

New Jersey Commissioner of Education**Final Decision**

Natalie Jimenez,

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 (DOE), to permanently disqualify her from employment in a public school pursuant to *N.J.S.A. 18A:6-7.1* after a criminal history background check revealed that in January 2003, she was convicted of destruction of property at a value greater than \$1,000 under Virginia law, an offense that is substantially equivalent to the disqualifying New Jersey crime of criminal mischief, *N.J.S.A. 2C:17-3(a)(1)*. The Department filed a motion to dismiss; petitioner failed to file a response.

The ALJ found, *inter alia*, that: a fingerprint search conducted as part of petitioner's background check revealed that on January 7, 2003, the Virginia Beach Circuit Court convicted petitioner of a felony charge of destruction of property at a value greater than \$1,000; she was sentenced to one year of probation and was required to pay restitution and fees under Va. Code Ann. §18.2-137; *N.J.S.A. 18A:6-7.1(e)* provides petitioner the opportunity to challenge her conviction's accuracy or claim an error in the disqualifying criminal record; in this case, petitioner does not dispute the accuracy of her criminal conviction or claim any error in her criminal record, but rather presents arguments in support of mitigation; petitioner asked the DOE to overturn her disqualification from employment because her conviction occurred twenty years ago, she has since transformed her life, and there have not been any other incidents since 2003; however, *N.J.S.A. 18A:6-7.1* permanently bars from employment with the DOE individuals who have 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" enumerated in *N.J.S.A. 18A:6-7.1(d)*. The ALJ concluded that petitioner is permanently barred from employment in New Jersey public schools; accordingly, the petition was dismissed.

Upon review, the Commissioner concurred with the ALJ that petitioner's criminal history disqualifies her from working in a public school. Accordingly, the Initial Decision was adopted as the final decision in this matter, and the petition of appeal 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.

234-24
OAL Dkt. No. 02105-24
Agency Dkt. No. 5-1/24

New Jersey Commissioner of Education
Final Decision

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v.

New Jersey Department of Education, Office
of Student Protection,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed and considered. The parties did not file exceptions.

Upon review, the Commissioner concurs with the Administrative Law Judge that petitioner is permanently disqualified from public school employment pursuant to *N.J.S.A.* 18A:6-7.1 because she was convicted of destruction of property at a value greater than \$1,000 under Virginia law, an offense that is substantially equivalent to the disqualifying New Jersey crime of criminal mischief, *N.J.S.A.* 2C:17-3(a)(1). The Commissioner notes that petitioner has not disputed the accuracy of her criminal record.

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.¹



ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 14, 2024
Date of Mailing: June 18, 2024

¹ 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 GRANTING

MOTION TO DISMISS

OAL DKT. NO. EDU 02105-24

AGENCY DKT. NO. 5-1/24

NATALIE JIMENEZ,

Petitioner,

v.

**NEW JERSEY DEPARTMENT OF
EDUCATION, OFFICE OF STUDENT
PROTECTION,**

Respondent.

Natalie Jimenez, petitioner, appearing pro se

David L. Kalisky, Deputy Attorney General, for respondent, New Jersey
Department of Education, Board of Examiners (Matthew J. Platkin,
Attorney General of New Jersey, attorney)

Record Closed: April 11, 2024

Decided: May 13, 2024

BEFORE **MAMTA PATEL**, ALJ:

STATEMENT OF THE CASE

Petitioner, Natalie Jimenez, applied for an administrative assistant position with the Southampton Township School District, but a background check revealed that Jimenez was convicted of a crime in Virginia, which is substantially equivalent to the crime of criminal mischief in New Jersey. Is Jimenez precluded from employment? Yes. N.J.S.A. 18A:6-7.1 disqualifies from employment with a school district an individual who has been convicted of, among other crimes, criminal mischief.

PROCEDURAL HISTORY

On December 8, 2023, the Department of Education (DOE) sent Jimenez a letter stating that she was “permanently disqualified” from employment with any educational institution under the supervision of the DOE, such as the Southampton school district. (R-1B.) The letter further stated that Jimenez could file an appeal challenging the “accuracy” of her criminal conviction. Ibid. On December 22, 2023, Jimenez filed a Pro Se Petition of Appeal with supporting documentation challenging her disqualification with the DOE. (P-1.) On February 6, 2024, the DOE filed a Motion to Dismiss in Lieu of Answer. (R-1.) On February 14, 2024, the DOE transmitted the case to the Office of Administrative Law (OAL) under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

On March 12, 2024, I held a telephone conference with the parties, during which Jimenez acknowledged receipt of the DOE’s Motion to Dismiss and indicated her intent to submit a response. Jimenez was given until April 1, 2024, to submit her response, and DOE was given until April 11, 2024, to submit a reply. To date, Jimenez has not filed a response to the DOE’s Motion to Dismiss.

On April 11, 2024, I closed the record, and the information provided as of that date was considered for this decision.

FINDINGS OF FACT

Based upon the evidence before me, I **FIND** the following as **FACT**:

1. Jimenez applied for an administrative assistant position with the Southampton school district, a public school in New Jersey. (R-1A.)
2. By statute, any person applying for employment with or to volunteer at a public school in New Jersey must submit to a background check. N.J.S.A. 18A:6-7.1.
3. On or about December 6, 2023, Jimenez submitted her fingerprints as part of the background check. (R-1A.)
4. The DOE ran a fingerprint search through the New Jersey State Police and the Federal Bureau of Investigation under N.J.S.A. 18A:6-7.2. (R-1A; R-1B.)
5. The fingerprint search revealed that on January 7, 2003, the Virginia Beach Circuit Court convicted Jimenez of a felony charge of destruction of property at a value greater than \$1,000, sentenced her to one year of probation, and required restitution and fees under Va. Code Ann. §18.2-137. (R-1C.)
6. On December 8, 2023, the Office of Student Protection notified Jimenez by letter that she was “permanently disqualified from serving in any position, paid or unpaid, with any educational institution under the supervision of the Department of Education” (R-1B.)
7. The December 8, 2023, letter also advised Jimenez that she had fourteen days from the date of the notice to “challenge the accuracy” of her criminal-history record. The letter further instructed her to “submit

documentation from the respective courts to support [her] claim of an error in the criminal record.” (R-1B.)

