

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT
217-2024-CV-00398

JANE DOE

v.

LOUIS F. EDELBLUT, in his capacity as Commissioner of Education; CHRISTINE M. BRENNAN, in her capacity as Deputy Commissioner of Education; the NEW HAMPSHIRE DEPARTMENT OF EDUCATION

VERIFIED COMPLAINT AND REQUEST FOR TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION PURSUANT TO RULE 48 AND EXPEDITED HEARING

NOW COMES, Jane Doe, by and through her attorneys, Shaheen & Gordon, P.A., and hereby complains against Defendants Louis F. Edelblut (“Edelblut”), Christine M. Brennan (“Brennan”), and the New Hampshire Department of Education (the “Department”) for the unlawful revocation of her New Hampshire teaching credential in violation of Part I, Article 15 of the New Hampshire Constitution, RSA 541-a; and the Department’s own rules. Specifically, the Department, acting through Edelblut and Brennan, unlawfully exceeded its authority in revoking Doe’s teaching credential without first providing Doe with sufficient notice of the facts and reasons for its decision, without providing Doe with an opportunity to avail herself of adjudicatory process established by the Board of Education, and without conducting a fair and impartial investigation into the facts. Furthermore, the decision to revoke a New Hampshire educator’s teaching credential in a contested case is within the purview of the New Hampshire Board of Education, not the Defendants.

For the reasons set forth herein, Doe requests that the Court immediately schedule a hearing on her request for a Temporary Restraining Order to prevent the continued and further

irreparable harm that she will suffer as a result of the Defendants’ conduct. As stated below, Doe provided notice to Defendants prior to filing this pleading. In further support thereof, Doe states as follows:

PARTIES

1. Jane Doe¹ is an adult individual residing in Troy, New Hampshire.
2. Doe held an Experienced Educator License (“EEL”) with various endorsements until June 17, 2024.
3. Louis F. “Frank” Edelblut is the New Hampshire Commissioner of Education with an office located at 25 Hall Street, Concord, NH 03301.
4. Christine M. Brennan is the New Hampshire Deputy Commissioner of Education with an office located at 25 Hall Street, Concord, NH 03301.
5. The New Hampshire Department of Education is a statutorily authorized agency of the State of New Hampshire with a principal address of 25 Hall Street, Concord, NH 03301.
6. The Department is under the executive direction of Edelblut and is tasked, in part, with “providing the general supervision for elementary and secondary school, teachers and administrators.” RSA 21-N:2, II.

JURISDICTION & VENUE

7. This case arises under the New Hampshire Constitution and laws of New Hampshire, specifically RSA Chapters 541 and 541-A, and is therefore within the general jurisdiction of the Superior Court. *See* RSA 491:7; 498:1.
8. The Superior Court has the authority to issue temporary restraining orders and injunctive relief. N.H. Super. Ct. R. 48 (Injunctions).

¹ Doe has sought leave to proceed under a pseudonym given the confidential nature of the investigatory and disciplinary process. *See* Ed. 502.01; Ed. 511.01(k). Doe also sought leave to proceed under a pseudonym out of fear for her personal safety and to protect the confidentiality and privacy of the student referenced herein.

9. Venue is proper in Merrimack County because the Defendants are state actors located in Concord, New Hampshire.

LEGAL BACKGROUND AND PROCEDURAL REQUIREMENTS

10. Part 1, Art. 15 of the New Hampshire Constitution provides, in relevant part, that “[n]o subject shall be ... deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land.” The New Hampshire Supreme Court has held that phrase “law of the land” in this article means “due process of law.” *See Riblet Tramway Co. v. Stickney*, 129 N.H. 140, 144 (1987).

11. “Due process under our constitutional republic has, as a primary consideration, the notion that no matter how rich or how poor, all of our citizens are entitled to fundamental fairness when the government seeks to take action that will deprive them of their property or liberty interest.” *Appeal of Plantier*, 126 N.H. 500, 507 (1985) (citation omitted).

