

## New Jersey Commissioner of Education

### Final Decision

Robert Cauvin,

Petitioner,

v.

Board of Education of the Township of North Brunswick, Middlesex County, and New Jersey Department of Education, Office of Student Protection,

Respondent.

### Synopsis

Petitioner, a tenured teacher, challenged the determination of the NJDOE, Office of Student Protection (OSP), to permanently disqualify him from employment in a public school pursuant to *N.J.S.A. 18A:6-7.1(a)* after a criminal history background check revealed that petitioner pled guilty in 1997 to lewdness, *N.J.S.A. 2C:14-4*, in North Brunswick Municipal Court. *N.J.S.A. 18A:6-7.1(a)* mandates that individuals convicted of an offense set forth in Chapter 14 of Title 2C are “permanently disqualified from employment” in public schools. Petitioner’s offense was not detected by OSP until 2022, after he had worked for years as a teacher without his 1997 conviction coming to light. Petitioner contended that the Board violated his tenure rights by terminating him without the filing of tenure charges; he sought reinstatement of his employment and restoration of emoluments including pension contributions. The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: the lewdness offense is not a disqualifying crime because under *State v. O.*, private consensual sexual activity does not constitute lewdness within the meaning of *N.J.S.A. 2C:14-4*; petitioner has not forfeited his tenure rights and is entitled to a hearing before an arbitrator regarding his employment; petitioner’s termination is unwarranted given prior Commissioner decisions in tenure matters involving teachers found guilty of lewdness who were given lesser penalties, as well as prior decisions in TEACH NJ arbitration matters; and OSP was not barred under the doctrine of laches from asserting that petitioner’s conviction was a disqualifying crime or offense. The ALJ granted petitioner’s motion for summary decision and ordered his reinstatement effective May 3, 2022.

Upon review, the Commissioner, *inter alia*, rejected the Initial Decision and granted the respondents’ motions for summary decision. In so doing, the Commissioner found that the ALJ committed several legal errors in summarily reversing petitioner’s disqualification and ordering his reinstatement, including disregarding the plain language of the mandatory disqualification statute, *N.J.S.A. 18A:6-7.1*, and revisiting the propriety of the 1997 lewdness conviction entered following petitioner’s guilty plea – for which the ALJ lacked jurisdiction. Accordingly, 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.

**New Jersey Commissioner of Education**  
**Final Decision**

Robert Cauvin,

Petitioner,

v.

Board of Education of the Township of North  
Brunswick, Middlesex County, and New Jersey  
Department of Education, Office of Student  
Protection,

Respondents.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by respondent Board of Education of the Township of North Brunswick (Board) and 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.

The material facts are uncontested. In October 1997, petitioner pled guilty to lewdness, *N.J.S.A. 2C:14-4*, in North Brunswick Municipal Court. He maintains that he was charged with the offense after engaging in a consensual sexual act in a car parked in a very private area of North Brunswick. *N.J.S.A. 18A:6-7.1(a)* mandates that individuals convicted of "[a]n offense as set forth in Chapter 14 of Title 2C" are "permanently disqualified from employment" in public schools. For reasons not known from the record, petitioner's October 1997 lewdness offense was not detected by OSP during his long career as a teacher until 2022. He worked as a special education

teacher for the Scotch Plains-Fanwood Regional School District from 1998 until 2003, and for the North Brunswick Township School District from 2003 until May 3, 2022. In 2000 and 2003, he underwent criminal history record checks conducted by OSP which found no criminal record.

On May 3, 2022, OSP informed the Board's Superintendent via email that petitioner was permanently disqualified from public school employment pursuant to *N.J.S.A. 18A:6-7.1(a)* based upon a 1997 conviction in North Brunswick Municipal Court "for a disqualifying crime or offense." On that same date, the Board terminated his employment. At its next meeting on May 11, 2022, the Board adopted a resolution approving his termination. At the time of petitioner's termination, he was on paid administrative leave following an unrelated November 2021 arrest.

In his petition of appeal, petitioner contends that the Board violated his tenure rights when it terminated him without the filing of tenure charges and seeks reinstatement of his employment, retroactive to May 3, 2022, plus restoration of economic emoluments including pension contributions. Citing *State v. O.*, 69 N.J. 574 (1976), he further contends that OSP wrongly considered the lewdness offense to be a disqualifying offense.<sup>1</sup> Once the matter was transmitted to the Office of Administrative Law (OAL), the parties moved for summary decision. The ALJ granted petitioner's motion for summary decision and ordered his reinstatement effective May 3, 2022.

