

261-24
OAL Dkt. No. EDU 11412-22
Agency Dkt. No. 305-11/22

New Jersey Commissioner of Education
Final Decision

Jeffrey Moultrie,

Petitioner,

v.

New Jersey Department of Education, Office of
Student Protection,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by respondent New Jersey Department of Education, Office of Student Protection (OSP) pursuant to *N.J.A.C. 1:1-18.4*, and petitioner's reply thereto, have been reviewed and considered.

In September 2022, Seashore Transportation hired petitioner as school bus driver for both public and private schools. A fingerprint check conducted pursuant to *N.J.S.A. 18A:39-19.1(a)* revealed that, in 1978, petitioner was convicted of second-degree attempted robbery in New York State. *N.J.S.A. 18A:39-19.1(a)* provides that school bus drivers "shall be permanently disqualified from employment or service if the individual's criminal history record reveals a record of conviction for which public school employment candidates are disqualified pursuant to

section 1 of P.L. 1986, c. 116 (C.18A:6-7.1).” Under *N.J.S.A. 18A:6-7.1(c)(1)* and (4), an attempted robbery conviction permanently disqualifies a person from public school employment.¹

Accordingly, via email and letter dated October 18, 2022, OSP informed petitioner that, pursuant to *N.J.S.A. 18A:39-19.1*, he was “permanently disqualified from school employment, or service as a school board member or trustee of a charter school under the supervision of the Department of Education, or employment with a contracted service provider under contract with said school or educational facility.” The letter further provided that OSP would direct the Motor Vehicle Commission to revoke petitioner’s bus endorsement unless he filed a challenge to the accuracy of his criminal record within 14 days.

Petitioner appealed OSP’s decision and the matter was transmitted to the OAL for a contested case hearing. At no point did petitioner deny the existence of the conviction or the fact that attempted robbery was a permanently disqualifying crime under *N.J.S.A. 18A:6-7.1*. Rather, petitioner argued that the Rehabilitated Convicted Offenders Act (RCOA), *N.J.S.A. 2A:168A-1* to -16, supersedes *N.J.S.A. 18A:6-7.1* and that, therefore, he should not be disqualified because he can prove that he has been rehabilitated since the 1978 conviction. In opposition to petitioner’s appeal, OSP maintained that petitioner’s permanent disqualification was mandatory under *N.J.S.A. 18A:6-7.1* irrespective of any evidence of rehabilitation.

When it enacted the RCOA in 1968, the Legislature “declared that the public interest is advanced ‘by removing impediments and restrictions upon [convicted offenders’] ability to obtain employment.’” *N.J. Tpk. Auth. v. Local 196, I.F.P.T.E.*, 190 N.J. 283, 301 (2007) (quoting

¹ *N.J.S.A. 18A:6-7.1(d)* provides that out-of-state convictions for crimes that are substantially equivalent to New Jersey disqualifying crimes will permanently disqualify the offender from public school employment.

N.J.S.A. 2A:168A-1). In this matter, petitioner specifically relies upon *N.J.S.A. 2A:168A-1* and -2 of the RCOA. *N.J.S.A. 2A:168A-1*, the RCOA's preamble, states in pertinent part that "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 from a crime . . . unless the conviction relates adversely to the occupation, trade, vocation, profession or business for which the license or certificate is sought." (emphasis added). *N.J.S.A. 2A:168A-2* provides that, "[i]n determining that a conviction for a crime relates adversely to the occupation, trade, vocation, profession or business, the licensing authority shall explain in writing how the following factors, or any other factors, relate to the license or certificate sought," and those factors include:

- a. The 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.²

At the hearing, petitioner credibly testified regarding his arrest, which occurred when he was eighteen years old, and the surrounding circumstances; his early release from parole; his service in the United States Army, including multiple medals he received while serving, and his honorable discharge; and subsequent employment with Amtrak and the United States Postal Service, where he also received various awards and commendations for his work performance, as well as work driving for an ambulance service. Petitioner's employer, the owner and operator of Seashore Transportation, credibly testified that he kept petitioner on staff as a mechanic after OSP disqualified him. He added that petitioner is an excellent employee and that he needs bus drivers.