12. The New Hampshire Supreme Court has long held that there is a constitutionally protected property interest in professional licenses. *Id.* (medical license) (“The right to engage in one’s occupation is a privilege of fundamental significance. At stake in a disciplinary proceeding is a [licensee’s] license to practice his livelihood and profession. The loss of a license to practice [] after years of training and experience is certainly a grievous loss.”).

13. Due process requires that professional licensees receive notice and an opportunity for a hearing before a fair and impartial decisionmaker before disciplinary action is taken against them. *See Appeal of Beyer*, 122 N.H. 934, 939 (1982)

14. These principles are codified in RSA 541-A:30, which provides that:

An agency shall not *revoke*, suspend, modify, annul, withdraw, or amend a license unless the agency first gives *notice* to the licensee *of the facts or conduct* upon which the agency intends to base its action, *and* gives the licensee an opportunity, *through an adjudicative proceeding*, to show compliance with all lawful requirements for the retention of the license.

RSA 541-A:30, II (emphasis added).

15. As it pertains to the Department and the discipline of New Hampshire educational licensees, the legislature vested the New Hampshire Board of Education (the “Board”) with the authority to enforce the code of conduct and to adopt rules pursuant to RSA 541-A to achieve that end. *See* RSA 186:11, X(e) (Duties of State Board of Education).

16. It is the duty of the Board, not the Commissioner, to “hear appeals and issue decisions ... of *any dispute* between individuals and school systems or the department of education, except those disputes governed by the provisions of RSA 21-N:4, III.”

17. The Board adopted Ed. 500, *et. seq.* (Credential standards for Educational Personnel), the purpose of which was to implement the *statutory responsibilities* of the Board, including to administer a code of conduct, specify unprofessional conduct which justified disciplinary sanctions against credential holders, and to “provide oversight of adjudicatory proceedings required for discipline of credential holders while providing such with *fair hearing practices and rights of appeal.*” Ed. 501.01(e) (emphasis added).²

18. Ed. 511, *et. seq.*, governs investigations and disciplinary proceedings.

19. Specifically, Ed. 511.01 requires that “Once the investigation is complete ... the department *shall* create a report which documents the results of the investigation” and *propose* a form of discipline. Ed. 511.01(j) (emphasis added).

20. “Investigatory reports *and all information gathered during the course of an investigation* shall be confidential,” subject to limited exceptions. Ed. 511.01(k) (emphasis added).

² The provisions of Ed. 500, specifically of Ed. 511 were revised in 2024 and became effective on or about June 13, 2024. As this matter was pending prior to the adoption of the revisions, the prior version of Ed. 500 governs this matter, and all citations herein are to the prior version.

21. Where the department determines that a credential holder has violated the code of conduct, *and the credential holder agrees to the proposed finding*, then the credential holder will agree to discipline. *See* Ed. 511.02(a) (emphasis added).

22. However, relevant here, there is a separate procedure for when a credential holder *does not agree* with the proposed disciplinary findings and sanction. *See* Ed. 511.03.

23. In that case, a credential holder may request an adjudicatory hearing “which shall commence pursuant to Ed. 200 *after the following*: (1) completion of an informal or formal investigation; *and* (2) filing of a written report and recommendation pursuant to Ed. 511.01(j).” (emphasis added).

24. Such adjudicatory hearings are then held before a hearing officer appointed by the Board. *See* Ed. 206-209; RSA 186:10-a.

25. After the hearing, the hearing officer has 45 days to issue a proposed written decision, which must include factual findings and rulings of law. Ed. 210.01(a).

26. Upon receipt of the proposed written decision, the parties are then provided with a minimum of 15 days to submit written exceptions to rulings of the hearing officer to the Board, which has the power to reopen the record or require that the hearings officer reconsider as appropriate. Ed. 211.01(a) & (c).

27. After the exceptions are provided, the hearings officer submits the written record to the Board for consideration. Ed. 212.01. The parties may request limited oral argument before the Board, after which time the Board will consider the record and issue a final decision. *See* Ed. 212.02 and 212.03.

28. After the Board’s final decision issues, a party may seek rehearing pursuant to Ed. 213.02. After the rights and actions under Ed. 213.02 are exhausted, the decision of the board becomes a final, appealable order of the Board for purposes of RSA 541. *See* Ed. 213.01.

