. Thomas R. Betancourt, A.L.J. (C-1.)¹

Following the filing of opposition and reply briefs, oral argument on the Motion to Dismiss was held on October 16, 2024 and the record was held open until November 1, 2024 for supplemental briefing.

INITIAL FINDINGS OF UNDISPUTED FACT

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

¹ aff'd, Comm'r., June 10, 2024 (Exhibit C-2).

1. In 2023, petitioner, Robert Brady applied for a Certificate of Eligibility (CE) in Marketing before the State Board of Examiners (“Board”).
2. That application was denied in full on or about September 14, 2023 and on or about November 12, 2023, Mr. Brady appealed that denial. (R-2.)
3. On January 11, 2024, the Secretary of the Board authored a memo outlining the facts of the denial and the basis of Mr. Brady’s appeal. (C-3.)
4. On January 19, 2024, the Board granted Mr. Brady’s appeal in part and denied it in part, giving him credit for six of the twelve necessary educational hours “in light of his documented work experience” in marketing. This decision was formalized in an Order dated March 1, 2024. As noted, this left petitioner six credits shy of what is needed for the issuance of the certificate. (R-1.)
5. That decision was appealed by Mr. Brady on or about March 12, 2024. (R-3.)
6. In addition to the identical materials that had been supplied to the Board in his initial appeal, Mr. Brady included new evidence in opposition to respondent’s Motion. This includes:

- A promotional flyer for his Ski Sling invention
- A screenshot from his website concerning customization of his ball-chair invention
- A letter of recommendation from the CEO of NADA Chair

UNDERLYING DECISION

In an Order issued on March 1, 2024, but arising out of its January 19, 2024 meeting, the Board of Examiners reviewed the initial denial of Mr. Brady’s application for the issuance of a Teacher of Marketing Certificate of Eligibility (CE). The Board ruled as follows:

Brady was denied the Teacher of Marketing CE because he needs 12 credits in marketing. He asked the Board to consider coursework he completed at Regis University (Regis). Brady received a bachelor's degree in Liberal Arts in 2005 as well as a graduate certificate in Executive Leadership and a master's degree in Organizational Development in 2007 from Regis. He asserts that the courses he took in management overlap with those required for a degree in marketing. After review of his submission including his official transcripts, the Board does not find the course he took in leadership or management are equivalent to the content covered by 12 credits of coursework in marketing.

Brady also included information on a number of his inventions and his efforts to bring them to the retail marketplace. The information he included in his submission focused on the details of the products but did not include evidence of sales figures or other information (Blue Ocean) which would prove his ability to successfully market his inventions.

Finally, Brady included a letter from his former employer, A&S Financial, which indicates he served as the Vice President of Marketing from 1990 through 1996 at which time he spearheaded the company's telemarketing and advertising campaign. In light of this documented work experience, the Board will grant him six credits in marketing.

Accordingly, for the foregoing reasons, on this 1st day of March 2024, Phil Brady's application for a Teacher of Marketing Certificate of Eligibility is hereby **PARTIALLY GRANTED** as to six credits in marketing and **PARTIALLY DENIED** as to six credits in marketing.

After review of his submission including his official transcripts, the Board does not find the courses he took in leadership or management overlap with those required for a degree in marketing. After a review of his submission including his official transcripts, the Board does not find the courses he took in leadership or management are equivalent to the content covered by 12 credits of coursework in marketing.

Brady also included information on a number of his inventions and his efforts to bring them to the retail marketplace. The information he included in his submission

focused on the details of the products but did not include evidence of sales figures or other information which would prove his ability to successfully market his inventions.

Finally, Brady included a letter from his former employer, A&S Financial, which indicates he served as the Vice-President of Marketing from 1990 through 1996 during which time he spearheaded the company's telemarketing and advertising campaign. In light of this documented work experience, the Board will grant him six credits in marketing.

MOTION

Respondent filed a Motion to Dismiss, arguing that petitioner has "failed to advance a cause of action as (he) does not meet the standards for a teacher of marketing certificate of eligibility." More specifically, he argues that the Board's decision is consistent with the requirements of N.J.A.C. 6A:9B-9.1 and that petitioner "has presented no new evidence suggesting otherwise". See N.J.A.C. 6A:3-1.10.

Petitioner opposes the Motion, arguing that the denial of his certificate and failure to fully credit his claimed academic experience "show(s) an overemphasis on academics over work-related experience even though (his) marketing capacities were derived from his graduate studies". Mr. Brady claims that the Board's decision does not comply with N.J.S.A. 18A:6-34 et seq. and that it was an abuse of discretion to award only six of the twelve needed credits to be eligible for his certificate.

