

258-17

NOLAN PANZICA, :
 :
 PETITIONER, :
 :
 v. : COMMISSIONER OF EDUCATION
 :
 NEW JERSEY STATE DEPARTMENT : DECISION
 OF EDUCATION, CRIMINAL :
 HISTORY REVIEW UNIT, :
 :
 RESPONDENT. :

SYNOPSIS

Petitioner – who had been employed as a school maintenance worker in the Rockaway Borough school district – argued that the decision of the New Jersey Department of Education, Criminal History Review Unit (Department), to disqualify him from employment following a drug conviction violated his procedural due process rights. Petitioner contended that he was not provided with proper notice and an opportunity to be heard, and requested that his disqualification be vacated for 90 days to allow him to challenge the criminal plea entered in Municipal Court. The Department filed a motion to dismiss in lieu of an answer.

The ALJ found, *inter alia*, that: there are no material facts at issue here, and the matter is ripe for summary decision; petitioner was arrested in September 2016 and charged with possession of marijuana and intent to use drug paraphernalia; the Rockaway school district was notified of his arrest a week later, and petitioner then met with Rockaway’s superintendent of schools, where he was presented with a document containing information about the arrest; petitioner then informed the District and the union representatives present at the meeting about his drug arrest; Panzica entered a guilty plea to one count of possession of drug paraphernalia with intent to use in December 2016; petitioner thereafter received a letter from the Department notifying him that he was permanently disqualified from employment in New Jersey public schools due to his criminal conviction; petitioner does not deny the criminal conviction that resulted in his disqualification, but rather requests a “do-over” in Municipal Court, claiming that he was not informed by anyone nor advised in any document from the Department or the District that a drug paraphernalia conviction would result in disqualification from his employment; however, petitioner failed to cite any regulation or case law for his argument that the District had a duty to inform him of the consequences of a drug conviction; the disqualification statute, *N.J.S.A. 18A:6-7.1(b)*, is a public record; and petitioner admitted that he did not avail himself of the statute’s requirements before he entered his guilty plea in Municipal Court. The ALJ concluded that petitioner’s argument that his procedural due process rights and his right to be heard were violated is without merit. Accordingly, the Department’s motion for summary decision was granted.

Upon review, the Commissioner concurred with the ALJ’s findings and conclusions, and adopted the Initial Decision of the OAL as the final decision in this matter. The petition was dismissed.

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.

August 31, 2017

OAL DKT. NO. EDU 3103-17
AGENCY DKT. NO. 17-1/17

NOLAN PANZICA, :
PETITIONER, :
v. : COMMISSIONER OF EDUCATION
NEW JERSEY STATE DEPARTMENT : DECISION
OF EDUCATION, CRIMINAL :
HISTORY REVIEW UNIT, :
RESPONDENT. :

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by the petitioner, Nolan Panzica, and the Criminal History Review Unit’s reply thereto.

In his exceptions, the petitioner reiterates the arguments that were made below contending that the Administrative Law Judge (ALJ) erroneously determined that the petition should be dismissed. The petitioner contends that in reaching his decision, the ALJ applied the incorrect standard to his right to challenge his disqualification from employment within a public school. The petitioner stresses that under *N.J.S.A. 18A:6-7.3*, his employer – the Rockaway Borough School District (District) – had an obligation to provide him with notice, after he was arrested, that a conviction for possession of drug paraphernalia would result in the dismissal from his position.¹ Petitioner contends that the District’s failure to adhere to the requirements of *N.J.S.A. 18A:6-7.3* violated his rights and damaged his ability to defend himself against

¹ It is undisputed that the petitioner entered a guilty plea in the Jefferson Township Municipal Court to one count of possession of drug paraphernalia with intent to use; and that the petitioner did not challenge the accuracy of his conviction after being afforded the opportunity to do so by the Criminal History Review Unit.

dismissal from his position. Further, the Initial Decision incorrectly determined that the petitioner was presumed to know the law.

