

**New Jersey Commissioner of Education**

**Final Decision**

Frederick Thorworth

Petitioner,

v.

New Jersey Department of Education,  
Office of Student Protection,

Respondent.

**Synopsis**

Petitioner challenged the determination of the New Jersey Department of Education, Office of Student Protection (Department), to permanently disqualify him from employment in a public school pursuant to *N.J.S.A. 18A:6-7.1* after a criminal history background check revealed three convictions for possession of small amounts of marijuana between 1971 and 1973, one in the State of Ohio and two in New York State. The Department filed a motion to dismiss petitioner’s appeal.

The ALJ found, *inter alia*, that: *N.J.S.A. 18A:6-7.1* requires disqualification for a conviction in another state when it is for a crime or offense “substantially equivalent” to a disqualifying crime or offense under New Jersey law; and *N.J.S.A. 18A:6-7.1* requires disqualification for offenses involving the possession of controlled dangerous substances, including marijuana. Accordingly, the ALJ granted the OSP’s motion and dismissed the petition.

Upon review, the Commissioner rejected the Initial Decision of the Office of Administrative Law and vacated the decision of the OSP disqualifying the petitioner from employment in schools under the supervision of the NJDOE. In so doing, the Commissioner found that there is currently no New Jersey crime or offense substantially equivalent to the Ohio and New York offenses of which petitioner was convicted. Following the enactment of L. 2021, c. 19 in 2021, individuals in possession of minimal amounts of marijuana, such as those at issue in petitioner’s convictions, are no longer charged with crimes in New Jersey. Accordingly, the petition was granted.

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.

204-24  
OAL Dkt. No. 03535-24  
Agency Dkt. No. 20-1/24

**New Jersey Commissioner of Education**  
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Frederick Thorworth,

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New Jersey Department of Education,  
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Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed and considered.

Petitioner appeals the January 4, 2024 decision of the New Jersey Department of Education's (NJDOE) Office of Student Protection (OSP), disqualifying him from employment in schools under the supervision of the NJDOE. Petitioner's criminal history records showed three convictions: 1) possession of marijuana in Ohio in 1971;<sup>1</sup> 2) sixth-degree possession of a dangerous drug in New York in 1972;<sup>2</sup> and 3) seventh-degree possession of a controlled substance in New York in 1973.<sup>3</sup>

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<sup>1</sup> The criminal history search results do not list a specific Ohio statute for this offense. The information provided by petitioner demonstrates that this offense involved a nominal amount of marijuana.

<sup>2</sup> The criminal history search results list the offense under New York Penal Law §220.05. New York no longer has a sixth-degree possession offense. Pursuant to New York Penal Law §220.06, fifth-degree possession is based on

Following the OSP's motion to dismiss, the Administrative Law Judge (ALJ) concluded that *N.J.S.A. 18A:6-7.1* requires disqualification for offenses involving the possession of controlled dangerous substances, which includes marijuana. Accordingly, the ALJ granted the OSP's motion to dismiss.

Upon review, the Commissioner rejects the Initial Decision. *N.J.S.A. 18A:6-7.1* requires a disqualification for a conviction in another state when it is for a crime or offense "substantially equivalent" to a disqualifying crime or offense under New Jersey law. The Commissioner has previously concluded that criminal history background checks "must be reviewed and effectuated based on the standards of the law then in effect." *Joseph V. Cidoni v. Bd. of Educ. of the City of Camden, Camden Co., and N.J. Dep't of Educ.*, Commissioner Decision No. 82-06 (Feb. 27, 2006); *see also Eduardo Nunez v. N.J. Dep't of Educ.*, Commissioner Decision No. 192-05 (May 26, 2005). Therefore, the Commissioner must determine whether there is currently a New Jersey crime or offense substantially equivalent to the Ohio and New York offenses of which petitioner was convicted. The Commissioner concludes that there is not. Following the enactment of L. 2021, c. 19 in 2021, individuals in possession of small amounts of marijuana, such as those at issue in petitioner's convictions, are no longer charged with crimes in New Jersey.

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possession of one-half ounce or more. Accordingly, the Commissioner concludes that the amount of marijuana involved in petitioner's 1972 conviction was less than one-half ounce.

<sup>3</sup> The criminal history search results list the offense under New York Penal Law §220.03. This provision lists no weight requirement; however, as it is a lesser offense than fifth-degree possession of one-half ounce or more, the Commissioner concludes that the amount of marijuana involved in petitioner's 1973 conviction was less than one-half ounce.

Accordingly, the relief requested in the petition of appeal is granted. The decision of the OSP disqualifying the petitioner from employment in schools under the supervision of the NJDOE is hereby vacated.

IT IS SO ORDERED.<sup>4</sup>



ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 23, 2024

Date of Mailing: May 28, 2024

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<sup>4</sup> This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A.* 18A:6-9.1. Under *N.J.Ct.R.* 2:4-1(b), a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

**DISMISSAL**

OAL DKT. NO. EDU 03535-24

AGENCY DKT.NO. 20-1/24

**FREDERICK THROWORTH,**

Petitioner,

v.