FACTUAL BACKGROUND

29. Doe has served as a reading teacher at a private educational institution located in New Hampshire for several years.

30. During that time, Doe distinguished herself as an exemplary educator and was the recipient of accolades and commendations for her performance as a teacher.

31. Over a period of several years, Doe taught Student A.³

32. At all times relevant hereto, Student A was over the age of eighteen and did not reside with her biological parents.

33. In the Fall of 2023, Student A disclosed to Doe that she believed she was pregnant and was not sure what to do.

34. Upon information and belief, Student A has also disclosed her pregnancy to other teachers.

35. Upon consultation with another teacher, Doe suggested that Student A contact a community health center (the “Center”) in New Hampshire that provided free options counseling and educational resources to pregnant women.

36. Doe provided Student A with the information to contact the Center for the counseling but did not participate in the counseling with Student A.

37. Student A informed Doe she did not want to tell her relatives that she was pregnant out of fear that they would influence her decision making.

³ The student in question is referred to herein as “Student A” to protect her identity, privacy and protected health information.

38. It was very important to Doe that she provided Student A with access to information and resources to make an informed decision but did not influence Student A's decision. Doe wanted Student A to be empowered to make an informed decision about her own healthcare and expressed to Student A that she would do what she could to support her irrespective of her decision.

39. After additional counseling, Student A ultimately decided to obtain an abortion procedure from the Center.

40. Upon information and belief, Student A's procedure could only be scheduled on a Friday morning. As the appointment approached, Student A informed Doe that she was not sure that she would be able to obtain a ride and was not able to drive herself to the appointment.

41. Doe encouraged Student A to exhaust all her options to find a ride but to let Doe know if she really could not find anyone to take her to the appointment.

42. The day before the appointment, Student A told Doe that she could not obtain a ride. Out of concern for Student A's safety and well-being, Doe told Student A that she would transport her to the appointment. Student A agreed.

43. On the morning of the Appointment, Student A signed herself out of school.

44. Upon information and belief, while Student A was excusing herself from school, a school administrator asked Student A whether "anyone was taking [her] to the appointment, or [was she] taking [herself]."

45. While Doe did not know at the time, school administration was also aware that Student A intended to seek an abortion.

46. Doe met Student A off of the school's premises and drove Student A to the Center for the appointment.

47. After the appointment, Doe transported Student A to a friend's house at Student A's request. Student A expressly did not want to go home.

48. The following Monday, Doe's school became aware that Doe transported Student A to the appointment.

49. By Thursday, the school terminated Doe and referred the matter to the Department.

50. The school provided the Department with a brief "Investigative Report," which provided a basic overview of the school's review of the allegations.

The Disciplinary Investigation

51. The Department informed Doe that it was opening an investigation into the allegations.

52. In November 2023, Doe voluntarily met with the Department representatives for an interview.

53. It is unclear whether the Department interviewed anyone else, obtained any documents, or conducted any other investigation into this matter beyond the "Investigative Report" provided by the school.

54. In late 2023, the Department proposed that Doe surrender her teaching credential and agree not to work as an educator, licensed or unlicensed, paid or volunteer, in New Hampshire or any other U.S. jurisdiction in lieu of further disciplinary action.

55. At no point did Doe receive any representation from the Department that her investigation had concluded, nor did Doe receive the report of findings required by Ed. 511.01.

56. To date, Doe has not received this report, despite repeated requests for it.

Edelblut's Public Comments and Improper Disclosure

57. In April 2024, in response to a New Hampshire Public Radio article critical of his management of the Department, Edelblut authored an Op-Ed entitled *Thank God Someone is Looking Out for the Children*.⁴

58. In his Op-Ed, Edelblut rhetorically asked whether the Department should “turn a blind eye” to allegations that “an educator lies by calling in sick so they can take a student – without parental knowledge – to get an abortion.”

