

IN THE MATTER OF THE DENIAL :
OF THE ISSUANCE OF A TEACHING : COMMISSIONER OF EDUCATION
CERTIFICATE TO OTTO KRUPP. : DECISION
_____:

SYNOPSIS

Petitioner, former mathematics teacher convicted of first-degree murder in 1979, appealed denial by State Board of Examiners of his application for re-issuance of a teaching certificate. Upon release after nearly 23 years of incarceration, petitioner applied for “certification after revocation” pursuant to *N.J.A.C.* 6:11-3.6. State Board of Examiners denied certification finding that, although petitioner had provided evidence of rehabilitation subsequent to his murder conviction and demonstrated that he functioned effectively while incarcerated, insufficient time had passed for him to demonstrate continued rehabilitation and the ability to function effectively outside of confinement.

The ALJ concluded that petitioner was statutorily disqualified from holding a teaching certificate, which would allow him to teach in public schools or in correctional facilities. In light of the Rehabilitated Convicted Offenders Act, *N.J.S.A.* 2A:168A-1 to -6, the ALJ found that petitioner was rehabilitated, but that, in 1998, the Legislature amended *N.J.S.A.* 18A:6-7.1, which disqualifies a teacher from employment in “any facility, center, school or school system under the supervision of the Department of Education” if he had been convicted of certain crimes, including murder. Before the 1998 amendments, an individual convicted of a disqualifying offense had the opportunity to demonstrate rehabilitation. As a result of the amendments, *N.J.S.A.* 18A:6-7.1 provides that an individual convicted of a disqualifying offense “shall be permanently disqualified from employment or service.” The ALJ denied the relief requested by petitioner.

The Commissioner adopted the Initial Decision with modification. The Commissioner concurred with the ALJ that petitioner was statutorily disqualified from holding a New Jersey teaching certificate. The Commissioner, however, found the Board of Examiners’ determination that, although petitioner had provided evidence of rehabilitation subsequent to his murder conviction and demonstrated that he functioned effectively while incarcerated, insufficient time had passed for him to demonstrate continued rehabilitation and the ability to function effectively outside of confinement entirely reasonable. The petition was dismissed.

<p>This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.</p>

June 24, 2004

IN THE MATTER OF THE DENIAL :
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CERTIFICATE TO OTTO KRUPP. : DECISION
_____ :

The record of this matter and Initial Decision issued by the Office of Administrative Law (OAL) have been reviewed. Exceptions of Petitioner Krupp and reply exceptions of the State Board of Examiners were filed in accordance with *N.J.A.C.* 1:1-18.4 and these submissions were fully considered by the Commissioner in his determination herein.¹

Petitioner’s exceptions essentially renew and elaborate on his arguments advanced before the Administrative Law Judge (ALJ) below. Initially, he seeks to clarify that he did not apply for “certification after revocation” pursuant to *N.J.A.C.* 6:11-3.6 but, rather, he applied for a teaching certificate pursuant to the Rehabilitated Convicted Offenders Act (RCOA). (Petitioner’s Exceptions at 1) Petitioner argues that pursuant to *N.J.S.A.* 2A:168A-3 of that Act, presentation of evidence “that the applicant has achieved a degree of rehabilitation indicating that his engaging in the proposed employment would not be incompatible with the welfare of society **shall preclude a licensing authority from disqualifying or discriminating against the applicant.**” (emphasis in text) (*Id.* at 3) He contends that the only thing in question at the time

¹ It is noted that primary exceptions of the State Board of Examiners were untimely, having been filed on May 25, 2004 in response to an Initial Decision which was mailed on May 11, 2004 and, therefore, such exceptions, have not been considered here. It is further noted that on May 27, 2004, Mr. Krupp filed an “addendum” to his previously filed exceptions. As this submission was filed outside the exceptions period prescribed by regulation, it similarly, was not considered here.

the Board of Examiners denied his request for certification was the sufficiency of “compelling rehabilitation” which, petitioner points out, the ALJ herein found to be conclusively established. Petitioner, therefore, avers that because he has satisfied the requirements of the RCOA, he should be issued a teaching certificate. (*Ibid.*)