The ALJ found: (1) the lewdness offense is not a disqualifying crime or offense because under *State v. O.*, private consensual sexual activity does not constitute lewdness within the

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<sup>1</sup> Petitioner also alleged that the Board violated the Open Public Meetings Act (OPMA), specifically *N.J.S.A. 10:4-12(b)(8)*, by failing to provide him with a *Rice* notice to advise that his employment would be discussed by the Board at its May 11, 2022, meeting. The ALJ did not make findings on this issue in the Initial Decision, and petitioner has not filed exceptions thereto. Therefore, the Commissioner deems the issue waived and will not consider it.

meaning of *N.J.S.A. 2C:14-4*; (2) petitioner has not forfeited his tenure rights and is entitled to a hearing before an arbitrator regarding his employment; (3) petitioner's termination is unwarranted given prior Commissioner decisions in tenure matters involving teachers found guilty of lewdness who were given lesser penalties, and prior decisions in TEACH NJ arbitration matters; and (4) OSP was not barred under the doctrine of laches from asserting that petitioner's conviction was a disqualifying crime or offense. Initial Decision, at 9-13.

In its exceptions, the Board argues that the ALJ erred in summarily ordering the reversal of petitioner's disqualification and his reinstatement. It contends that the ALJ sought to analyze the propriety of the 1997 conviction, which is an overreach to a question not presented. It notes that petitioner is not challenging the accuracy of his criminal history record, and that the implications of the offense must be analyzed under the mandatory disqualification statute, *N.J.S.A. 18A:6-7.1*. It also contends that the ALJ's reliance on prior Commissioner tenure decisions is misplaced because the holdings in those cases, which concern whether lewd acts constituted "conduct unbecoming," cannot be extrapolated to disqualification cases. Regarding petitioner's reinstatement, the Board contends that the ALJ exceeded his authority because only the Board can re-employ petitioner, either on its own initiative or by order of the Commissioner. Furthermore, even if petitioner's reinstatement stands, the Board argues that it should not be compelled to bear the cost of his back pay and benefits because it had no choice under State law but to terminate petitioner.

OSP also takes exception to the ALJ's conclusion that the 1997 lewdness offense is not a disqualifying offense and requests that petitioner's disqualification from public school employment be upheld. It asserts that it is undisputed that petitioner was convicted of an

offense that automatically results in disqualification pursuant to *N.J.S.A. 18A:6-7.1*. It further argues that disqualification is mandatory regardless of when the conviction occurred. It also notes that petitioner does not challenge the accuracy of his criminal history record. It maintains that the ALJ did not have the authority to rule upon or revisit the merits of the underlying conviction, and that petitioner's opportunity to challenge the conviction occurred during the municipal court proceedings.

In response, petitioner continues to dispute the legality of his 1997 conviction, arguing that under *State v. O.*, decided in 1976, his actions did not constitute lewdness within the meaning of *N.J.S.A. 2C:14-4*. Consequently, he argues that the incident cannot serve as a basis for his disqualification and that *N.J.S.A. 18A:6-7.1* is inapplicable. He reiterates his claim that his tenure rights were violated because the Board did not file tenure charges against him prior to terminating his employment. He repeats his assertion that any alleged disqualifying criminal misconduct must in some way involve his official employment duties for forfeiture of any vested tenure rights to occur. He again cites numerous prior Commissioner tenure decisions and TEACH NJ arbitration awards to support his position that his termination was unwarranted for committing a lewdness offense.

Upon review, the Commissioner concurs with respondents that the Initial Decision must be rejected because the ALJ erred by summarily reversing petitioner's disqualification and ordering his reinstatement. First, the ALJ committed legal error by disregarding the plain language of the mandatory disqualification statute, *N.J.S.A. 18A:6-7.1*. *N.J.S.A. 18A:6-7.1(a)* unambiguously states that individuals convicted of "[a]n offense as set forth in Chapter 14 of Title 2C" are "permanently disqualified from employment" in public schools. While *N.J.S.A. 18A:6-*

7.1(e) allows an individual “to challenge the accuracy of the disqualifying criminal history record,” petitioner does not challenge the accuracy of his criminal history record.<sup>2</sup> It is uncontested that he pled guilty to lewdness, *N.J.S.A. 2C:14-4*, in 1997. Consequently, upon learning of same in May 2022, OSP notified petitioner and the Board that petitioner was permanently disqualified from public school employment. The Board was obligated as a matter of law to terminate petitioner’s employment once he was permanently disqualified. *In the Matter of the Tenure Hearing of John Socrates*, Commissioner Decision No. 235-11 at 3 (June 24, 2011).