59. RSA 133:32 only requires parental notification where “an unemancipated minor” or “a female for whom a guardian or conservator has been appointed ... because of incompetency” is seeking abortion care. As these provisions did not apply in this instance, there was no legal obligation or duty to provide Student A’s parents with “knowledge” prior to receiving care.

60. Yet, the gist of Edelblut’s public statement was that Doe helped a minor circumvent New Hampshire’s parental notification law. This was false and the Department—and by extension, Edelblut—knew that Student A was an adult months before Edelblut made the statement.

61. In response to calls to substantiate Edelblut’s claim, the Department published a redacted version of the “Investigative Report” provided by Doe’s former school.

62. In June 2024, the Department published additional redacted documents related to the investigation. However, upon information and belief, the metadata associated with this document production included references to Doe’s last name and was also disclosed to at least one major media outlet.

⁴ See <https://www.education.nh.gov/news-and-media/thank-god-someone-looking-out-children>.

63. Significant media coverage followed with respect to this issue, with an emphasis on the perceived requirement that Student A’s parents have been notified. Again, the Department’s biased and stilted disclosure of information—information which should have remained confidential until the adjudicative process completed—caused a misleading narrative of the facts to permeate in the media, damaging Doe’s reputation and putting her at risk.

64. Edelblut and the Department engaged in this conduct before any formal report was made to Doe concerning the Department’s findings and conclusions, before any formal disciplinary action was even proposed, and while Doe was considering the Department’s surrender proposal.

65. This conduct was plainly intended to intimidate Doe into voluntarily surrendering her credentials and leaving education altogether.

The Revocation of Doe’s Teaching Credential

66. On June 17, 2024, Doe received a letter from Brennan purporting to revoke Doe’s teaching credential (the “Revocation Letter”).

67. The Revocation Letter informed Doe that the Department “has formally revoked your New Hampshire Educator License.”

68. The Revocation Letter further stated that “This revocation is based upon a violation of the Code of Conduct for New Hampshire Educators. Specifically, the violation is of Ed 510.02(b)(2), in that you failed to provide appropriate supervision to a student under your control and direction by taking the student to obtain an abortion.”

69. The Revocation Letter informed Doe that she would be added to the List of Revoked or Suspended Educators, her license status would be listed as “Revoked” in the

Educator Information System, and her revocation would also be entered into the National Association of State Directors of Teacher Certification.

70. On June 18, 2024, Doe informed the Department that Doe disputed the proposed discipline, formally requested that the matter be scheduled for an adjudicatory hearing as provided for by the rules, and again requested that the Department's report be made available. A pre-hearing conference is currently scheduled for July 16, 2024.

71. Doe also informed the Department that pursuant to the relevant regulations and statute, Doe's teaching credential should not be revoked prior to a hearing. Doe requested clarification on whether her license was revoked.

72. On June 21, 2024, the Department confirmed that Doe's teaching credential had been revoked.

73. Not only has no hearing been held on this matter but, aside from the Revocation Letter, Doe has not received any specific proposed findings made by the Department or any analysis of how the facts support an alleged violation of Ed. 510.02(b)(2).⁵

Irreparable Harm to Doe and the Necessity of Immediate Injunctive Relief

74. Doe has obtained new employment and is set to begin a summer teaching job on July 8, 2024.

75. As a hearing in this matter has yet to be scheduled, and the current pre-hearing conference is not scheduled until after Doe's teaching position begins, there is no opportunity to have the Department's revocation decision reviewed.

⁵ By its own terms, Ed. 510.02(b)(2) places a duty on New Hampshire educators to "provide appropriate supervision, pursuant to local school district policy ..., *at school or school-sponsored activities or the failure to ensure the safety and well-being of students.*" (emphasis added). There is a legitimate legal question of whether this provision would even apply under these facts, which has yet to be addressed by the Department or considered by a hearing officer.

76. Doe will suffer irreparable harm, loss, and damage without immediate injunctive relief as she will be unlawfully deprived of the ability to work in her teaching position, has lost her credential and, therefore, her ability to earn a living in her profession during the pendency of the adjudicatory proceeding, and her clearly established constitutional and statutory rights are being violated as a result of the Department's decision. She will also be improperly added to the National Association of State Directors of Teacher Certification, thereby frustrating her ability to work anywhere, before she has a chance to seek a fair hearing on this matter.