With respect to the effect of *N.J.S.A.* 18A:6-7.1 on this matter, petitioner readvances his position that this provision does not even come into consideration until after the issuance of his certificate under the RCOA. He maintains that subsequent to an applicant qualifying and applying for a teaching position, *N.J.S.A.* 18A:6-7.1 operates to circumscribe the particular forums where he may be employed. Petitioner argues that to bar issuance of a teaching certificate under the RCOA because he is disqualified from employment in one forum, *i.e.*, public schools, operates to automatically disqualify him from other forums where he is allowed to be employed but which require a teaching certificate. He maintains that because *N.J.S.A.* 18A:6-7.1 does not disqualify him from employment in these other forums, he should not be discriminated against by denial of certification under the RCOA. (*Id.* at 4)

Finally, petitioner again questions whether the Office of Education in the Department of Corrections and the Juvenile Justice Commission are encompassed by the provisions of *N.J.S.A.* 18A:6-7.1, as this statutory provision claims applicability to institutions “**under the supervision of the Department of Education and board of education,**” and these entities do not have a board of education. (emphasis in text) (*Id.* at 4-5)

In response, the Board of Examiners advances that petitioner’s contention that he applied for a certificate to teach pursuant to RCOA and that he has exhibited sufficient rehabilitation under this Act to warrant his certification is misplaced. It maintains, the RCOA does not govern the procedure for determining whether an individual should receive a certificate

after revocation. Rather, it urges, [*N.J.A.C.* 6:11-3.6(g)] governed the procedure for issuance of a certificate after revocation in this matter. This provision required petitioner to provide information to the Board of Examiners with respect to the circumstances leading to the revocation of his prior certificate and demonstrate rehabilitation which warranted the issuance of a new certificate. The Board professes that in making their determination as to whether petitioner demonstrated the requisite rehabilitation, it was guided by the factors itemized in the RCOA.² After full consideration of all of the relevant factors, the Board of Examiners asserts that it concluded that:

[t]he nature and seriousness of the crime, the circumstances under which the crime occurred, the age of the petitioner when he committed the crime, and the nature and duties of a teacher weigh in favor of disqualifying the petitioner for a teaching certificate because the conviction clearly relates adversely to the teaching profession. Furthermore, although it is undisputed that the petitioner has demonstrated evidence of rehabilitation while incarcerated, there has been insufficient time for petitioner to demonstrate sufficient rehabilitation outside of confinement. Virtually all of the evidence that [p]etitioner submitted in support of his application concerned his good behavior while working within the criminal justice system. There is no evidence of his ability to function effective[ly] outside of this confinement or in a school system. (Board of Examiners' Reply Exceptions at 5)

² It is noted that *N.J.S.A.* 2A:168A-2 of the RCOA permits a licensing authority to disqualify or discriminate against an applicant for a license or certificate "if a conviction for a crime relates adversely to the occupation, trade, vocation, profession or business for which the license or certificate is sought." In determining whether a conviction for a crime so relates, the licensing authority is required to detail in writing how specific factors relate to the license or certificate sought. These factors include, but are not limited to, a. Nature and duties of the occupation, trade, vocation, profession or business, a license or certificate for which the person is applying; b. Nature and seriousness of the crime; c. Circumstances under which the crime occurred; d. Date of the crime; e. Age of the person when the crime was committed; f. Whether the crime was an isolated or repeated incident; g. Social conditions which may have contributed to the crime; h. Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the applicant under their supervision. (*N.J.S.A.* 2A:168A-2)

As such, the Board of Examiners contend that, in accordance with their responsibility to protect the interests of New Jersey school children in the issuance of teaching certificates, they “were well within their authority to deny the petitioner’s application for certificate after revocation.”

(*Id.* at 6)

With regard to petitioner’s contention that *N.J.S.A.* 18A:6-7.1 would not disqualify him from teaching for the Juvenile Justice Commission, the Board of Examiners urge:

[a]s the ALJ correctly noted in his Initial Decision, “[i]n view of the prominent involvement of the Department of Education in securing funding, promulgating rules of governance [and] monitoring educational programs,” educational institutions operated by the Juvenile Justice Commission are State facilities under the supervision of the Department of Education. Therefore, the ALJ’s finding that the statutory prohibition of *N.J.S.A.* 18A:6-7.1 applies to education institutions operated by the Juvenile Justice Commission should be upheld. (Board of Examiner’s Reply Exceptions at 9)

Upon his full and independent review of the record, the Commissioner concurs with the ALJ that petitioner is properly denied a New Jersey teaching certificate.