**NEW JERSEY DEPARTMENT OF EDUCATION,**

**OFFICE OF STUDENT PROTECTION,**

Respondent.

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**F.T.**, petitioner, pro se

**David Kalisky**, Esq. for respondent (Matthew J. Platkin, Attorney General,  
attorneys)

Record Closed: April 10, 2024

Decided: April 17, 2024

BEFORE **KIMBERLY A. MOSS**, ALJ:

This motion to dismiss in lieu of answer was brought by New Jersey Department of Education, Office of Student Protection (NJDOE) in the above-mentioned matter on

or about March 8, 2024. Petitioner, Frederick Throworth (Throworth) filed a reply on March 28, 2024. NJDOE supplemented its motion on April 10, 2024

### **FACTUAL DISCUSSION**

Throworth applied for the position of teacher's aide in the Sussex-Wantage Regional School District. On or about January 24, 2024, NJDOE notified Throworth that based on his background check showing three convictions for marijuana related offenses in 1971, 1972 and 1973, he was permanently disqualified from serving in any position, paid or unpaid with any education institution under the supervision of the Department of Education. On September 9, 1971, Throworth was convicted in Columbus, Ohio of possession of marijuana. He received a thirty-day suspended sentence. On December 11, 1972, Throworth was convicted of criminal possession of controlled substances seventh degree, marijuana, in Fallsburg, New York. He received a conditional discharge. Throworth was convicted of criminal possession of a controlled dangerous substance, marijuana, seventh degree in Southampton, New York on December 11, 1973. He was sentenced to ninety days incarceration.

Throworth does not deny that he was convicted of these offenses. However, as to the Columbus Ohio 1971 conviction, he stated that he pled guilty due to his attorneys advise. Regarding the 1972 Fallsburg conviction Throworth states that he was in jail for six days and evidently pled guilty. As to the South Hampton Conviction Throworth states that marijuana was found near him after he was at a party and the police arrived.

All of these convictions are from fifty years ago. Since that time Throworth has not been arrested, he has been married for forty-eight years and has two adult daughters. He worked as an optician for thirty years. The Christine Leaders Institute granted Thorworth the title of officiant ordination for ministry issued on March 16, 2017. He has a Certificate of Authority from the State of New Jersey for the Guitar Shop, which was issued on June 8, 1999.

## **LEGAL ANALYSIS AND CONCLUSION**

N.J.A.C. 6A:3-1.5(g) provides:

Nothing in this section precludes the filing of a motion to dismiss in lieu of an answer to a petition, provided that such motion is filed within the time allotted for the filing of an answer. Briefing on such motions shall be in the manner and within the time fixed by the Commissioner, or by the ALJ if the motion is to be briefed following transmittal to the OAL.

N.J.A.C. 6a:3-1.10 provides:

At any time prior to transmittal of the pleadings to the OAL, in the Commissioner's discretion or upon motion to dismiss filed in lieu of answer, the Commissioner may dismiss the petition on the grounds that the petitioner has advanced no cause of action even if the petitioner's factual allegations are accepted as true or for lack of jurisdiction, failure to prosecute or other good reason.

On a motion made pursuant to R. 4:6-2(e) "the inquiry is confined to a consideration of the legal sufficiency of the alleged facts apparent on the face of the challenged claim." P. & J. Auto Body v. Miller, 72 N.J. Super. 207, 211 (App.Div.1962). The court may not consider anything other than whether the complaint states a cognizable cause of action. *Ibid.* For this purpose, "all facts alleged in the complaint and legitimate inferences drawn therefrom are deemed admitted." Smith v. City of Newark, 136 N.J. Super. 107, 112 (App.Div.1975). See also Heavner v. Uniroyal, Inc., 63 N.J. 130, 133 (1973); Polk v. Schwartz, 166 N.J. Super. 292, 299 (App.Div.1979). A complaint should not be dismissed under this rule where a cause of action is suggested by the facts and a theory of actionability may be articulated by way of amendment. Muniz v. United Hsps. Med. Ctr. Pres. Hsp., 153 N.J. Super. 79, 82-83 (App.Div.1977). However, a dismissal is mandated where the factual allegations are palpably insufficient to support a claim upon which relief can be granted. Reider v. State Department of Transportation 221 N.J. Super. 547,522 (App.Div. 1987)

A party must have standing to have the "ability or entitlement to maintain an action before the court." In re Baby T., 160 N.J. 332, 340 (N.J.,1999). Standing is "a threshold justiciability determination whether the litigant is entitled to initiate and maintain an action before a court or other tribunal." In re Six Month Extension of N.J.A.C. 5:91-1 et seq., 372 N.J. Super 61, 85 (App. Div. 2004).