77. Furthermore, as Doe is currently employed as an educator, the loss of her credential exposes her to liability such that she is at immediate risk of either needing to resign from her position or be terminated.

78. The statutory and regulatory procedures make it apparent that neither the Commissioner, Deputy Commissioner, nor the Department have the authority to revoke a credential in a contested case prior to an adjudicatory proceeding. Rather, that authority rests with the Board and is only exercised *after* a hearing, and the Board's review of the hearing officer's proposed findings and the parties' exceptions.

79. To revoke Doe's teaching credential prior to this process is both well beyond the scope of the Defendants' authority, but also violates Doe's due process rights under Pt. I, Art. 15 of the New Hampshire Constitution, RSA 541-A:30, and Ed. 511. Every day this erroneous and unlawful order stands further exposes Doe to irreparable harm.

COUNT I

Request for Temporary Restraining Order and Preliminary Injunctive Relief

80. Doe incorporates all paragraphs above and below as if fully restated herein.

81. Pursuant to N.H. Super. Ct. R. 48, a "Temporary Restraining Order may be granted without written or oral notice to the adverse party only if: (1) it clearly appears to the

court in which the action is pending from specific facts shown by affidavit or by the verified petition that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party can be heard in opposition; and (2) the applicant or the applicant's representative certifies to the court in writing the efforts which have been made to give the notice”

82. For the reasons set forth herein, Doe is currently subjected to irreparable harm by virtue of the Defendants' unlawful revocation of her credential and her threatened inclusion in the National Association of State Directors of Teacher Certification. Because Defendants' violation of New Hampshire law and the Department's own rules is so egregious and apparent, a temporary restraining order should issue immediately, and an expedited hearing should be held to determine Doe's ongoing entitlement to injunctive relief pending the outcome of the adjudicatory process.

83. Preliminary injunctive relief, including a temporary restraining order, is a provisional remedy that preserves the status quo pending a final determination of the case on the merits. *N.H. Dep't. of Env't'l Serv. v. Mottolo*, 155 N.H. 57, 62 (2007). An injunction may issue when there is an immediate danger of irreparable harm to a party seeking such relief and there is no adequate remedy at law. *Id.* A party seeking an injunction must show it would likely succeed on the merits. *Id.* It is within a trial court's discretion to grant an injunction after consideration of the facts and established principles of equity. *Id.*

84. Undersigned counsel provided the Defendants with notice of this filing via email on June 24, 2024, prior to this Verified Complaint and request for Temporary Restraining Order being filed.

85. Doe states that there is a danger of irreparable harm and that an immediate temporary restraining order and preliminary injunction are necessary to protect her established constitutional, statutory, and regulatory rights under the Department's own rules. Specifically, as stated above, Doe is currently employed as a teacher and needs to maintain her credentials in order to retain that position. She is also set to begin a summer teaching job on July 8, 2024, and needs a valid credential to do so.

86. As set out above, the Department, specifically Edelblut and Brennan, acted *ultra vires* when it revoked Doe's credentials without following the appropriate procedures and before the Board issued a final order relative to this matter. Rather, the Defendants' decision to revoke Doe's credential prior to completion of the adjudicatory process directly contravened the provisions of RSA 541-A:30 and Ed. 511 and, therefore, her established rights thereunder.

87. In the Revocation Letter and subsequent correspondence, Defendants failed to articulate any legitimate statutory or regulatory authority for the immediate suspension of Doe's license prior to an adjudicatory hearing.

88. Furthermore, the Defendants have failed to provide the required report and recommendations for Doe to review the factual and legal conclusions justifying such an extreme sanction. As such, there is no dispute that the Department failed to conform to the established policies and procedures without explanation and has therefore violated (and continues) to violate Doe's rights. Doe is therefore likely to succeed on the merits of any claim predicated on Defendants' failure to provide Doe with sufficient notice and a fair hearing prior to the imposition of discipline.