Initially, the Commissioner rejects out-of-hand petitioner’s claim of application for and entitlement to certification pursuant to the RCOA. As was recognized by the ALJ, application for teaching certificates, establishment of requirements for their issuance, revocation and suspension is within the jurisdictional purview of the Board of Examiners:

N.J.S.A. 18A:6-38 vests the Examiners with broad authority to issue appropriate certificates to teach pupils in the public schools and to revoke such certificates under rules and regulations prescribed by the State Board of Education. Teaching staff members in state facilities, including correctional facilities, “shall hold the appropriate certificate issued by the State Board of Examiners.” *N.J.S.A.* 18A:7B-6. School authorities have the right and the duty to screen teachers as to their fitness. (citations omitted) (Initial Decision at 7)

N.J.A.C. 6:11-2.2 **Duties**³, in effect at the time of petitioner's application for a certificate, further elaborates on the authorization and responsibilities of this body:

[t]he State Board of Examiners shall grant appropriate certificates to teach or to administer, direct, or supervise, the teaching, instruction or educational guidance of pupils in public schools operated by district boards of education, and such other certificates as it shall be authorized to issue by law, based upon certified scholastic records, documented experience or upon examinations, and may revoke or suspend such certificates. It is the responsibility and authority of the State Board of Education upon recommendation of the Commissioner of Education to establish rules and regulations governing the issuance, revocation and suspension of certificates, including rules governing types of certificates, authorizations and certification requirements. All actions of the State Board of Examiners shall be taken in accord with rules prescribed by the State Board of Education. The Board may, subject to the procedures set forth in *N.J.A.C.* 6:11-3, refuse to issue a certificate where the applicant has been found by a court or administrative agency of competent jurisdiction, to have engaged in conduct which would have provided adequate grounds for the revocation of the certificate, if then held. The Board shall not refuse to issue a certificate without providing the applicant an opportunity to be heard pursuant to *N.J.A.C.* 6:11-3.15.

In contrast, the Commissioner observes that the RCOA provides no independent authorization for application for, or issuance of, a license or certificate but, rather, operates to preclude licensing authorities from disqualifying or discriminating against an applicant for these credentials based *solely* on his or her conviction of a crime.

Moreover, in reviewing the interrelationship between the RCOA and *N.J.S.A.* 18A:6-7.1, the Commissioner finds no conflict or tension between these statutory provisions. The Commissioner observes that the Rehabilitated Convicted Offenders Act, *N.J.S.A.* 2A:168A-1 *et seq.*, was originally enacted by the Legislature in 1968. The intent of this Act is reflected in 2A:168A-1 **Legislative Findings**:

³ This provision was revised and recodified as *N.J.A.C.* 6A:9-4.2, effective January 20, 2004.

The Legislature finds and declares that it is in the public interest to assist the rehabilitation of convicted offenders by removing impediments and restrictions upon their ability to obtain employment or to participate in vocational or educational rehabilitation programs based solely upon the existence of a criminal record.

Therefore, the Legislature finds and declares that notwithstanding the contrary provisions of any law or rule or regulation issued pursuant to law, a person shall not be disqualified or discriminated against by any licensing authority because of any conviction for a crime, unless N.J.S. 2C:51-2 is applicable *or unless the conviction relates adversely to the occupation, trade, vocation, profession or business for which the license or certificate is sought.* (emphasis supplied)

As such, pursuant to this statutory provision, the relevant inquiry in judging the propriety of disqualification or discrimination against an applicant for licensure or certification based on conviction of a crime is whether the conviction at issue has a direct relation to the license or certificate being sought. *See Storcella v. State Dept. of Treasury*, 296 N.J. Super. 238 (App. Div. 1997).

