

C # 311-97DHPBL
SB # 61-97
EDU # 1830-98
C # 364-04

IN THE MATTER OF THE :
DISQUALIFICATION FROM SCHOOL : STATE BOARD OF EDUCATION
EMPLOYMENT OF R.J.B. : DECISION

Decided by the Assistant Commissioner of Education, June 13, 1997

Decided by the State Board of Education, September 3, 1997

Remanded by the State Board of Education, February 4, 1998

Decided by the Commissioner of Education, September 9, 2004

For the Petitioner-Appellant, R.J.B., pro se

For the Participant Commissioner of Education, Jason Michael Ross,
Deputy Attorney General (Peter C. Harvey, Attorney General of
New Jersey)

R.J.B. (hereinafter "petitioner"), who was employed as a school bus driver by the Bayonne Board of Education, was disqualified by the Office of Criminal History Review of the Department of Education from continued employment in the State's schools after a criminal history record review conducted pursuant to N.J.S.A. 18A:39-19.1 as then in effect revealed that he had been convicted of possession of drug paraphernalia in February 1997. The petitioner appealed his disqualification to the Commissioner of Education, contending that he was rehabilitated.¹

¹ We note that prior to 1998, an individual convicted of an offense that was disqualifying under N.J.S.A. 18A:6-7.1 or N.J.S.A. 18A:39-19.1 could be employed in the public schools if he affirmatively

In a letter decision dated June 13, 1997, an Assistant Commissioner of Education upheld the disqualification, concluding that the petitioner had failed to demonstrate clear and convincing evidence of his rehabilitation under the standard set forth in N.J.S.A. 18A:6-7.1 as then in effect.

On September 3, 1997, the State Board of Education reversed the decision of the Assistant Commissioner, concluding that the petitioner's conviction for possession of drug paraphernalia was not a "crime or offense involving the manufacture, transportation, sale, possession, or habitual use of a 'controlled dangerous substance' as defined in the 'New Jersey Controlled Dangerous Substances Act'" so as to constitute a disqualifying offense under N.J.S.A. 18A:39-19.1 as then in effect.

On February 4, 1998, we granted the Commissioner's request to participate for purposes of seeking reconsideration/clarification of our decision of September 3, 1997. Upon reconsideration in light of the arguments presented, we remanded this matter to the Commissioner with the direction that he transmit it to the Office of Administrative Law for initial determination on the issue of whether a conviction for possession of drug paraphernalia was a disqualifying offense. We retained jurisdiction.

On July 27, 2004, an administrative law judge ("ALJ") concluded that, in light of the Appellate Division's decision in In the Matter of the Disqualification from School Employment of J.W., Docket #A-5481-98T3 (App. Div. 2000), certif. denied, 165 N.J. 602 (2000), the petitioner's conviction for possession of drug paraphernalia was a disqualifying offense under N.J.S.A. 18A:39-19.1 as in effect at the time of the

demonstrated rehabilitation to the Commissioner by clear and convincing evidence. However, effective June 30, 1998, subsequent to the petitioner's conviction, the statutes were amended to eliminate any provision for rehabilitation.

conviction.² Since the petitioner had failed to respond to any communications or to appear at any scheduled hearings, the ALJ recommended dismissing his rehabilitation claim. He therefore recommended that the petitioner be disqualified from employment as a school bus driver.

On September 9, 2004, the Commissioner adopted the ALJ's decision and transmitted this matter back to us pursuant to our retention of jurisdiction.

By letter dated September 10, 2004, the Director of the State Board Appeals Office advised the petitioner and the Deputy Attorney General representing the Commissioner that they were being afforded the opportunity to submit briefs by September 30 in response to the Commissioner's decision. No briefs were filed.

After reviewing the decisions below, we accept the Commissioner's decision. Accordingly, the petitioner is disqualified from school employment, and the matter is closed.

Ernest P. LePore abstained.

December 1, 2004

Date of mailing _____

² We note that the statute was amended in 1998 to specifically include possession of drug paraphernalia as a disqualifying offense.