In its reply brief, the respondent points out that in none of the materials presented by Mr. Brady is there any evidence that he has successfully marketed any of the events or products contained therein. This includes the materials that were supplied with his original appeal as well as newly submitted materials which should not be considered here, since they were never presented to the Board.

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 fundement 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.

As noted in Banco Popular N. Am. v. Gandi, 184 N.J. 161, 166 (2005):

Obviously, if the complaint states no basis for relief and discovery would not provide one, dismissal is the appropriate remedy. Pressler, *Current N.J. Court Rules*, comment 4.1 on R. 4:6-2 (2005) (citing Camden County Energy Recovery Assocs. v. N.J. Depot of Env'tl. Prot., 320 N.J. Super. 59, 64, 726 A.2d 968 (App.Div.1999), *aff'd o.b.*, 170 N.J. 246, 786 A.2d 105 (2001)).

While the dispute has been briefed in the macro sense, in reality, it is a "micro" one. Was the Board's decision to only award petitioner the equivalent of six credits instead of the required twelve for his combination of college level leadership and management classes and his documented work experience the correct one? Or, more accurately as will be seen below, was that decision "consistent with the applicable statutory and regulatory provisions" or was it arbitrary and capricious?

Starting at the beginning. The "limited certificate of eligibility" that Mr. Brady applied for was created by N.J.S.A. 18A:26-2, et seq. Per N.J.S.A. 18A: 26-2(b), it is defined as "a certificate issued by the State Board of Examiners to candidates who meet the criteria established pursuant to section 4 of this act." Then N.J.S.A. 18A:26-

2(e)(4)(a) calls for the State Board of Education to develop specific rules regarding eligibility as directed;

- (1) the requirement to complete a minimum number of subject area course credits and all other related alternative requirements or exceptions, except that a candidate applying for a limited certificate of eligibility shall hold a bachelor's degree at a minimum;
- (2) the minimum grade point average requirement and all other alternative grade point average requirements or exceptions;
- (3) the requirement to achieve a minimum score on a Commissioner of Education-approved test of basic reading, writing, and mathematical skills and all other alternative basic skills requirements or exceptions; or
- (4) the requirement to achieve a minimum passing score on an appropriate State test of subject matter knowledge and all other alternative requirements or exceptions to achieving a passing score on an appropriate State test of subject matter knowledge.

[See also, N.J.S.A. 18A:26-2(h).]

The basic requirement to obtain an instructional certificate is covered in N.J.A.C. 6A:9B-9.1, which reads as follows (in relevant part):

(a) To fulfill the endorsement requirements necessary for an instructional certificate, pursuant to N.J.A.C. 6A:9B-8, the candidate shall:

1. Complete one or more of the following coursework requirements for the subject area in which the candidate is seeking the endorsement:
 - i. Complete an undergraduate major in the subject area as documented by an official transcript from an accredited four-year college or university;
 - ii. Hold a graduate degree in the subject area; or
 - iii. Complete at least 30 credits in a coherent sequence of courses appropriate to the subject

area as documented by an official transcript from an accredited college or university, of **which 12 semester-hour credits must be at the advanced level of study, including junior-, senior-, or graduate-level study as documented by the official transcript of an accredited college or university;**

If the initial application is denied, per N.J.A.C. 6A:9B-4.12 et seq., the applicant can appeal and if there is a specific area of deficiency identified, the candidate is permitted to supply evidence of alternative education and/or experience that may be considered an equivalent to that shortcoming:

- (a) A candidate for certification may appeal to the Board of Examiners an adverse decision of the Office regarding the candidate's eligibility.

...

- (b) If a candidate receives an evaluation that identifies areas of deficiency in the certification requirements, pursuant to N.J.A.C. 6A:9B-5.3(c), the candidate may provide the Board of Examiners with evidence of alternative education and/or experience that the candidate considers equivalent to any area(s) of deficiency.

As noted above, in reviewing the appeal, the Board maintained its rejection of Mr. Brady's college courses as being relevant to a marketing CE, but given his marketing experience, decided to substitute that experience for six of the required twelve credits of advanced education. It is this "missing" six credits that is in dispute.