Turning to the provisions of *N.J.S.A. 18A:6-7.1 et seq.*, as recognized by the ALJ, pursuant to amendments enacted by the Legislature in 1998, this provision

disqualifies [an individual] from employment in “any facility, center, school or school system under the supervision of the Department of Education” if he had been convicted of certain crimes, including murder. Before the change in the law, subsection (e) of the statute allowed a person convicted of a disqualifying offense the opportunity to demonstrate affirmatively his or her rehabilitation by clear and convincing evidence. As a result of the 1998 amendments, however, *N.J.S.A. 18A:6-7.1* now provides that an individual convicted of a disqualifying offense “shall be permanently disqualified from employment or service.” Similarly, the Legislature expressly repealed the provision in the law that had previously granted such individual the opportunity to show rehabilitation. Instead, subsection (e) limits the individual to

“an opportunity to challenge the accuracy of the disqualifying criminal record.” (citation omitted) Initial Decision at 8.

The Commissioner notes that the Legislature in enacting the 1998 amendments to *N.J.S.A.* 18A:6-7.1 proclaimed that a conviction for a first or second degree crime was inimical to employment in the public schools. When these amendments were drafted, the Legislature declared that the interest and safety of school children in the State of New Jersey must prevail. Indeed, one of the sponsors of the amendments declared, “We are entrusting these people with our children’s safety. The risk that these people have not been rehabilitated is a gamble that we are not willing to take.” Senator Norman M. Robertson, Senate and Assembly News Release, GovNet #30085. The other sponsor of the amendments stated, “There is no good reason why we should have a child abuser or flasher working with our children. This legislation keeps these people where they belong -- far away from our kids.” Senator Joseph A. Palaia, Senate and Assembly News Release, GovNet #30085.

Because the enactment of the 1998 amendments to *N.J.S.A.* 18A:6-7.1 is specifically predicated on the Legislature’s belief that an individual’s conviction for certain crimes, including murder, *relates adversely to employment in the public school system of New Jersey*, disqualification or discrimination against such an individual who has applied for a teaching certificate is specifically exempted from the dictates of the RCOA by that provision’s clear language as a consequence of the relationship between the offense and the certification being sought.

Additionally, the Commissioner stresses that the nature and purpose of a teaching certificate compel petitioner’s denial of this credential. As correctly observed by the ALJ:

Possession of a valid teaching certificate is legally necessary only if someone wants to teach in a public school or correctional facility. It is unnecessary to have a teaching certificate in order to

teach in a private or parochial school, unless the nonpublic school itself happens to impose such qualification as a condition of employment. Nonpublic schools may voluntarily arrange for the Commissioner to conduct a criminal-record check for disqualifying offenses, but are under no legal obligation to do so. (citation omitted) (Initial Decision at 9)

Most importantly, the award of a certificate by the Board of Examiners certifies that the holder has met all of the requirements established by the State Board of Education and is authorized to serve in the public schools of New Jersey. As a consequence of *N.J.S.A.* 18A:6-7.1, petitioner is precluded from employment in any entity under the auspices of the Department of Education and the State Board of Education, rendering the award of certification to him a legal impossibility.

Finally, even assuming, *arguendo*, that the certification sought by petitioner could be awarded, the Commissioner cannot concur that the Board of Examiners erred in concluding that petitioner was not rehabilitated. Notwithstanding the ALJ's perception of the extent of petitioner's proffered demonstration of rehabilitation at the time of his OAL hearing, the Commissioner's full review here persuades him that the Board of Examiners' determination that, although he had provided evidence of rehabilitation subsequent to his murder conviction and demonstrated that he functioned effectively while incarcerated, insufficient time had passed for him to demonstrate continued rehabilitation and the ability to function effectively outside of confinement, was entirely reasonable and, therefore, must be sustained. This said, however, the Commissioner, for the reasons expressed above, concurs with the ALJ that the extent or degree of petitioner's rehabilitation is not a consideration, as he is statutorily disqualified from holding a New Jersey teaching certificate.

Accordingly, the Initial Decision of the OAL is adopted, as modified above, and the instant Petition of Appeal is hereby dismissed.

IT IS SO ORDERED.⁴

COMMISSIONER OF EDUCATION

Date of Decision: June 24, 2004

Date of Mailing: June 25, 2004

⁴ This decision may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6A:4-1.1 *et seq.*