Second, the ALJ committed legal error when revisiting the propriety of the 1997 lewdness conviction entered following petitioner’s guilty plea. The ALJ lacked jurisdiction to review the conviction, to decide that private consensual sexual activity does not constitute lewdness within the meaning of *N.J.S.A. 2C:14-4*, and to hold that, therefore, petitioner did not commit a disqualifying offense. The Commissioner has jurisdiction to determine “controversies and disputes arising under the school laws.” *N.J.S.A. 18A:6-9. Bower v. Bd. of Educ. of E. Orange*, 149 *N.J.* 416, 420 (1997). *N.J.S.A. 2C:14-4* is not a school law; it is part of the New Jersey Code of Criminal Justice. Neither the adjudication of crimes and offenses nor the appellate review of convictions falls within the Commissioner’s purview. The ALJ’s opinion regarding the factual basis for the conviction is irrelevant to the question of petitioner’s disqualification from public school employment. As explained above, it is uncontested that petitioner pled guilty to a permanently disqualifying offense as per the plain language of *N.J.S.A. 18A:6-7.1*, and he does not challenge the accuracy of his criminal history record. The conviction stands and has not been expunged.

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<sup>2</sup> Since petitioner has repeatedly acknowledged that he does not challenge the accuracy of his criminal history record, the ALJ’s determination that OSP did not provide him with an opportunity to challenge it is rejected as unsupported by the record.

Accordingly, OSP acted appropriately when it permanently disqualified petitioner from public school employment, and the Board acted appropriately when it terminated his employment.

Third, the ALJ committed legal error when holding that the Board violated petitioner's tenure rights by terminating his employment without the filing of tenure charges, and that he is entitled to a hearing before an arbitrator regarding his employment. In *Socrates*, which the ALJ did not consider, respondent, a tenured teacher, pled guilty to a Chapter 14, Title 2C lewdness offense in municipal court. *Socrates*, at 2. Although the Board had filed tenure charges against him that were stayed pending disposition of the criminal matter before he pled guilty, the Commissioner upheld his summary termination immediately following OSP's determination to permanently disqualify him from public school employment because he pled guilty to a permanently disqualifying offense as identified in *N.J.S.A. 18A:6-7.1*. *Id.* at 2-3.

The Commissioner held in *Socrates* that removal from his tenured teaching position did not occur as a consequence of the tenure charges filed against him, but rather was "obligatory as a matter of law" under *N.J.S.A. 18A:6-7.1*. *Id.* at 2. Thus, the Commissioner found no basis for a hearing or oral argument on the tenure charges, which were never adjudicated. *Id.* at 2-3. The same is true in this case. The Board had an obligation to terminate petitioner's employment upon notification from OSP that he was convicted of a permanently disqualifying offense. Tenure charges are unnecessary given the circumstances, and petitioner is not entitled to a hearing before an arbitrator.<sup>3</sup>

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<sup>3</sup> The ALJ's reliance upon *Caucino v. Board of Trustees, Teachers' Pension and Annuity Fund*, 475 N.J. Super. 405 (App. Div. 2023), in further support of his conclusion that petitioner is entitled to a tenure hearing is misplaced. The Commissioner rejects the ALJ's finding that under *Caucino*, "an individual cannot be presumed guilty of any form of 'unbecoming conduct' if they were not employed as a teacher" and that, therefore, petitioner has not forfeited his "vested tenure rights." Initial Decision, at 11. At the

Fourth, the ALJ committed legal error when holding that petitioner's termination is unwarranted given prior Commissioner decisions in tenure matters involving teachers found guilty of lewdness who were given lesser penalties, as well as TEACH NJ arbitration matters involving "sexual activities." Initial Decision, at 13. Apart from the fact that the instant case does not involve adjudication of tenure charges or a determination regarding whether petitioner's actions constitute unbecoming conduct, the tenure matters cited by the ALJ were decided in 1985 and 1988—many years before *N.J.S.A. 18A:6-7.1* was amended in 1998 to mandate permanent disqualification from public school employment upon conviction of a lewdness offense. *See L. 1998, c. 31, § 5* (amending *N.J.S.A. 18A:6-7.1* to require permanent disqualification from employment if convicted of certain enumerated crimes and offenses, including offenses set forth in chapter 14 of Title 2C).

Thus, the fact that individuals in the 1980s tenure matters were not permanently disqualified or terminated from employment at the conclusion of tenure proceedings is neither dispositive nor controlling because, at that time, *N.J.S.A. 18A:6-7.1* did not mandate permanent disqualification upon conviction of a lewdness offense as it does today. Similarly, the ALJ's reliance upon TEACH NJ arbitration matters to support the conclusion that petitioner is entitled to a tenure hearing ignores *N.J.S.A. 18A:6-7.1* and its applicability to the facts of this case. That statute was not at issue in the TEACH NJ arbitration matters relied upon by petitioner and the

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outset, *Caucino* concerned pension rights, not tenure rights. Moreover, neither the Commissioner nor the Board nor OSP has presumed petitioner guilty of "unbecoming conduct." A finding regarding whether petitioner's conviction constitutes unbecoming conduct is unnecessary given *N.J.S.A. 18A:6-7.1*'s mandate that he be permanently disqualified from public school employment based upon his criminal history record. Any issues concerning forfeiture of vested rights under pension laws following permanent disqualification from employment pursuant to *N.J.S.A. 18A:6-7.1*—which is the focus of the *Caucino* opinion—are beyond the scope of this proceeding.



