

**SUPREME COURT OF NEW JERSEY**  
**Docket No. 089658**

---

IN THE MATTER OF THE CERTIFICATES OF NICHOLAS CILENTO,  NEW JERSEY DEPARTMENT OF EDUCATION, STATE BOARD OF EXAMINERS	: A Petition for Certification from the : June 26, 2024 Judgment of the: : : SUPERIOR COURT OF NEW JERSEY : APPELLATE DIVISION : Docket No. A-3586-21 : : Sat Below: : Hon. Francis J. Vernoia, J.A.D. : Hon. Katie A. Gummer, J.A.D. : : : On Appeal from the Final Administrative : Decision of the Commissioner : of Education : : Comm. of Education Dec. No. 131-22 : State Bd. of Examiners Dkt. No. 2021-123 : Agency Dkt. No. 9-12/21A : : <i>Administrative Action</i>
--	---

---

**REPLY BRIEF IN FURTHER SUPPORT OF PETITION FOR  
CERTIFICATION PURSUANT TO R. 2:12-8 ON BEHALF OF  
PETITIONER NICHOLAS CILENTO**

---

MELLK CRIDGE LLC  
211 Blackwell Road  
Pennington, NJ 08534  
P: (609)-924-0700  
E: [arnold@mellk-cridge.com](mailto:arnold@mellk-cridge.com); [ed@mellk-cridge.com](mailto:ed@mellk-cridge.com)

Of Counsel: Arnold M. Mellk, Esq (NJ Atty. ID No. 272001971)  
On the Petition: Edward A. Cridge, Esq. (NJ Atty. ID No. 026462006)

Dated: September 16, 2024

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES.....3

PRELIMINARY STATEMENT.....4

LEGAL ARGUMENT: THE PETITION FOR CERTIFICATION SHOULD  
BE GRANTED.....4

    POINT ONE: THE LAW IS NOT SETTLED.....4

    POINT TWO: THE TENURE FAD WAS A FINAL  
AGENCY DECISION.....6

    POINT THREE: THE STANDARDS FOR EMPLOYMENT  
TERMINATION AND DELICENSURE ARE  
IDENTICAL.....7

CONCLUSION.....11

**TABLE OF AUTHORITIES**

**Cases**

*Bound Brook Bd. of Educ. v. Ciripompa*, 228 N.J. 4 (2017).....9

*Morison v. Willingboro Bd. of Ed.*, 478 N.J. Super. 229, 313 A.3d 93 (2024),  
Supreme Court Dkt. No. 089327, *cert. den.* July 18, 2024.....5

*Liberty Ins. Corp. v. Techdan, LLC*, 253 N.J. 87 (2023).....8

*Redcay v. State Bd. of Educ.*, 130 N.J.L. 369, 371 (1943), *aff'd.*,  
131 N.J.L. 326 (E&A 1944).....8

**Administrative Decisions**

*In the Matter of the Certificates of Craig A. Levin*,  
Examiners Order of Revocation Dkt. No. 2223-182.....9

*In the Matter of the Certificate(s) of Hector Montes*,  
OAL Dkt. No. EDE 07509-20, Agency Dkt. No. 1920-146  
(Initial Decision February 14, 2024).....10

*In the Matter of the Certificates of Kimberly Killion*,  
Examiners Order of Revocation Dkt. No. 2021-186.....9

*Tenure of Sammons*, 1972 S.L.D. 302.....8

**Statutes**

N.J.S.A. 18A:6-10.....8

N.J.S.A. 18A:6-10—17.1.....6

N.J.S.A. 18A:6-38.....8

**Regulations**

N.J.A.C. 6A:9B-4.4(a).....8

**Rules**

R. 2:12-8.....4

**PRELIMINARY STATEMENT**

Petitioner Nicholas Cilento has received the Brief in Opposition to the Petition for Certification filed by Respondent State of New Jersey, Department of Education. Petitioner hereby Replies to that submission, pursuant to *R. 2:12-8*. Petitioner incorporates by reference herein and relies upon the Procedural History and Statement of Facts set forth in his Appellate Brief (**Db8-12**), and upon the Preliminary Statement and Statement of the Matter Involved set forth in his Petition for Certification (**Petition, pp. 6-10**). The definitions and abbreviations utilized in the Petition for Certification are utilized herein as well.

**LEGAL ARGUMENT**  
**THE PETITION FOR CERTIFICATION SHOULD BE GRANTED**

**POINT ONE**  
**THE LAW IS NOT SETTLED**

Respondent incorrectly argues against Certification on grounds that this case involves “settled principles” of law. **Rb8; Rb17**. Contrarily, research discloses no decision where a New Jersey court has addressed governmental authority to take fundamentally incompatible actions based upon a single, identical factual record. Respondent offers no remotely apposite citation to the Court.