In response, OSP maintained that petitioner's permanent disqualification was mandatory under *N.J.S.A. 18A:6-7.1*. In support of its position, OSP emphasized that *N.J.S.A. 18A:6-7.1*—enacted in 1986, decades after the RCOA—initially contained language similar to the RCOA that permitted employment applicants convicted of disqualifying offenses to provide clear and convincing evidence demonstrating rehabilitation for the Department to consider. *See L. 1986, c. 116, § 1*. However, in 1998, the Legislature amended *N.J.S.A. 18A:6-7.1*, expanded the list of disqualifying offenses, and deleted the provision in the law that had permitted applicants to provide evidence of rehabilitation. *L. 1998, c. 31, § 5. See also David Kelly v. N.J. Dep't of Educ.*,

² Although the RCOA was expanded in 2007 to provide that, under certain conditions, a certificate may be issued by a court, Parole Board or other supervising authority pursuant to *N.J.S.A. 2A:168A-7* and -8 that would presumptively demonstrate a qualified offender's "rehabilitation for purposes of seeking public employment," *In re Carluccio*, 426 *N.J. Super.* 15, 28 (App. Div. 2012), petitioner concedes that he lacks such a certificate.

Crim. Hist. Rev. Unit, Commissioner Decision No. 344-14 (Aug. 21, 2014) (explaining that “the Legislature has repeatedly amended” *N.J.S.A.* 18A:6-7.1, “broadening the scope of disqualifying offenses and precluding evidence of rehabilitation, to provide greater protection for children from those it deemed a danger to them”).

OSP argued that because *N.J.S.A.* 18A:6-7.1 was amended more recently and is specific to employment in public schools, the Legislature must have intended for it to govern in this situation over the RCOA. OSP also relied upon *In the Matter of the Denial of the Issuance of a Teaching Certificate to Otto Krupp*, Commissioner Decision No. 255-04 (June 24, 2004), wherein the Commissioner found “no conflict or tension” between the RCOA and *N.J.S.A.* 18A:6-7.1. *Krupp*, at 19. In *Krupp*, the Commissioner explained that by amending *N.J.S.A.* 18A:6-7.1 in 1998, the Legislature “proclaimed that a conviction for a first or second degree crime was inimical to employment in the public schools” and determined that “an individual’s conviction for certain crimes . . . relates adversely to employment in the public school system of New Jersey” as contemplated by *N.J.S.A.* 2A:168A-1. *Id.* at 19-21. Consequently, once the 1998 amendments took effect, OSP was not required to consider evidence of rehabilitation under the RCOA before permanently disqualifying said individuals from public school employment.

Ultimately, the ALJ agreed with petitioner. In particular, the ALJ concluded that the RCOA applied, that petitioner offered credible evidence of rehabilitation under the RCOA, and that OSP “failed to establish that petitioner’s 1978 conviction relates adversely to the license being sought.” Initial Decision, at 12. Without analyzing the significance of the 1998 amendments to *N.J.S.A.* 18A:6-7.1, the ALJ concluded that “the Legislature reopened the doors to employment in the public schools for certain rehabilitated offenders, notwithstanding any law to the contrary,

including *N.J.S.A. 18A:6-7.1* and *N.J.S.A. 18A:39-19.1*, when it enacted RCOA.” Initial Decision, at

11. Accordingly, the ALJ reversed OSP’s determination that petitioner was permanently disqualified from public school employment.

OSP takes exception to: (1) the ALJ’s determination that petitioner presented evidence of rehabilitation pursuant to the RCOA that must be considered; and (2) the ALJ’s legal conclusion that respondent is precluded from fulfilling its mandatory statutory obligation under *N.J.S.A. 18A:6-7.1* to permanently disqualify petitioner from employment as a public school bus driver because the RCOA supersedes *N.J.S.A. 18A:6-7.1*. In reply, petitioner argues that the ALJ’s decision is correct and should be adopted by the Commissioner for the reasons he asserted before the ALJ. He reiterates that he has clearly shown that he has been rehabilitated pursuant to the RCOA since his conviction many years ago.