ALJ, and none of those individuals were convicted of a lewdness offense. Therefore, the TEACH NJ arbitration matters are distinguishable and fail to support the conclusion that petitioner is entitled to a tenure hearing.

Accordingly, the Initial Decision is rejected for the reasons explained herein. Respondents' motions for summary decision are granted, and the petition of appeal is hereby dismissed. Petitioner remains permanently disqualified from public school employment pursuant to *N.J.S.A. 18A:6-7.1* as per OSP's May 2022 determination, and the Board's termination of petitioner's employment is upheld on that basis.

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

  
ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 4, 2024  
Date of Mailing: November 6, 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**

**SUMMARY DECISION**

OAL DKT. NO. EDU 06237-22

AGENCY DKT. NO. 195-7/22

**ROBERT CAUVIN,**

Petitioner,

v.

**BOARD OF EDUCATION OF  
THE TOWNSHIP OF NORTH BRUNSWICK,  
MIDDLESEX COUNTY,**

Respondent.

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**Stephen Hunter, Esq.,** for petitioner Robert Cauvin (Detzky, Hunter & DeFillippo, LLC, attorneys)

**Eric L. Harrison., Esq.,** for respondent Board of Education of the Township of North Brunswick, Middlesex County (Methfessel & Werbel, P.C., attorneys)

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

Record Closed: February 26, 2024

Decided: August 26, 2024

BEFORE **CARL V. BUCK III, ALJ:**

### **STATEMENT OF THE CASE**

This case was initially filed through an application for emergent relief pursuant to N.J.A.C. 6A:3-1.6, in which petitioner Robert Cauvin (Cauvin or petitioner) challenged termination of his employment as a tenured special education teacher by the North Brunswick Township Board of Education (Board), viz., the North Brunswick Township School District (District). Petitioner sought immediate reemployment retroactive to May 3, 2022. Petitioner's termination was based upon information provided to the District from the Office of Student Protection (OSP) (under the State of New Jersey, Department of Education (DOE)), dated May 3, 2022. This information stated that petitioner is permanently disqualified from serving in "any position, paid or unpaid, with any educational institution under the supervision of the Department of Education, or with a contracted service provider under contract with said school or educational facility." This disqualification was based on an arrest which occurred in North Brunswick on October 15, 1997 (arrest), and subsequent conviction.

On May 3, 2022 the Board hand delivered a letter (Letter) to petitioner, dated May 3, 2022, which stated, "as a result of a conviction stemming from an arrest in 1997, you are 'permanently disqualified from serving in any position, paid, or unpaid, with any education under the supervision of the Department of Education.'" The Letter further states petitioner is terminated "[a]s a result of the foregoing notification, and [his] disqualification from serving as a teacher." (Pet'r's Mot. Ex. B.) The District superintendent stated that she recommends the Board to retroactively approve same during its next meeting. The Board's public meeting notes of May 11, 2022 indicate that the Board adopted a resolution to approve the termination of [petitioner]. Id.

Petitioner seeks a determination that respondent erred in disqualifying him from employment due to the 1997 arrest, where petitioner did not know that:

1. Such arrest in 1997 would lead to a disqualification from employment; and

2. Such arrest never appeared on prior investigations performed for employment.

Petitioner challenges the action of OSP on the following bases:

1. The lack of a Rice Notice required by N.J.S.A. 10:4-6, the Open Public Meetings Act (OPMA), prior to public meeting where the Board voted to terminate him; and
2. The lack of providing a tenure proceeding prior to his termination;
3. The additional reasons detailed herein.

### **PROCEDURAL HISTORY AND FACTUAL FINDINGS**

On July 21, 2022, petitioner appealed the action by the District and moved for emergent relief and alternatively for relief through a due process hearing.

The matter was transferred to the Office of Administrative Law (OAL), where it was filed on July 26, 2022, as a contested case. N.J.S.A. 52:14B-1 to –15; N.J.S.A. 52:14F-1 to –13. In an Order on the emergent matter issued by me on August 4, 2022, petitioner's request for emergent relief was denied. That denial was made without prejudice.