Upon the review of the record, the Commissioner is in accord with the ALJ's conclusion – for the reasons set forth in the Initial Decision – that the Criminal History Review Unit properly disqualified the petitioner from public school employment based on his conviction for possession of drug paraphernalia. The Commissioner is also in accord with the ALJ's determination that the District was not required to notify the petitioner of the consequences of a drug conviction. Despite the petitioner's assertion to the contrary, the arguments made by the petitioner were thoroughly considered and discussed by the ALJ in rendering the specific determinations outlined in the Initial Decision. Accordingly, the petition of appeal is hereby dismissed.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: August 31, 2017

Date of Mailing: August 31, 2017

² This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36* (*N.J.S.A. 18A:6-9.1*).



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 03103-17

AGENCY DKT. NO. 17-1/17

NOLAN M. PANZICA,

Petitioner,

v.

**NEW JERSEY DEPARTMENT OF
EDUCATION CRIMINAL HISTORY
REVIEW UNIT,**

Respondent.

Judson L. Hand, Esq., for petitioner (Law Offices of Alan L. Zegas, attorneys)

James M. Esposito, Deputy Attorney General, for respondent (Christopher S. Porrino, Attorney General of New Jersey, attorneys)

Record Closed: April 7, 2017

Decided: September 13, 2017

BEFORE **JULIO C. MOREJON**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, Nolan Panzica (Panzica), seeks a determination that the respondent, New Jersey Department of Education Criminal History Review Unit (Department), erred in disqualifying him from employment due to a drug conviction, where Panzica did not

know that a drug conviction would lead to a disqualification from employment. Specifically, Panzica argues that the Department's decision violated his procedural due process, as the Department did not provide him with proper "notice" and an opportunity to "be heard." Panzica requests that his disqualification be vacated for 90 days to allow him to challenge the criminal plea entered in the Municipal Court.

Panzica filed his Petition with the Department on January 26, 2017³. On March 1, 2017, the Department filed a motion to dismiss in lieu of an answer, pursuant to N.J.S.A. 6A:3-1.10⁴. On March 28, 2017, Panzica filed an opposition to the Department's motion for summary decision, and on April 7, 2017, the Department filed its reply to Panzica's response to the motion.

The matter was transferred to the Office of Administrative Law (OAL), where it was filed on March 6, 2017, as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. Thereafter, on March 28, 2017, Panzica filed his opposition to the motion for summary decision, and on April 7, 2017, the Department file their reply to Panzica's response.

FINDINGS OF FACT

The facts in this case are undisputed. Based upon the briefs, certifications and documents filed by the parties, I **FIND** the following to be the **FACTS** of this case:

On September 23, 2016, Panzica was arrested and charged in Jefferson Township with possession of one count of less than 50 grams of marijuana and one count of possession with intent to use drug paraphernalia. A week later the Rockaway

³ On or about December 29, 2016, Panzica filed a letter with the Department, challenging the Department's decision, along with Panzica's Certification, Exhibits and form of Order. By letter dated January 12, 2017, the Department instructed Panzica that his filing was not in compliance with N.J.A.C. 6A: 3-1.4, and that he had until January 23, 2017 to refile accordingly. Thereafter, on January 23, 2017, Panzica filed his Petition in conformance with the rules.

⁴ The Department had initially filed a Motion to Dismiss in Lieu of an Answer with the Commissioner of Education under N.J.A.C. 6A:3-1.10. The Department requested in its motion that once the matter was transferred to the Office of Administrative Law (OAL), that the Department's motion be converted to a summary decision motion under N.J.A.C. 1:1:12.5.

Borough School District (District), where Panzica is employed as a school maintenance worker, was notified of his arrest. Panzica then met with Superintendent Mark Schwartz; Rockaway Borough Education Association (Union) presidents, Jeri Hurley (Hurley) and Carol Culthier (Culthier), also attended the meeting. At this meeting, Panzica was presented with a “document” containing information about the arrest, and he informed the District and his Union of his drug arrest.

On or about December 1, 2016, Panzica entered a guilty plea in the Jefferson Township Municipal Court to one count of possession of drug paraphernalia with intent to use. By letter dated December 2, 2016, the New Jersey State Department of Education (DOE) notified Panzica that he was permanently disqualified from employment in New Jersey public schools due to his criminal conviction. The DOE’s notice informed Panzica that he had “30 days from the date of this written notice of disqualification” to challenge the accuracy of the criminal conviction. This was the first-time Panzica was informed that a criminal conviction would lead to a permanent disqualification from employment in New Jersey Public Schools.