Upon careful review, the Commissioner adopts the ALJ’s uncontested factual findings and credibility determinations as expressed in the Initial Decision but rejects the ALJ’s legal conclusions. The Commissioner holds that the ALJ erroneously reversed OSP’s permanent disqualification of petitioner from employment as a public school bus driver based upon a flawed analysis of the RCOA and *N.J.S.A. 18A:6-7.1*. Specifically, the ALJ overlooked a prior Commissioner decision, *Krupp*, which directly addresses the relationship between the two statutory schemes and the significance of the 1998 amendments to *N.J.S.A. 18A:6-7.1*. The ALJ also failed to apply well-established principles of statutory interpretation. The Commissioner concurs with OSP that petitioner’s permanent disqualification from employment as a public school bus driver was mandatory under *N.J.S.A. 18A:6-7.1* notwithstanding evidence of rehabilitation offered pursuant to the RCOA.

This conclusion is consistent with *Krupp*. As noted, in *Krupp*, the Commissioner held that “[b]ecause the . . . 1998 amendments to *N.J.S.A. 18A:6-7.1* [were] specifically predicated on the Legislature’s belief that an individual’s conviction for certain crimes . . . *relates adversely to employment in the public school system of New Jersey*, disqualification or discrimination against such an individual . . . is specifically exempted from the dictates of the RCOA by that provision’s [*N.J.S.A. 2A:168A-1*’s] clear language as a consequence of the relationship between the offense and the certification being sought.” *Krupp*, at 21. The Commissioner finds and concludes that the ALJ erroneously distinguished *Krupp* on the basis that in that matter, the applicant did not provide sufficient proof of rehabilitation whereas petitioner in this case did so. By distinguishing *Krupp* on its facts, the ALJ bypassed the significance of the 1998 amendments to *N.J.S.A. 18A:6-7.1*, as well as the fact that the Commissioner’s interpretation of those amendments as explained in *Krupp* is entitled to deference because the “agency’s expertise and superior knowledge of a particular field” is implicated. *Greenwood v. State Police Training Ctr.*, 127 N.J. 500, 513 (1992).

Furthermore, well-established principles of statutory interpretation support the need to consider the 1998 amendments to *N.J.S.A. 18A:6-7.1* as part of the legal analysis in this matter. *See State v. Gomes*, 253 N.J. 6, 28 (2023) (holding that when determining “the intended overall meaning of the texts of multiple statutes that were adopted at different times,” it is “the most recent statutory enactment [that] ordinarily supersedes, or at least qualifies or illuminates, language that was adopted in earlier statutes”). Additionally, “a more specific statutory provision” such as *N.J.S.A. 18A:6-7.1*, which expressly addresses employment in public schools, “usually controls over a more general one,” such as the RCOA. *Ibid.* To conclude as the ALJ did that the RCOA, specifically *N.J.S.A. 2A:168A-2*, controls in this matter would render the

Legislature's 1998 amendments to *N.J.S.A. 18A:6-7.1* inoperative and meaningless, thereby violating another important principle of statutory interpretation. *See Innes v. Innes*, 117 N.J. 496, 509 (1990) (holding that one must "avoid constructions that render any part of a statute inoperative, superfluous, or meaningless").

Moreover, when considering the significance of the 1998 amendments to *N.J.S.A. 18A:6-7.1*, it is important to acknowledge that the Legislature is presumed to be "aware of its own enactments." *Headen v. Jersey City Bd. of Educ.*, 212 N.J. 437, 449 (2012). When it removed the rehabilitation language from *N.J.S.A. 18A:6-7.1* in 1998 and determined instead that convictions for certain crimes would permanently disqualify applicants from public school employment, the Legislature was aware of the RCOA. It nonetheless determined that convictions for certain enumerated crimes were so adverse to public school employment—in environments where student safety is at stake—that evidence of an offender's rehabilitation should not be considered. As the Commissioner explained in *Krupp*:

[T]he 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."

[*Krupp*, at 21.]