On or about August 21, 2023, petitioner filed a Motion for Summary Decision. Respondent filed a response to the Motion and Cross Motion on the same date. The parties filed joint stipulations on August 24, 2023. On September 22, 2023, petitioner filed a reply letter memorandum and supporting documentation. Oral argument on the motions was held on December 12, 2023. Final submissions were made, and the record was closed on February 26, 2024. Extensions for issuance of this Initial Decision were requested and granted.

The following **FACTS** have been agreed to by the parties and are submitted as joint exhibits and accordingly I **FIND** the following as **FACT**:

1. Robert Cauvin is the holder of a Teacher of Handicapped certificate.
2. On October 15, 1997, Robert Cauvin was arrested in New Brunswick, New Jersey and charged with N.J.S.A. 2C:14-4, Lewdness under complaint S-1997-534513.
3. On October 28, 1997, Robert Cauvin was found guilty and assessed fines for the Lewdness charge stemming from the October 15, 1997 arrest.
4. On October 28, 1997, Robert Cauvin completed all financial obligations related to the Lewdness charge stemming from the October 15, 1998 arrest (sic).
5. Robert Cauvin worked for the Scotch Plains-Fanwood School District from 1998 until 2003.
6. As an employee of the Scotch Plains-Fanwood School District, Robert Cauvin was required to undergo a background check.
7. Background checks for prospective public school employees are done by the New Jersey Department of Education, Office of Student Protection (OSP).
8. On July 24, 2000, a payment for a background check was requested for Robert Cauvin for purposes of employment with Scotch Plains-Fanwood School District.
9. The background check stemming from the July 24, 2000 payment found no criminal record for Robert Cauvin. Therefore, OSP did not disqualify Robert Cauvin from working for the Scotch Plains-Fanwood School District.

10. Robert Cauvin worked for the North Brunswick Township School District (District) from 2003 until May 3, 2022.
11. As an employee of the District, Robert Cauvin was required to undergo a background check.
12. On August 5, 2003, a check to pay for a background check was requested for Robert Cauvin for purposes of employment with the District.
13. The background check resulting from the August 5, 2003 payment found no criminal record for Robert Cauvin. Therefore, OSP did not disqualify Robert Cauvin from working for the District.
14. On May 3, 2022, OSP informed the District that Robert Cauvin was permanently disqualified from teaching based on the finding of guilty for the October 15, 1997 arrest for lewdness.
15. On May 3, 2022, based on the disqualification, the District terminated Robert Cauvin's employment.
16. The Lewdness charge stemming from the October 15, 1997 arrest has not been expunged.
17. Robert Cauvin has filed to expunge the Lewdness charge stemming from the October 15, 1997 arrest in Middlesex County Superior Court.

The following **FACTS** are not in dispute and accordingly I **FIND**:

On or about October 15, 1997, petitioner was arrested. (Pet'r's Cert. 2.<sup>1</sup>) The petitioner was ultimately convicted of the charge of with a violation of N.J.S.A. 2C:14-4<sup>2</sup>, Lewdness under complaint S-1997-534513.

Beginning in 1998, petitioner was employed in two positions in two separate school districts; both of which required background checks. (Pet'r's Resp. 2-3.) The background check from July 24, 2000, revealed no criminal convictions. The background check from August 5, 2003, revealed no criminal convictions. Petitioner's second position was with the Board where he was a Special Education teacher from 2003 until his termination.

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<sup>1</sup> Petitioner states that he was arrested "for engaging in a consensual sexual act in [his] car that was parked in a very private area in North Brunswick." Pet'r's Resp. 2. Petitioner has not provided records of said arrest.

- <sup>2</sup> N.J.S.A. 2C:14-4. Lewdness
- a. A person commits a disorderly persons offense if he does any flagrantly lewd and offensive act which he knows or reasonably expects is likely to be observed by other nonconsenting persons who would be affronted or alarmed.
- b. A person commits a crime of the fourth degree if:
- (1) He exposes his intimate parts for the purpose of arousing or gratifying the sexual desire of the actor or of any other person under circumstances where the actor knows or reasonably expects he is likely to be observed by a child who is less than 13 years of age where the actor is at least four years older than the child.
- (2) He exposes his intimate parts for the purpose of arousing or gratifying the sexual desire of the actor or of any other person under circumstances where the actor knows or reasonably expects he is likely to be observed by a person who because of mental disease or defect is unable to understand the sexual nature of the actor's conduct.
- c. As used in this section:
- "lewd acts" shall include the exposing of the genitals for the purpose of arousing or gratifying the sexual desire of the actor or of any other person.

L.1978, c.95; amended 1992,c.8,s.1.