The standard of review in a case such as this was enunciated in Walder v. New Jersey Dept. of Educ., St. Bd. of Exam'rs, 2014 N.J. Agen. LEXIS 1259 (Dec. 29, 2014). As opposed to many cases where the standard is "arbitrary, capricious and unreasonable", here, the standard "is whether the decision is consistent with the applicable statutory and regulatory provisions." Id. at *4 - *5. The Commissioner explained more fully;

As a threshold matter, when there is a challenge to a finding by the Board of Examiners denying a request for the issuance of a certificate, the Commissioner is not legally

mandated to give deference to his staff but instead determines if the finding was legally appropriate. It is important to recognize that a decision by the Board denying the issuance of a certificate is not akin to the appellate review of a final agency decision that is entitled to an arbitrary, capricious or unreasonable standard of review. Moreover, where the Department of Education has limited the scope of review of a subordinate office or division, it has done so by regulation, i.e., appeals filed under N.J.A.C. 6A:4 challenging a decision of the State Board of Examiners revoking/suspending a certificate or a decision of the School Ethics Commission. See, Board of Trustees of the Passaic County Elks Cerebral Palsy Center v. New Jersey Dept of Educ., Office of Accountability and Compliance, Commissioner's Decision No. 334-14, dated August 14, 2014. **Therefore, the appropriate standard of review of the Board's March 2014 decision is whether the decision is consistent with the applicable statutory and regulatory provisions.**

Ibid. (Emphasis added.)

While a footnote in Walder did cause some confusion, noting that the ALJ who wrote the Initial Decision had mistakenly utilized the arbitrary, capricious or unreasonable standard, overall when taken together with N.J.A.C. 6A:4-4.1(a) and as argued by respondent, in determining whether a decision of the Board of Examiners is arbitrary, capricious or contrary to law, the Commissioner (and the ALJ) must determine whether that decision is “supported by sufficient credible evidence in the record”. Id. at n.2.

N.J.A.C. 6A:4-4.1(a) reads as follows:

In determining appeals from decisions of the State Board of Examiners or the School Ethics Commission pursuant to this chapter, the Commissioner shall ascertain whether the decision is supported by sufficient credible evidence in the record and shall not disturb the decision unless the appellant has demonstrated the State Board of Examiners or the School Ethics Commission acted in a manner that was arbitrary, capricious, or contrary to law

This standard has been followed consistently, most recently in Harriman v. New Jersey Dept. of Educ., St. Bd. of Exam'rs, 2024 N.J. Agen. LEXIS 103 (Jan. 29, 2024):

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"))).

Id. at *13-*14.

Walder is also illustrative in its review of whether a hearing is necessary or if a decision on a Motion to Dismiss is appropriate. The case involved a determination of whether certain education/special education courses constitute "liberal arts" semester hours. Id. at *4. It was decided that since the nature of the course work was not in dispute, the dispute was therefore "limited to a legal determination as to whether the course work constitutes 'liberal arts' semester hours for the purposes of satisfying the requirements for a CEAS in accordance with N.J.A.C. 6A:9-8.1(b)(3)." Id. at *5. It was determined that "the Board's decision rejecting her attempt to substitute twenty

semester hours of special education/education course work is consistent with the applicable regulatory provisions governing the issuance of certificates.” Ibid.

Here, there is a two-pronged analysis/determination that has to be made:

- a. Do any of the petitioner’s college courses meet the requirements of N.J.A.C. 6A:9B-9.1(a)(1)(iii)?
- b. Does the petitioner’s work experience qualify for the full twelve credits needed per 6A:9B-4.12(b)?

I **CONCLUDE** that the answer to the first question is easy. No. Petitioner argues that the Board “showed disregard” for the alleged similarity between management and marketing graduate studies as well as for his graduate class in Persuasion, Influence and Motivation² and his academic experience gained through the co-op program at Montclair State University. Effectively, petitioner is arguing that “management” equals “marketing”. It doesn’t. While there may be some overlap in management and marketing courses, not only did Mr. Brady never receive any degree or certificate in marketing, but he has also literally never taken a marketing class and arguably the only other course related to that area was a single three credit class in Sales Concepts and Practices taken at Montclair State University prior to his transfer to Regis.

As for his practical marketing experience, the issue that the Board had was the lack of “evidence of sales figures or other information which would prove his ability to successfully market his inventions.” During oral argument, Mr. Brady attacked the marketing credentials of the Board members who made the decision, and the denial was “based on an outdated understanding of marketing”.

To put it at its most basic, the evidence presented to the Board (and to the Court that was not formally submitted to the Board) demonstrates that Mr. Brady is a very personable and creative designer/inventor who has failed to demonstrate that he has the capability to either have those products made, or if they are made, to sell them.

² Where the syllabus stated it is “likely to cover” at least five areas of persuasion, one of which was “persuasion in advertising and marketing”. (P-A.)