Accordingly, the Commissioner holds that petitioner shall remain permanently disqualified from employment as a public school bus driver pursuant to *N.J.S.A. 18A:39-19.1* and *N.J.S.A. 18A:6-7.1*. However, as petitioner's employer testified that he hired petitioner as a

school bus driver for both public and private schools, OSP shall direct the Motor Vehicle Commission to restore petitioner's school bus endorsement for purposes of employment as a nonpublic school bus driver as he is not disqualified from operating a school bus for a nonpublic school. *See Scott Baron v. N.J Dep't of Educ., Off. of Student Prot.*, Commissioner Decision No. 95-20 (March 13, 2020) (holding that "N.J.S.A. 18A:39-19.1 applies only to bus drivers employed by public schools or other educational entities under the supervision of the Department of Education").

IT IS SO ORDERED.³



ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 11, 2024
Date of Mailing: July 12, 2024

³ 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

OAL DKT. NO. EDU 11412-22

AGENCY DKT. NO. 305-11/22

JEFFREY MOULTRIE,

Petitioner,

v.

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

Respondent.

Martin J. Arbus, Esq, for petitioner, (Arbus, Maybruch & Goode, LLC, attorneys)

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

Record Closed: April 18, 2024

Decided: May 29, 2024

BEFORE **WILLIAM T. COOPER III**, ALJ:

STATEMENT OF THE CASE

Petitioner, Jeffrey Moultrie (petitioner), appeals the determination by respondent, Department of Education, Office of Student Protection (respondent or OSP), that pursuant to N.J.S.A. 18A:6-7.1, he is permanently disqualified from

employment as a public-school bus driver and any other public-school employment because of his 1978 conviction in New York for second-degree robbery. Petitioner does not dispute the accuracy of his criminal history record or that N.J.S.A. 18A:6-7.1 requires his disqualification. Petitioner argues that the Rehabilitated Convicted Offenders Act (RCOA), N.J.S.A. 2A:168A-1 to -16, supersedes N.J.S.A. 18A:6-7.1, and that due to his rehabilitation, he should not be disqualified.

PROCEDURAL HISTORY

On October 18, 2022, the OSP issued a notice disqualifying petitioner from working at any educational institution under the supervision of the Department of Education.

On November 11, 2022, the petitioner timely appealed respondent's disqualification determination to the Commissioner of Education, pursuant to N.J.A.C. 6A:3-1.1 to -1.17. On December 18, 2022, respondent filed a motion to dismiss in lieu of an answer.

The matter, including the motion, was transmitted as a contested case to the Office of Administrative Law, where it was filed on December 21, 2022. N.J.S.A. 52:14 B-1 to -15; N.J.S.A. 52:14 F-1 to -13.

On October 6, 2023, an Order denying respondent's motion to dismiss was entered.

A hearing was conducted on January 23, 2024. The record remained open for the parties to submit written summations, which were submitted on February 26, 2024.

Clarification from the parties concerning the difference between a private school and public-school bus operator was requested, and the responses were received on April 18, 2024. The record closed on that date.

FACTUAL DISCUSSION AND FINDINGS

Testimony

Jeffrey Moultrie

The petitioner testified in support of his application and candidly admitted to the actions that led to his arrest on September 18, 1978. Petitioner grew up in the South Bronx in what he characterized as a bad neighborhood. On the day of his arrest, he was eighteen years and one month, hanging out with his friends. The group began to “hassle” a gentleman who walked by, and the New York City Police Department’s Anti-Crime Unit appeared on the scene and arrested the entire group. There were no weapons involved, but because of his age, the petitioner was charged with attempted robbery in the second degree, a crime that exposed him to a total of twelve years of incarceration. He was represented by a public defender who recommended he accept a plea bargain wherein the state would recommend a four-year sentence. The petitioner agreed, and on November 22, 1978, he was sentenced to a maximum of four years of incarceration. The petitioner served two years and was released. During his period of incarceration, the petitioner earned his General Education Degree (GED).

A condition of his parole was to “find and maintain gainful employment throughout his parole term,” and he was able to comply with this condition with the assistance of the Neighborhood Work Project for convicted offenders. An additional condition of his parole included regular drug testing, which was not an issue as he did not use illegal drugs. The petitioner was successfully released early from his parole.