(emphasis added)

(Pet'r's Cert. 1.) On May 3, 2022, petitioner was provided a letter from Board Superintendent Janet Ciarrocca (Ciarrocca) which stated Cauvin was terminated from his teaching position. (Pet'r's Mot. Ex. A.) Petitioner's medical benefits ended on May 22, 2022.

The Board cites a redacted email, dated May 3, 2022, in support of this termination from James C. Scaringelli (Scaringelli), Investigator with the OSP, which was sent to Ciarrocca and dated May 3, 2022. (Pet'r's Mot. Ex. A.) The email states that the OSP received documentation showing a conviction for a disqualifying crime or offense, and that "the applicant has been notified that he is permanently disqualified from serving in any position, paid or unpaid, with any educational institution under the supervision of the Department of Education . . ." The email asks the Board to advise the OSP of the status of the applicant's employment.

The Board hand delivered the Letter to petitioner, dated May 3, 2022 which stated, "as a result of a conviction stemming from an arrest in 1997, you are 'permanently disqualified from serving in any position, paid, or unpaid, with any education under the supervision of the Department of Education.'" The Letter further states petitioner is terminated "[a]s a result of the foregoing notification, and [his] disqualification from serving as a teacher." (Pet'r's Mot. Ex. B.) The superintendent further stated she recommends the Board to retroactively approve same during its next meeting. Ibid. The Public Meeting notes of May 11, 2022, indicate that the Board adopted a resolution to approve the termination of [petitioner]. Id.

### **ARGUMENTS OF THE PARTIES**

Petitioner asserts that he is entitled to relief in the form of his motion for summary decision and provides the following five points in support of his claim:

#### **POINT I:**



The petitioner is entitled to the granting of his motion for summary decision and his reinstatement as a teacher within the North Brunswick School District since the New Jersey Supreme Court's 1976 decision in State v. O. mandates the conclusion that engaging in private consensual sexual activity is not within the ambit of New Jersey criminal statutes and did not represent a "disqualifying crime or offense" that could result in the termination of the petitioner's tenured employment.

**POINT II:**

The 2023 published Appellate Division decision, Caucino v. Board of Trustees, Teachers' Pension and Annuity Fund, supports the petitioner's legal argument that even any alleged disqualifying criminal misconduct must in some way involve an employee's official employment duties in order to qualify for the forfeiture of any vested rights under a New Jersey state statute.

**POINT III:**

Prior Commissioner of Education and judicial decisions that relate to either criminal acts of teaching staff members and other certificated personnel or "conduct unbecoming a teacher" involving impermissible contact or acts directed at students mandate the conclusion that petitioner's 1997 plea to lewdness in consideration of the State v. O. supreme court decision does not support a conclusion that the petitioner committed any "disqualifying crime or offense" to warrant his dismissal.

**POINT IV:**

Teacher NJ arbitration awards also substantiate petitioner Cauvin's legal argument that his involvement in consensual sexual contact on October 15, 1997, does not support a conclusion that petitioner committed any "disqualifying crime or offense" to warrant his termination.

**POINT V:**

The respondent OSP is equitably estopped and barred by the principle of laches from arguing that in 1997 the petitioner committed a "disqualifying crime or offense" when the OSP, on two separate occasions in conducting criminal history background checks of petitioner, determined that there was no basis to conclude that the petitioner committed any disqualifying act that required his dismissal.

The first argument of petitioner relies on the New Jersey Supreme Court Decision in State v. O., 69 N.J. 574 (1976). This case found that the private consensual acts between adults are not within the ambit of State criminal statutes, and thus the Board violated petitioner's rights when it summarily terminated petitioner based upon his offense in 1976 without initiating tenure charge proceedings. (P-Mot. 1-2.)

The Board's response to this contention is that petitioner's tenure rights were not violated when the Board was directed by the NJ DOE to terminate him because he was convicted a crime that permanently disqualified him from serving in any position with any educational institution under the supervision of the NJ DOE, and the Board has no authority to reject these findings.

Considering the facts, circumstances and documentary evidence supplied by the parties, I **FIND** that State v. O. dictates that individuals engaged in private consensual sexual activity could not be found guilty of indecent exposure, or committing an act of open lewdness, within the meaning of N.J.S.A. 2C:14-4, and that private consensual acts between adults are not within the ambit of any State criminal statutes. Extending then, petitioner's engagement in a private act of "exposure" between consenting adults in October, 1997, did not represent any criminal activity within the meaning of the New Jersey Criminal Statutes, such as N.J.S.A. 2A:115-1 or N.J.S.A. 2C:14-4 and therefore was not a disqualifying crime. Therefore, petitioner prevails on this point.