During oral argument, he essentially admitted that he has never successfully, either by himself or through others, marketed a product.

Just as a “for instance”, I watched the YouTube video linked in his exhibits. It was posted on Mr. Brady’s “WorkspaceWellness” channel and has a total of 125 views in the two and a half plus years that it has been posted. It should also be noted that this particular YouTube channel has only two subscribers and that the number of views is by far the largest of any of the eight videos posted to the channel over the past six years.³⁴

In fact, Mr. Brady was asked during oral argument that even conceding that some of his marketing materials/brochures are impressive to a layperson, “what good is any of that in showing your mastery in marketing if you’ve never sold any of it?” The reply was, frankly, non-sensical. Unless the modern techniques and nuances of marketing do not involve actually selling an item, then the petitioner has never successfully marketed anything. As for the one product that appears to actually have made it to market (the Ski Sling), that is alleged to have occurred in 1998 when he “sold some units” of it via a magazine advertisement.

At its most basic;

Marketing encompasses every part of a plan to turn a prospective consumer into a happy and satisfied customer. It includes everything from market research to advertising. The goal of marketing is to convince a person that your product is worth investing in, establish brand loyalty and increase overall sales.

https://www.forbes.com/advisor/business/what-is-marketing/#marketing_definition_section (last accessed Nov. 1, 2024)

As was noted during oral argument, Mr. Brady has provided some impressive concepts and product ideas and has met with some potential investors and endorsers. However, there is simply no evidence that he has ever (save for this single item from a

³ <https://www.youtube.com/watch?v=8NILqfw3jBM&t=1098s> (last accessed Nov. 3, 2024)

⁴ <https://www.youtube.com/@homeworkgyms> (last accessed Nov. 3, 2024)

quarter century ago about which next to no detail has been provided) successfully transformed one of those meetings into the licensing, production and/or sales of a product. Until that occurs, Mr. Brady cannot be said to be an expert in marketing (over and above the credit the Board already gave him).

As for his work with Oakland Cares, while it is certainly commendable, his duties are that of an active volunteer who helped design a flyer and a t-shirt and organized a local fundraiser to help forward the charitable goals of the organization. This was not a marketing job. Nor frankly, was the fundraiser or logo design for MigrantRelief.org [an apparently now dormant 501(c)(3) corporation which he founded]. There is no indication of whether the “schedual” of five concerts successfully raised any money for the organization, what the attendance figures for the shows was, etc. The letter from the head of NADA Chair is similarly vague as to Mr. Brady’s contributions and what is effectively two days at a trade show and an idea that “could well be patented and market tested at this year’s fair”, falls right in line with the Board’s reasoning for the denial of the CE. (P-H.)

None of this is meant to denigrate Mr. Brady, his efforts, talents or intentions. As noted, to the untrained eye, some of his designs (the school logoed Back Bliss backpack and the Tony Little concepts in particular, at least to me) are impressive. However, I **CONCLUDE** that none of the evidence submitted to the Board or in conjunction with this Motion is remotely sufficient to demonstrate that the Board’s partial rejection of his appeal was inconsistent “with the applicable statutory and regulatory provisions” or that it was 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. Brady’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.



November 8, 2024

DATE

MATTHEW G. MILLER, ALJ

Date Received at Agency:

November 8, 2024

Date Mailed to Parties:

November 8, 2024

sej

APPENDIX

EXHIBITS

FOR COURT:

- C-1 Denial of Emergent Relief Order (May 7, 2024)
- C-2 Commissioner decision (June 10, 2024)
- C-3 Board memorandum (January 11, 2024)

FOR APPELLANT:

- P-A Regis University Management Masters class COM 437 outline
- P-B Regis University Management Major FAQ
- P-C Website for customizable ball chairs
- P-D Home gym redesign, bag redesign photographs/marketing
- P-E Northern Valley Regional High School Career Pathways handout
- P-F Tony Little product design concept; Back Bliss product design concept; Sit/Stand computer workstation concept
- P-G Ski Sling magazine advertisement
- P-H Letter of recommendation from CEO of Nada Chair (March 28, 2024)
- P-I Exemplar memes; Goal Getter sweatband design; charity logos and designs; YouTube interview; letter of recommendation from Mayor of Oakland (NJ) (October 6, 2023); letter of recommendation from Steve Sahagian (October 10, 2023)

FOR RESPONDENT:

- R-1 Board of Examiners decision (March 1, 2024)
- R-2 Board of Examiners credential review form
- R-3 Appellant's Petition of Appeal (March 7, 2024)