In 1982, the petitioner was accepted to the University of Syracuse (Syracuse), where he also played football. Unfortunately, the petitioner could not afford to stay in Syracuse and left the school in 1984. The petitioner maintained employment from 1984 to 1987, at which time he joined the United States Army (Army). While in the Army, the petitioner was trained as a “Light Wheel Vehicle Mechanic” and as a “Food Service Specialist.” During his training, the petitioner was stationed at Fort Knox in Kentucky, Fort Sill in Oklahoma, and Fort Lee in Virginia. The petitioner was deployed in 1990 to

Germany and then to Saudi Arabia, where he participated in the Desert Shield campaign. The petitioner was returned to Fort Drum in New York State, where he was released from the armed service. The petitioner rose to the rank of sergeant and received an “Honorable Discharge” on January 8, 1995. The petitioner’s discharge noted that he had earned the “Army Achievement Medal,” “Army Service Medal,” “National Defense Service Medal,” “Overseas Service Ribbon,” “Mechanic Badge,” “Army Good Conduct Medal,” and “Expert Badge Rifle and Hand Grenade.”

Upon his honorable discharge, the petitioner relocated to the Bronx, N.Y. where he worked several jobs, including as a driver for a local cab service and as an attendant at a local gas station. In 1997, he was able to secure employment with Amtrak as a coach attendant. Petitioner’s employment with Amtrak led to employment with the United States Postal Service (USPS). As a USPS employee, the petitioner received a “Spot Award” and “Certificate of Appreciation” in recognition of his outstanding ability and quality performance of duty on January 8, 2007, and again on March 5, 2010, petitioner received a letter of appreciation for reporting to work during the blizzard that occurred February 26, 2010.

The petitioner left USPS for employment that had better wages and benefits. He obtained his Commercial Driver License (CDL) in the State of New York and was employed by the Richmond County Ambulance Service located in Staten Island, N.Y.

The petitioner is married and has five children, four boys and one girl, and his family moved to Perth Amboy, New Jersey, where he obtained employment with Seashore Transportation (Seashore). The petitioner passed the New Jersey CDL test but was unable to obtain passenger endorsement due to his 1978 criminal conviction.

John Villapiano

John Villapiano (Villapiano) is the owner and operator of Seashore. He testified that he hired the petitioner in September 2022 to be a school bus driver for both public and private schools. When the petitioner was disqualified, Villapiano provided the petitioner an opportunity to work in the “garage” as a mechanic. He explained that the

petitioner does an excellent job keeping the bus fleet running. However, Villapiano advised that what he really needs is a bus driver because finding people qualified to operate a school bus has become very difficult. Villapiano further testified that the petitioner is an excellent employee, is punctual, and has had no problems at all while working for Seashore.

FINDINGS

For testimony to be believed, it must not only come from the mouth of a credible witness, but it also must be credible. It must elicit evidence that is from such common experience and observation that it can be approved as proper under the circumstances. See Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination requires an overall assessment of the witnesses' story in light of its rationality or internal consistency and the manner in which it "hangs together" with other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). Also, "the interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony." State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted).

A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super 282, 287 (App. Div. 1958).

There was no indication that either the petitioner or Villapiano had any interest, motive or bias that would affect their testimony. As such, I accept both witnesses as credible.

The respondent did not dispute any of the testimony provided or object to any of the evidence submitted by the petitioner, nor did any witnesses testify on behalf of OSP.

Based upon the testimony heard and documents entered in evidence, I **FIND** the following as **FACT**:

1. The petitioner was originally hired by Seashore as a bus driver for both public and private schools in the Monmouth and Ocean County areas. The petitioner applied for a CDL with P (Passenger) and S (School Bus) endorsements necessary to operate a school bus for Seashore. As required, the petitioner submitted his fingerprints as part of the background check.
2. The fingerprint search revealed that the petitioner had a 1978 criminal conviction out of the State of New York for second-degree robbery.
3. The petitioner does not challenge the accuracy of his criminal history record or the fact that his criminal convictions would disqualify him under N.J.S.A. 18A:6-7.1.
4. Based upon his criminal history, the petitioner was notified that he was “permanently disqualified” from serving in any position, paid or unpaid, with any educational institution under the supervision of the Department of Education, or any contracted service provider under contract with any “school or educational facility.” The notice does not differentiate between public and private schools.
5. On September 18, 1978, when the petitioner was a resident of Bronx, New York, he was arrested and charged with robbery. Petitioner readily admits to this conviction but explained that he did not participate in the robbery and was instead attempting to prevent younger individuals from attempting to rob an older gentleman. Unfortunately, because he was eighteen years old, he was charged as an adult with robbery. The petitioner was represented by a public defender and was advised that if he did not accept a plea agreement, he would face up to twelve years of incarceration. The petitioner accepted the plea agreement, pleaded guilty to robbery, and on November 22, 1978, was sentenced to four years of incarceration. The

petitioner served less than two years of his four-year sentence and was released on parole in April 1980. While he served his time in prison, the petitioner earned his GED and had no issues during his two years of parole.