N.J.S.A. 18A:6-7.1 (b) provides:

A facility, center, 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 teaching staff member or substitute teacher, teacher aide, child study team member, school physician, school nurse, custodian, school maintenance worker, cafeteria worker, school law enforcement officer, school secretary or clerical 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. An individual employed by a board of education or a school bus contractor holding a contract with a board of education, in the capacity of a school bus driver, shall be required to meet the criminal history record requirements pursuant to section 6 of P.L.1989, c.104 (C.18A:39-19.1). A facility, center, 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 may require criminal history record checks for individuals who, on an unpaid voluntary basis, provide services that involve regular contact with pupils. In the case of school districts involved in a sending-receiving relationship, the decision to require criminal history record checks for volunteers shall be made jointly by the boards of education of the sending and receiving districts. An individual, except as provided in subsection g. of this section, shall be permanently disqualified from employment or service under this act if the individual's criminal history record check reveals a record of conviction for any crime of the first or second degree; or

b. An offense involving the manufacture, transportation, sale, possession, distribution or habitual use of a "controlled dangerous substance" as defined in the "Comprehensive Drug Reform Act of 1987," N.J.S.2C:35-1 et al. or "drug paraphernalia" as defined pursuant to N.J.S.2C:36-1 et seq.; or

N.J.S.A. 2C: 35-2 defines controlled dangerous substance as:

"Controlled dangerous substance" means a drug, substance, or immediate precursor in Schedules I through V, marijuana and hashish as defined in this section, any substance the distribution of which is specifically prohibited in N.J.S.2C:35-3, in section 3 of P.L.1997, c.194 (C.2C:35-5.2), in section 5 of P.L.1997, c.194 (C.2C:35-5.3), in section 2 of P.L.2011, c.120 (C.2C:35-5.3a), or in section 2 of P.L.2013, c.35 (C.2C:35-5.3b),



and any drug or substance which, when ingested, is metabolized or otherwise becomes a controlled dangerous substance in the human body. When any statute refers to controlled dangerous substances, or to a specific controlled dangerous substance, it shall also be deemed to refer to any drug or substance which, when ingested, is metabolized or otherwise becomes a controlled dangerous substance or the specific controlled dangerous substance, and to any substance that is an immediate precursor of a controlled dangerous substance or the specific controlled dangerous substance. The term shall not include distilled spirits, wine, malt beverages, as those terms are defined or used in R.S.33:1-1 et seq., tobacco and tobacco products, or cannabis and cannabis as defined in section 3 of P.L.2021, c.16 (C.24:6I-33). The term, wherever it appears in any law or administrative regulation of this State, shall include controlled substance analogs.

Marijuana is defined as:

“Marijuana” means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds, except those containing resin extracted from the plant. “Marijuana” shall not mean: hemp and hemp products cultivated, handled, processed, transported, or sold pursuant to the “New Jersey Hemp Farming Act,” P.L.2019, c.238 (C.4:28-6 et al.); or cannabis as defined in section 3 of P.L.2021, c.16 (C.24:6I-33) which is cultivated and produced for use in a cannabis item, as defined in that section, in accordance with the “New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act,” P.L.2021, c.16 (C.24:6I-31 et al.).

Prior to the 1998 amendment to N.J.S.A. 18A:6-7.1 there was a provision had a provision stating that:

Notwithstanding the provisions of this section, 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 if the individual has affirmatively demonstrated to the Commissioner of Education clear and convincing evidence of his or her rehabilitation. In determining whether an individual has affirmatively demonstrated rehabilitation, the following factors shall be considered:

- (1) The nature and responsibility of the position which the convicted individual would hold;
- (2) The nature and seriousness of the offense;
- (3) The circumstances under which the offense occurred;

- (4) The date of the offense;
- (5) The age of the individual when the offense was committed;
- (6) Whether the offense was an isolated or repeated incident;
- (7) Any social conditions which may have contributed to the offense;
- (8) 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 had the individual under their supervision **WITHOUT AN OPPORTUNITY TO appeal CHALLENGE THE ACCURACY OF THE DISQUALIFYING CRIMINAL HISTORY RECORD**

The 1998 amendment deleted this portion of the statute. The statute does not have a rehabilitation component. In the Matter of Otto Krupp Teaching Certificates EDU 5196-03 Final Decision. Although Throworth's last conviction was in 1973, all of his convictions were for possession of marijuana. N.J.S.A. 2C: 35-2 includes marijuana as a controlled dangerous substance., even though marijuana has been de criminalized.

N.J.S.A. 18A:6-7.1(d) provides:

For the purposes of this section, a conviction exists if the individual has at any time been convicted under the laws of this State or under any similar statutes of the United States or any other state for a substantially equivalent crime or other offense.

Throworth's convictions were in Ohio and New York for possession of marijuana. I **CONCLUDE** N.J.S.A. 18A:6-7.1 (b) applies in this matter because Throworth was convicted of possession of marijuana offenses in 1971, 1972 and 1973.

### **ORDER**

Based on the foregoing, it is hereby **ORDERED** that respondent's request for the petition to be dismissed 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 17, 2024



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DATE

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**KIMBERLY A. MOSS, ALJ**

Date Received at Agency:

April 17, 2024

Date Mailed to Parties:

April 17, 2024

ljb