Petitioner's second point is borne out in his citation to Caucino v. Board of Trustees, Teachers' Pension and Annuity Fund, 475 N.J. Super. 405 (App. Div. 2023), wherein the Appellate Division noted that Caucino had been a teacher employed by the Monmouth County Vocational School District (Monmouth) and a contributing member of

the Teachers' Pension and Annuity Fund (TPAF) during the time period between September 1993 until August 2004. He pled guilty in Federal District Court to bank fraud in 1995 and was sentenced in 1999. In June 2004, the New Jersey Board of Education notified Caucino that he was disqualified from employment as a teacher, pursuant to N.J.S.A. 18A:6-7.1, which permanently disqualifies teachers and other school employees who have been convicted of certain crimes from employment in all school systems under the supervision of the Department of Education.

The Appellate Division in Caucino found that in October 1999, six years after he was hired by the School District, Federal authorities advised the New Jersey Board of Education of Caucino's conviction and sentence, yet the New Jersey Board of Education took no action against Caucino's teaching certificate until five years later when a search conducted by the New Jersey Board of Education's Criminal History Review Unit confirmed Caucino's conviction and sentence.

The Appellate Division determined that any alleged disqualifying criminal misconduct must in some way involve an employee's official employment duties in order to qualify for the forfeiture of any vested rights under a New Jersey State Pension statute. Petitioner analogizes this to his case and states that there could not be the forfeiture of Cauvin's vested tenure rights based on any reliance that he had pled guilty to a violation of a statute determined by the New Jersey Supreme Court in 1976 to not encompass private consensual sexual activity, which the Supreme Court in State v. O. determined was not within the ambit of any criminal statute. Caucino holds that an individual cannot be presumed guilty of any form of "unbecoming conduct" if they were not employed as a teacher, especially in consideration of the significance of the State v. O.

The State counters that Cauvin's contention that he (Cauvin) cannot be disqualified because the act of lewdness for which he was arrested did not involve his employment. This is furthered in the State's brief that the disqualification statute is much more definitive and mandates that persons shall be permanently disqualified from service if that individual's criminal history check reveals a record of conviction for enumerated violations of N.J.S.A. 2C:14. N.J.S.A. 18A:6-7.1. The disqualification statute does not require that

the enumerated violations occur at a school, or that they touched upon an educator's employment, for action to be taken against them by OSP. In fact, to his detriment, Cauvin acknowledges this fact and provides support for his disqualification.

The State further argues that in Caucino, the court did not reverse the removal of Caucino from Monmouth, nor did it reverse his permanent disqualification and that Cauvin's disqualification was appropriate and actually supported by the case law cited by Cauvin. As in Caucino, Cauvin's disqualifying offense was found after he began teaching, and, despite the offense being unrelated to his employment as an educator, the court took no issue with Caucino's removal. As such, as in Caucino, Cauvin's removal, per N.J.S.A. 18A:6A-7.1, was appropriate and supported by the law.

Considering the facts, circumstances and documentary evidence supplied by the parties I **FIND** that Caucino holds that an individual cannot be presumed guilty of any form of "unbecoming conduct" if they were not employed as a teacher, especially in consideration of the significance of the State v. O. Therefore, petitioner prevails on this point.

Petitioner's third point cites a number of cases (and their respective penalties) in asserting that his termination is unwarranted. The most salient of these are Board of Education of the Township of Old Bridge v. Richard M. Pappa, 1988 S.L.D. 542, where a tenured teacher was accused of "conduct unbecoming" because of his open public lewdness conviction. Pappa was arrested in a rest area on the Garden State Parkway by undercover agents operating a "sting" operation. His conduct was described as "sitting on a picnic table bench with his pants open, exposing his genitals and masturbating in the presence of an undercover officer". Id. at 543. Pappa pled guilty to public lewdness (N.J.S.A. 2C:14-4) in Municipal Court. The ALJ and the Commissioner of Education imposed a penalty of 120-day salary forfeiture, and the withholding of salary increment for one year.

The second salient case is In Town of West Orange Board of Education v. Martin Lieb, 1985 S.L.D. 933, the Commissioner affirmed the findings of the ALJ that Lieb should

be reinstated as a school teacher following a public lewdness conviction. Lieb was originally charged with criminal sexual conduct in violation of N.J.S.A. 2C:14-3(b), but the offense was downgraded. Lieb had touched the “genital area” of an Essex County Police Officer in a secluded area of the South Mountain reservation.

The State counters that Cauvin’s argument that he cannot be disqualified because the act of lewdness for which he was arrested did not involve his employment is erroneous. The State cites that in OSP’s moving brief, the disqualification statute is much more definitive and mandates that persons shall be permanently disqualified from service if that individual’s criminal history check reveals a record of conviction for enumerated violations of N.J.S.A. 2C:14. N.J.S.A. 18A:6-7.1. The disqualification statute does not require that the enumerated violations occur at a school, or that they touched upon an educator’s employment, for action to be taken against them by OSP. In fact, to his detriment, Cauvin acknowledges this fact and provides support for his disqualification.