6. Upon his release and the termination of his parole, the petitioner attended Syracuse University, where he played football. Unfortunately, after two years, the petitioner was unable to afford tuition, and as a result, he returned to his parents' home in the Bronx.
7. In 1985, the petitioner entered military service with the United States Army (Army). The petitioner served two four-year enlistments, achieving the rank of sergeant. While in the service, the petitioner received numerous accommodations, including a National Defense Service Medal and a good conduct medal. The petitioner served during Operation Desert Storm as a mechanic, repairing military vehicles during combat operations. The petitioner was "Honorably Discharged" from the Army on January 8, 1995.
8. Upon his discharge, the petitioner maintained gainful employment, which included working for Amtrak, the United States Postal Service (USPS), and Richmond County (Staten Island) Ambulance service.
9. The petitioner is married and has five children. His family moved to New Jersey, and the petitioner was hired by Seashore as a bus driver. The petitioner passed the NJ State CDL driving test but was permanently banned based upon his criminal conviction from forty-five years ago.
10. The petitioner's forty-five-year-old 1978 criminal conviction is petitioner's only criminal violation.
11. Seashore provides bus services to both public and private schools. The position of OSP is that because Seashore holds contracts with boards of education under the Department's authority, the petitioner's inability to meet the criminal history record requirements under N.J.S.A. 18A:39-19.1 precludes petitioner from working as a school bus driver.

LEGAL ANALYSIS

The issue here is whether the respondent's determination to permanently disqualify petitioner from employment as a public-school bus driver was appropriate.

N.J.S.A. 18A:6-7.1 provides that if a prospective public school bus driver's criminal history background check reveals a disqualifying second-degree attempted robbery conviction, that person is permanently disqualified from school employment. N.J.S.A. 18A:6-7.1 provides in relevant part as follows:

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 . . . 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 . . . 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**

. . . .

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.

(1) A crime involving the use of force or the threat of force to or upon a person or property including, but not limited to, **robbery**, aggravated assault, stalking, kidnapping, arson, manslaughter and murder[.]

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

Further, N.J.S.A. 18A:6-7.1 mandates that the criminal convictions that would result in such disqualification include, but are not limited to, “a record of conviction for any crime of the . . . **second degree**; or . . . [a] crime involving the use of force or threat of force to or upon a person or property including, but not limited to, **robbery**[.]” N.J.S.A. 18A:6-7.1(c)(1) (emphasis added). This statute also provides that “for 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.” N.J.S.A. 18A:6-7.1(d). Finally, under the disqualification law, a prospective employee is afforded “an opportunity to challenge the accuracy of the disqualifying criminal history record.” N.J.S.A. 18A:6-7.1(e). Here, there is no dispute that the petitioner has a 1978 criminal conviction in the State of New York for second-degree robbery. Based upon this conviction, the respondent maintains that the decision to disqualify the petitioner is mandatory.

Petitioner counters that RCOA allows the employment in public schools for certain rehabilitated offenders, notwithstanding any laws to the contrary, including N.J.S.A. 18A:6-7.1, noting:

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.A. 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.

[N.J.S.A. 2A:168A-1.]