8. On December 22, 2023, following N.J.A.C. 6A:3-1 to -1.17, Jimenez filed a petition of appeal, which included a personal statement and several reference letters from friends, employers, and not-for-profit organizations. (P-1.)
9. In her personal statement, Jimenez states that when she was twenty-one years old and living in Virginia Beach, while under the influence of alcohol and in a moment of frustration with her neighbors, she keyed their cars and slashed their tires. Jimenez states that she regrets her actions and has since learned better coping skills. She is employed and attaining her bachelor’s degree in social work and psychology, a current member of the National Society of Leadership and Success, and on the dean’s list and honor roll multiple times. Jimenez also advises that she is a devout Christian, wife, and mother of five children. (P-1.)
10. Jimenez does not challenge the criminal history report.

CONCLUSIONS OF LAW

Motion-to-Dismiss Standard

In deciding a motion to dismiss for failure to state a claim, the legal standard to be applied is whether the moving party is entitled to relief as a matter of law because the basis of a cause of action cannot be gleaned from the complaint even after an in depth and liberal search. Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746(1989).

Jimenez's Disqualification from Employment

N.J.S.A. 18A:6-7.1(e) provides Jimenez the opportunity to challenge her conviction's accuracy or claim an error in the disqualifying criminal record. Here, Jimenez does not dispute the accuracy of her criminal conviction or claim an error with her criminal record, but rather presents arguments in support of mitigation. (P-1.) Jimenez seeks the DOE to overturn her disqualification from employment because her conviction occurred twenty years ago, she has since transformed her life, and there have not been any other incidents since 2003. (P-1.)

Although Jimenez's conviction occurred in 2003, the Act specifically states that "a conviction exists if the individual has at **any time been convicted.**" N.J.S.A. 18A:6-7.1(d) (emphasis added).

N.J.S.A. 18A:6-7.1 permanently bars from employment with the DOE an individual who has 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**" the crimes enumerated in the statute. N.J.S.A. 18A:6-7.1(d) (emphasis added).

In 2003, Jimenez was convicted under Va. Code Ann. §18.2-137, Injuring, etc., any property, monument, etc., which states in relevant part:

B. If any person who is not the owner of [any property, real or personal, not his own] intentionally [breaks down, destroys, defaces, damages], he is guilty of (ii) a Class 6 felony if the value of or damage to the property, memorial or monument is \$1,000 or more.

N.J.S.A. 18A:6-7.1.1 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

. . . 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 a capacity or position

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

. . . .

c. (2) A crime as set forth in chapter 39 of Title 2C of the New Jersey Statutes, a third-degree crime as set forth in chapter 20 of Title 2C of the New Jersey Statutes, **or a crime as listed below:**

. . . .

Criminal mischief N.J.S.2C:17-3[.]

[N.J.S.A. 18A:6-7.1 (emphasis added).]

New Jersey law does not distinguish crimes as either felonies or misdemeanors but rather by degree, i.e., first through fourth; thus, New Jersey defines criminal mischief as:

a. Offense defined. A person is guilty of criminal mischief if he:

(1) Purposely or knowingly damages tangible property of another or damages tangible property of another recklessly or negligently

b. Grading.

. . . .

(2) Criminal mischief is a crime of the fourth degree if the actor causes pecuniary loss in excess of \$500.00 but less than \$2000.00.

[N.J.S.A. 2C:17-3.]

Accordingly, I **CONCLUDE** that the substantial equivalent of Va. Code Ann. §18.2-137 is N.J.S.A. 2C:17-3(a)(1), criminal mischief that caused damage greater than \$1,000, N.J.S.A. 2C:17-3(b)(2), which disqualifies Jimenez from employment.¹

Since N.J.S.A. 18A:6-7.1 does not provide for consideration of any mitigating factors I further **CONCLUDE** that Jimenez is disqualified from employment with Southampton.

ORDER

For the reasons set forth above, I **ORDER** that Jimenez is **DISQUALIFIED** from employment from Southampton, DOE's Motion to Dismiss is **GRANTED**, and Jimenez's Petition of Appeal is **DISMISSED**.

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.

¹ The DOE's Motion to Dismiss cites to "[a] crime involving the use of force or the threat of force to or upon a person or property[.]" N.J.S.A. 18A:6-7.1(c)(1). However, as discussed above, I believe Jimenez's Virginia conviction is most comparable to a violation of criminal mischief under applicable New Jersey law.

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**. Exceptions may be filed by email to ControversiesDisputesFilings@doe.nj.gov or by mail to **Office of Controversies and Disputes, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**. A copy of any exceptions must be sent to the judge and to the other parties.

May 13, 2024

DATE



MAMTA PATEL, ALJ

Date Received at Agency:

May 13, 2024

Date Mailed to Parties:

May 13, 2024

MP/dw

EXHIBITS

For petitioner:

P-1, Letter of Appeal with supporting documentation

For respondent:

R-1A through R-1C, Motion to Dismiss with attached exhibits