Respondent’s argument reflects its misunderstanding of the critical issue. As acknowledged in the Petition, the Examiners’ “independent authority to take action” (See **Rb8**) is not in question. See **Petition, pp. 14-15, fn.6**. Rather, it is the extent of a state agency’s authority to issue inconsistent FADs, and the consequences of such action, that are that worthy of this Court’s review and pronouncement.

Respondent incorrectly states that this case “asks the same questions” as *Morison v. Willingboro Bd. of Ed.*, 478 N.J. Super. 229, 313 A.3d 93 (2024), Supreme Court Dkt. No. 089327, *cert. den.* July 18, 2024<sup>1</sup>. **Rb8**. *Morison* addressed the issue of whether a predicate tenure arbitration award wholly estops the Examiners from initiating or prosecuting an OSC / delicensure action. Here, Petitioner acknowledges that the answer to that question is “No.” If granted, Certification would not intrude upon the Examiners’ ability to investigate, charge, prosecute, independently prove, and independently penalize teacher misconduct. See **Petition, pp.14-16**. Rather, this case presents the much more limited, yet more significant question of incompatible agency action premised upon a single, identical factual record.

---

<sup>1</sup> It is worth noting that Mr. Cilento’s Notice of Appeal was filed with the Appellate Division on July 25, 2022; his case argued January 31, 2024, and decided by the Appellate Division on June 26, 2024. The Notice of Appeal in *Morison* was filed on or about December 28, 2022; the case was argued March 4, 2024, and decided March 28, 2024. In other words, Mr. Cilento’s case was the first one appealed, but last one decided.

Because this case offers the Court the opportunity to address and settle a general, fundamental, unresolved principle of agency action/ authority, Certification should be Granted.

**POINT TWO**  
**THE TENURE FAD WAS A FINAL AGENCY DECISION**

In an effort to sidestep the quandary of its incompatible agency action, Respondent denies the nature of the underlying proceedings, arguing that Mr. Cilento’s tenure hearing, and the consequent Tenure FAD, “[do] not represent an agency action.” **Rb12—13**. This is the case, Respondent contends, because statutorily appointed arbitrators are “not employees of the [DOE.]” **Rb16**.<sup>2</sup> Therefore, according to Respondent, principles of agency comity and privity to not apply. *Ibid*.

Neither Mr. Cilento, nor Woodbridge, had any authority or control over the referral of the tenure case to arbitration by the Commissioner; the assignment of the Arbitrator by the Commissioner; or the rules and standards applicable to the tenure proceedings. Rather, all of these things were governed in detail by the TEHL. See N.J.S.A. 18A:6-10—17.1. Mr. Cilento’s tenure case was not the product of an arbitration clause or private agreement by and between the parties. It was not heard

---

<sup>2</sup> Of course, neither Administrative Law Judges nor members of the Board of Examiners are “employees” of the DOE, and there is no such requirement to issue an FAD embodied in the law.

and decided by our judiciary. It was the product and province of the DOE, by and through its statutory agent—the Arbitrator. As set forth in the Petition (**pp. 10-12**) Mr. Cilento’s tenure case, and the Tenure FAD, were unquestionably the agency action of the DOE.

This Petition presents a momentous question of administrative law to this Court. Respondent’s attempt to avoid it through simple mischaracterization should be rejected.

**POINT THREE**  
**THE STANDARDS FOR EMPLOYMENT TERMINATION AND**  
**DELICENSURE ARE IDENTICAL**

In its Answering Brief, Respondent posits that the standards applicable to a teacher’s termination from tenured employment, and teacher delicensure, are somehow different:

The tenure matter before the arbitrator was limited to a determination of whether the tenure charges proven against Cilento warranted his dismissal from employment or the reduction of his salary, while the matter before the Board [of Examiners] was a separate and distinct action to determine whether his teaching certificate should be suspended or revoked pursuant to N.J.S.A. 18A:6-38.

See **Rb15**. Therefore, Respondent claims, preclusive principles of *res judicata* and collateral estoppel do not obtain, since the Tenure FAD’s judgment as to Mr. Cilento’s continued employment was not coextensive as to his certification. **Rb15**.

Respondent's argument ignores the plain language of the applicable statutory schemes. N.J.S.A. 18A:6-10, setting the standards for employment termination, provides that: "[n]o [tenured] person shall be dismissed or reduced in compensation... except for **inefficiency, incapacity, unbecoming conduct, or other just cause**, and then only after a hearing..." *Emphasis added*. N.J.S.A. 18A:6-38 empowers the Examiners to suspend / revoke teaching certificates "under rules and regulations prescribed by the State board [of Education]." The applicable regulation is N.J.A.C. 6A:9B-4.4(a), which empowers the Examiners to suspend / revoke certificates "on the basis of demonstrated **inefficiency, incapacity, conduct unbecoming a teacher, or other just cause.**" *Emphasis added*.