N.J.S.A. 2A:168A-2 provides:

Notwithstanding the contrary provisions of any law or rule or regulation issued pursuant to law, no State, county or municipal department, board, officer or agency, hereinafter referred to as “licensing authority” authorized to pass upon the qualifications of any applicant for a license or certificate of authority or qualification to engage in the practice of a profession or business or for admission to an examination to qualify for such a license or certificate may disqualify or discriminate against an applicant for a license or certificate or an application for admission to a qualifying examination on the grounds that the applicant has been convicted of a crime, or adjudged a disorderly person, except that a licensing authority may disqualify or discriminate against an applicant for a license or certificate if N.J.S.A. 2C:51-2 or any disqualifying criminal activity set forth in subsection a. of section 7 of P.L.2009, c.53 (C.17:11C-57) is applicable, or 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 that a conviction for a crime relates adversely to the occupation, trade, vocation, profession or business, the licensing authority shall explain in writing how the following factors, or any other factors, relate to the license or certificate sought:

- a. The 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.

In this matter, the OSP did not detail how the enumerated factors related to the bus license sought by petitioner. Rather, it was argued that, “[b]ecause 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 [robbery], relates adversely to employment in the public school system of New Jersey, disqualification or discrimination against such an individual who has applied for [public school employment] 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 employment] being sought.” In re Krupp, EDU 05196-03, Final Decision (October 6, 2004), <https://njlaw.rutgers.edu/collections/oal>.

However, the Legislature reopened the doors to employment in the public schools for certain rehabilitated offenders, notwithstanding any law to the contrary, including N.J.S.A. 18A:6-7.1 and N.J.S.A. 18A:39-19.1, when it enacted RCOA.

Thus, RCOA permits a licensing authority to disqualify or discriminate against an applicant for a license or certificate if that applicant has a conviction for a crime that “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 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; and h.) Any evidence of rehabilitation, including good conduct in prison or in the community, schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the applicant under their supervision. See N.J.S.A. 2A:168A-2.

Respondent’s reliance upon In re Krupp is misplaced, as that case is factually distinguishable from the present matter. Krupp was a former mathematics teacher who was seeking reinstatement of his teaching certificate after serving twenty-three years in

prison for a conviction of first-degree murder. Krupp, who was recently released from prison prior to applying to renew his teaching certificate, was unable to provide sufficient proof that he had been rehabilitated. Here, the credible evidence establishes that the petitioner has been rehabilitated; the disqualifying crime occurred forty-five years ago when the petitioner had just turned eighteen years old; the petitioner has led a law-abiding lifestyle since his release from prison; subsequently attended Syracuse University; then served in the United States Army from 1987 to 1995 (including service in the Desert Storm campaign), achieving an honorable discharge in 1995; and since his honorable discharge, petitioner has maintained gainful employment, which includes, among others, employment at Amtrak, the United States Postal Service, and Richmond County Ambulance Services. Further, the petitioner is married and has five children. Lastly, his employer describes him as an excellent employee. In short, the petitioner is the ideal example of why RCOA was enacted.

Accordingly, I **CONCLUDE** that the credible evidence establishes that the petitioner has been rehabilitated. I further **CONCLUDE** that respondent has failed to establish that petitioner's 1978 conviction relates adversely to the license being sought.

ORDER

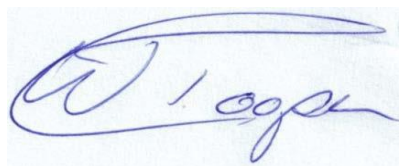
For the reasons set forth above, the determination by respondent Department of Education, Office of Student Protections that pursuant to N.J.S.A. 18A:6-7.1, the petitioner is permanently disqualified from employment as a public-school bus driver and any other public-school employment, is hereby **REVERSED**. The OSP shall notify the Motor Vehicle Commission to issue the petitioner a school bus driver license.

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**. 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.

A handwritten signature in blue ink, appearing to read "W. T. Cooper", is positioned above a horizontal line.

May 29, 2024

DATE

WILLIAM T. COOPER, III, ALJ

Date Received at Agency:

May 29, 2024

Date E-Mailed to Parties:

May 29, 2024

WTC/sg

APPENDIX

WITNESSES

For petitioner

Jeffrey Moultrie

John Villapiano

For respondent

None

EXHIBITS

For petitioner

P-1 Certificate of Discharge from United States Army 1/8/95.

P-2 United States Postal Service 3/5/10 letter of accommodation.

P-3 United States Postal Service 1/8/07 certificate of appreciation.

P-4 Supreme Court of New York certificate of disposition. Dated 12/7/05.

For respondent

None