

July 25, 2006

Michael C. Damm, Esq.  
Selikoff & Cohen, P.A.  
307 Fellowship Road, Suite 314  
Mt. Laurel, NJ 08054-1233

Re: In the Matter of the Certificate of Wheatonia Jones  
Docket No. 0506-123

Dear Mr. Damm:

As you are aware, the State Board of Examiners issued an Order to Show Cause to your client, Wheatonia Jones, by which the Board is seeking to suspend or revoke her Emergency Teacher of the Handicapped certificate. The Order was predicated on allegations that her use of physical force and body contact against a student placed the student at some unnecessary and undue risk of harm. That matter is now pending at the Office of Administrative Law (OAL). In the interim, Jones applied for a standard Teacher of the Handicapped certificate. The Office of Licensure and Credentials rejected that application pursuant to *N.J.A.C. 6A:9-17.7(i)* because of the pending matter against her emergency certificate. Jones is now seeking emergent relief and is appealing the Office's decision to deny her standard certificate application. On June 8, 2006, the Board reviewed your motion for emergent relief, pursuant to *N.J.A.C. 6A:9-17.17*. After careful review of the matter, for the reasons that follow, on July 20, 2006, the Board voted to deny the motion.

In determining whether to grant emergent relief, the State Board of Examiners relied on the standards established for stays in *Crowe v. DeGioia*, 90 *N.J.* 126 (1982), which are incorporated in *N.J.A.C. 6A:9-17.21(b)*:

1. The moving party will suffer irreparable harm if the requested relief is not granted;
2. The legal right underlying the moving party's claim is settled;
3. The moving party has a likelihood of prevailing on the merits of the underlying claim; and
4. When the equities and interests of the parties are balanced, the moving party will suffer greater harm than the other party if the requested relief is not granted.

In applying the *Crowe v. DeGioia* test to this case, the State Board of Examiners finds that emergent relief is not warranted. Contrary to Jones' assertions, she would not suffer irreparable harm if her emergency certificate expires before the resolution of her hearing. Jones can seek other employment and even employment in a parochial or private school which does not require a New Jersey teaching certificate. Additionally, Jones does not have a settled legal right to her standard certificate. Jones does not have an absolute right to possess a license; she merely has the right to a hearing before her license is revoked. That hearing is currently being held before the OAL. At issue in this appeal, by contrast, is Jones' application for a new certificate. There is no comparable due process obligation imposed upon the Board to give Jones a hearing before it decides to grant or deny issuance of a new certificate. Moreover, even if the Board did not apply the provisions of *N.J.A.C. 6A:9-17.7(i)* to this matter, pursuant to *N.J.A.C. 6A:9-17.2*, it has the discretion to deny any otherwise-qualified applicant a certificate. Thus, even though Jones may satisfy the listed criteria for certification, she is not guaranteed the right to receive a certificate.

Furthermore, the likelihood that Jones will prevail on the merits of her underlying claim is doubtful, at best. The Board finds Jones' argument that it continued to issue her emergency certificates despite the incident which led to the issuance of the Order to Show Cause disingenuous. In September 2005 the Board became aware of Jones' alleged actions and it issued an Order to Show Cause to her. All of her emergency certificates were issued prior to September 2005 and, in fact, the last was issued in July 2005, two months before the Board of Examiners first considered her case. Finally, Jones has not demonstrated that she will suffer greater harm than the Board of Examiners if her relief is not granted. Jones has engaged in behavior, which, if proven, will make her unsuitable to teach. The Board is mindful of its responsibility to protect New Jersey's schoolchildren from individuals who should not be teaching. If the Board were to issue her certification now, without the benefit of fact-finding as to her behavior, it could be harming other children. Clearly, when the benefits and harms are balanced, Jones cannot prevail on her application. Accordingly, because the application for emergent relief does not meet the standards established in *Crowe v. DeGioia*, the State Board of Examiners voted to deny Jones' request.

Sincerely,

Robert R. Higgins, Acting Secretary  
State Board of Examiners

RRH/MZ/jones-deny emergent relief

By certified mail

Date of mailing: JULY 25, 2006

This matter may be appealed to the Commissioner of Education pursuant to *N.J.A.C. 6A:3-1 et seq.*