"When two or more statutory schemes are analyzed, they `should be read in *pari materia* and construed together as a unitary and harmonious whole.'" *Liberty Ins. Corp. v. Techdan, LLC*, 253 N.J. 87, 103-04 (2023). Here, this is not a difficult exercise. "Unbecoming conduct" for purposes of N.J.S.A. 18A:6-10 espouses the same standard as "unbecoming conduct" for purposes of N.J.A.C. 6A:9B-4.4(a). Indeed, in issuing the Order of Suspension to Mr. Cilento, the Examiners cited *Tenure of Sammons*, 1972 S.L.D. 302, 321, and *Redcay v. State Bd. of Educ.*, 130 N.J.L. 369, 371 (1943), *aff'd.*, 131 N.J.L. 326 (E&A 1944) in explication of the conduct unbecoming standard. **See Da48**. Both are tenure cases.



In *Bound Brook Bd. of Educ. v. Ciripompa*, 228 N.J. 4 (2017), which arose from a TEHL tenure arbitration case, this Court reiterated the longstanding formulation of the unbecoming conduct standard:

This Court has defined unbecoming conduct as conduct "which adversely affects the morale or efficiency of the [department]" or "has a tendency to destroy public respect for [government] employees and confidence in the operation of [public] services." *In re Young*, 202 N.J. 50, 66, 995 A.2d 826 (2010) (alterations in original) (quoting *Karins v. Atl. City*, 152 N.J. 532, 554, 706 A.2d 706 (1998)). We have also held that a finding of unbecoming conduct "need not be predicated upon the violation of any particular rule or regulation, but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." *Karins, supra*, 152 N.J. at 555, 706 A.2d 706 (quoting *Hartmann v. Police Dep't of Ridgewood*, 258 N.J. Super. 32, 40, 609 A.2d 61 (App. Div. 1992)).

Even when the unbecoming conduct alleged has elements similar to those that might comprise a hostile work environment claim, this Court has explained that "[t]he absence of [harassment] evidence in this type of case is not critical.... [I]t is not necessary for an employer to allow events to unfold to the extent that the disruption of the office and the destruction of working relationships is manifest before taking action." *Karins, supra*, 152 N.J. at 561-62, 706 A.2d 706 (quoting *Connick v. Myers*, 461 U.S. 138, 152, 103 S.Ct. 1684, 1692, 75 L.Ed.2d 708, 723 (1983)).

*Id.* at 14. The Examiners have invoked *Ciripompa*, and its recitation of the unbecoming conduct standard, in issuing Orders of Revocation following delicensure proceedings. *See, e.g., In the Matter of the Certificates of Craig A. Levin*, Examiners Order of Revocation Dkt. No. 2223-182; *In the Matter of the Certificates of Kimberly Killion*, Examiners Order of Revocation Dkt. No. 2021-186.

In the context of employment termination versus delicensure, the application of the unbecoming conduct standard not a matter of difference, but rather one of degree:

**It is recognized that revocation or suspension of a teaching or other certificate is not automatic even when the employee's employment has been terminated.** "Dismissal from a tenured position and revocation of certification serve different purposes." In re Teaching Certificate of Labib, Dkt. No. 49-00, State Bd. of Educ. (January 3, 2001) <http://lawlibrary.rutgers.edu/oal/search.html> (quoting In re Teaching Certificates of Ahem, State Bd. of Educ. (August 5, 1987)). The Board of Examiners' "decision to revoke or suspend precludes employment as a teacher [or other certificate position] in any school district in this state" and, thus, "the responsibility imposed on the State Board of Examiners when it makes its decision to revoke or suspend is a significant one." Ibid. This responsibility requires that the Board of Examiners "make an independent determination as to whether the individual should be precluded from employment in other districts, whether permanently or temporarily, based on all the evidence relating to this question." Ibid.

*In the Matter of the Certificate(s) of Hector Montes*, OAL Dkt. No. EDE 07509-20, Agency Dkt. No. 1920-146 (Initial Decision February 14, 2024), *emphasis added*.

For all the reasons described in Mr. Cilento's Petition, at **pp. 23-24**, the degree of conduct unbecoming warranting delicensure is necessarily more severe than that which only warrants termination from a tenured position. Attempting to avoid this logical inevitability, Respondent asks this Court to countenance the fiction that more than one unbecoming conduct standard exists.

Respondent's attempt to create different unbecoming conduct standards, avoid the application of preclusive principles to its actions, and thereby excuse the illegitimate and unlawful dissonance between the Tenure FAD and License FAD should be rejected by this Court.

**CONCLUSION**

For these, and all the reasons set forth in his Petition for Certification, this Court should Grant Certification in this matter, and review the Final Judgment of the Appellate Division.

Respectfully submitted,

MELLK CRIDGE LLC

*s/ Edward A. Cridge*

Edward A. Cridge, Esq.