LEGAL ANALYSIS AND CONCLUSIONS

A. Summary Decision Standard

Under N.J.A.C. 1:1-12.5(b) a “motion for summary decision shall be served with briefs and with or without supporting affidavits.” N.J.A.C. 1:1-12.5(b). A summary decision may be rendered “if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” Ibid.

A court should grant summary judgment when the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 528-529 (1995). The Supreme Court of New Jersey has adopted a standard that requires

judges to “engage in an analytical process to decide whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” Id. at 533.

“When a motion for summary decision is made, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding . . .” N.J.A.C. 1:1-12.5(b). A court should deny a motion for summary decision when the party opposing the motion has produced evidence that creates a genuine issue as to any material fact challenged. Brill, supra, 142 N.J. at 528-29. When making a summary decision, the “judge’s function is not himself [or herself] to weigh the evidence.” Id. at 540.

The Petition filed by Panzica, along with his certification, attests that he pleaded guilty to one count of a drug paraphernalia charge; that he informed the District of his arrest and criminal charge and he requested a 90-day stay to “challenge” the plea agreement entered in the Municipal Court. Panzica’s attestation as contained in the Petition are admissions of fact and therefore do not give rise to any material issue of material fact challenged. Panzica challenges his procedural due process rights and right to be heard, which is a question of law.

B. The Employee Disqualification Statute:

A school, or school system under the supervision of the Department of Education and board of education which cares for, or is involved in the education of children under the age of 18 shall not employ for pay or contract for the paid services of any custodian, school maintenance worker, or any other person serving in a position which involves regular contact with pupils unless the employer has first determined consistent with the requirements and standards of this act, that no criminal history record information exists on file in the Federal Bureau of Investigation, Identification Division, or the State Bureau of Identification which would disqualify that individual from being employed or utilized in such capacity or position (N.J.S.A. 18A:6-7.1)

An individual, shall be permanently disqualified from employment or service in a public school district, if the individual's criminal history record check reveals a record of conviction for any crime involving, "drug paraphernalia" as defined pursuant to N.J.S.A. 2C:36-1 et seq. (N.J.S.A. 18A:6-7.1(b)).

An individual shall not be disqualified from employment or service under this act on the basis of any conviction disclosed by a criminal record check performed pursuant to this act without an opportunity to challenge the accuracy of the disqualifying criminal history record (N.J.S.A. 18A:6-7(e)).

Panzica does not deny the criminal conviction that resulted in his disqualification from employment. In addition, Panzica does not challenge the "accuracy" of his criminal conviction. Panzica requests an opportunity for a do-over in the Municipal Court. Panzica claims that he was not "informed" by anyone nor "advised" in any document from the DOE or the District, that a drug paraphernalia conviction would result in disqualification from his employment at the District. However, Panzica fails to cite any regulation or case law for his argument that the District has a duty to inform him of the consequences of a drug conviction. The statute, which regulates Panzica's disqualification from employment, N.J.S.A. 18A:6-7.1(b), is a public record and is made available for all to read. Panzica admits that he did not avail himself of the statute's requirements before he entered his guilty plea in the Municipal Court, and now blames the DOE and the District for his error.

Panzica is also mistaken when he argues that his procedural due process was violated before he was disqualified from his public employment at the District. The statute provides that an individual shall not be disqualified from employment or service under this act on the basis of any conviction disclosed by a criminal record check performed pursuant to this act without an opportunity to challenge the accuracy of the disqualifying criminal history record (N.J.S.A. 18A:6-7(e)). Said opportunity was provided to Panzica in the DOE's notice of December 2, 2016, which allowed Panzica "30 days" from the date of the notice or disqualification to "challenge the accuracy" of

his criminal history record. Panzica has not submitted any proof challenging the criminal conviction, but instead chose to challenge the disqualification process instead.

Accordingly, the Department's motion for summary decision in lieu of an answer to dismiss the Petition is **GRANTED**.

ORDER

It is hereby **ORDERED** that the Department's motion for summary decision in lieu of an answer to dismiss the Petition is **GRANTED**.

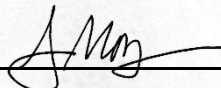
I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

April 25, 2017

DATE



JULIO C. MOREJON, ALJ

Date Received at Agency:

April 25, 2017

Date Mailed to Parties:
lr