89. There is no adequate remedy at law for the real and imminent deprivations of statutory rights and continued *ultra vires* actions by the Defendants as set forth above. An order

of this Court will be the only way to reinstate Doe's credential pending the completion of the adjudicatory process and to prevent Defendants from continuing to act in violation of and contrary to New Hampshire law and the Department's own rules.

90. Additionally, granting a preliminary injunction in this instance is in the public interest. Defendants' conduct in publicly disclosing a pending disciplinary matter, disclosing information and documents gathered by the Department during the investigation, and then disclosing Doe's name to the media, all violated the Department's own confidentiality rules. *See* 511.01(k). This egregious, unnecessary conduct raises a litany of concerns regarding the fairness and bias of this investigation and sanctions process. The public has an interest in ensuring that its educators are provided with a fair and impartial adjudicatory process before they are subjected to discipline, and Doe has been plainly deprived of that process. The Defendants should be held accountable for their cavalier disregard of the Department's own rules.

91. Consequently, because Doe has established an immediate danger of irreparable harm with no adequate remedy at law, a likelihood of success on the merits, and that the public interest favors her request for injunctive relief, this Court should grant Doe's request for a temporary restraining order immediately and schedule an expedited hearing in this matter.

COUNT II Permanent Injunction

92. Doe incorporates all paragraphs above and below as if fully set forth herein.

93. For the reasons set forth in Count I, permanent injunctive relief is necessary and appropriate to enjoin the Defendants from violating New Hampshire law and the Board's rules.

COUNT III Attorney's Fees

94. Doe incorporates all paragraphs above and below as if fully set forth herein.

95. As set forth above, Doe's right to a fair and impartial hearing prior to the imposition of discipline is a clearly established right under the New Hampshire Constitution, the New Hampshire Supreme Court's caselaw as it pertains to professional licensees, RSA 541-A:30, and Ed. 511.

96. But for the Defendant's gross deviation from the established procedures, Doe would not have had to seek redress from this Court to vindicate these clearly established rights.

97. As such, an order awarding Doe her costs, disbursements, and reasonable attorneys' fees incurred in bringing this action and seeking this relief is warranted pursuant to *Harkeem v. Adams*, 117 N.H. 687, 691 (1977) and *Claremont Sch. Dist. v. Governor*, 144 N.H. 590, 595 (1999).

98. In the event the Court grants Doe's request for fees and costs, she requests leave to file an affidavit in support thereof within 15 days of the Court's order.

PRAYER FOR RELIEF

Accordingly, Doe respectfully request that this Court enter the following relief:

A. An order temporarily restraining the Department from continuing to revoke her teaching credential and immediately reinstating her credential pending a final order from the New Hampshire Board of Education pursuant to Ed. 212.03;

B. An order declaring that the Department's purported revocation of Doe's teaching credential violates New Hampshire law;

C. An order permanently enjoining Edelblut, Brennan, and their agents, officers, employees, successors, and all persons acting in concert with each or any of them from revoking Doe's credential prior to an express final decision from the Board of Education;

D. An order awarding Doe's costs, disbursements and reasonable attorneys' fees incurred in bringing this action; and

E. Such other or further relief as the Court deems just and proper.

Respectfully Submitted,

Jane Doe, proceeding under Pseudonym
By her Attorneys

SHAHEEN & GORDON, P.A.

Dated: June 24, 2024

/s/ James J. Armillay, Jr.
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VERIFICATION
(To be Filed under Seal)

I, REDACTED, hereby verify and affirm under Oath that the facts stated in this Verified Complaint and Request for Temporary Restraining Order are true and correct to the best of my knowledge and belief. I also verify that I am proceeding under a pseudonym for the reasons set forth in my Motion for Leave to Proceed Under Pseudonym and that I am the “Jane Doe” whose verification is attached to the Verified Complaint and Request for Temporary Restraining Order.

Dated: June 24, 2024

REDACTED

STATE OF NEW HAMPSHIRE

COUNTY OF Millsborough

Subscribed and sworn before be this 24 th day of June 2024.



Tricia D. Goff
~~Justice of the Peace~~/ Notary Public
My Commission Expires: _____