Considering the facts, circumstances and documentary evidence supplied by the parties I **FIND** the Pappa and Lieb cases persuasive. As a note, petitioner cites cases in which the “incidents” all occur during the pendency of teacher employment. The State cites, among other cases, the Caucino case noting that the bank robber Caucino was convicted of occurred in 1995 and Caucino taught from 1993 to 2004. It was not until 2004 that he was permanently disqualified from employment based on his conviction, and removed by Monmouth. Although the court took no issue of his removal from Monmouth for a crime that was wholly unrelated to his position as a teacher and which was discovered years after he began teaching. The court only reversed Caucino’s deferred retirement benefits denial and did not reverse the removal of Caucino from Monmouth, nor did it reverse his permanent disqualification.

Considering the facts, circumstances and documentary evidence supplied by the parties I **FIND** that Caucino is not persuasive in that the category of the offense of bank robbery is not analogous to a conviction of lewdness. The dissimilar nature of the crime, and the caselaw provided shows that, petitioner prevails on this point.

Petitioner's fourth point is that Teacher NJ arbitration awards provide support of petitioner's arguments that teachers who were found guilty of "conduct unbecoming a teacher" because of sexual activities, while employed as certificated teachers, were not dismissed from their tenured employment, while petitioner was dismissed as a tenured teacher based on consensual, non-criminal sexual activity prior to the start of his teaching career. The caselaw cited by petitioner provides a variety of situations where teachers are entitled to an appropriate hearing before an arbitrator as called for.

The State's position on this issue is that Cauvin demonstrates a fundamental lack of understanding of the disqualification statute, and these proceedings. The State contends that the disqualification statute operates outside from, and independent of, employer-initiated tenure proceedings of a disciplinary nature, or actions against a teacher's certificates by the Board of Examiners. It is a mandatory, non-discretionary, absolute bar against employment if an individual has a disqualifying offense on their record. Tenure proceedings are wholly irrelevant to the inquiry in this matter.

Considering the facts, circumstances and documentary evidence supplied by the parties, I **FIND** that petitioner's argument on this point is persuasive and that the employer initiated tenure proceedings are precisely indicated here to avoid the summary dispensation which occurred to Cauvin. Petitioner prevails on this point.

The final point raised by petitioner is that OSP is equitably estopped and barred by the principal of laches from arguing that the 1997 action constituted a "Disqualifying Crime or Offense." On this point I **FIND** that OSP is not barred from the ability to make this finding; **HOWEVER**, the proper processes in this instance were not followed. Respondent prevails on this point.

## **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, 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 Cauvin, along with his certification, states that he engaged in a private consensual sexual act in October 1997, while in his parked car in a private unlit area. The arrest for this action and plea to a violation of N.J.S.A. 2C:14-4, was made before petitioner began teaching and twenty-five years before petitioner was first advised that the respondent OSP determined that he had committed a disqualifying “crime or offense” so as to mandate his dismissal as a public school teacher.

No testimony or documentation contravenes petitioner’s statement as to the event and the fact that he was engaged in consensual sexual activity in a parked vehicle owned by the petitioner in a private area when discovered by local municipal police officers.

Cauvin 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 eighteen, 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)

N.J.S.A. 18A:6-7.1(a) provides that “[a]n individual[] . . . 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 [a]n offense as set forth in chapter 14 of Title 2C of the New Jersey Statutes[.]”

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). (emphasis added)

Cauvin does not deny the criminal conviction that resulted in his disqualification from employment. In addition, he does not challenge the “accuracy” of his criminal conviction. He states that he was not provided with an opportunity for appropriate hearing and opportunity to expunge his record considering that the event occurred before he began teaching, the lewdness conviction was inaccurate as material aspects of the statute were not present and the conviction for lewdness was never revealed in his prior



investigations. Specifically marked portions of the statute – pertaining to intention as to other uninterested parties – were not present in the 1997 action.

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 not provided to Cauvin and he has challenged the disqualification process. He has also filed for expungement of the conviction.

Considering the facts and circumstances of the OSP in light of the history of investigations previously performed and the failure of the OSP to provide Cauvin with the opportunity to challenge the veracity, accuracy and impact of the disqualifying criminal history, the petitioner's motion for summary decision in lieu of an answer to dismiss the petition is **GRANTED**. The respondent's cross-motion for summary decision is **DENIED**.

**ORDER**

It is hereby **ORDERED** that the petitioner's motion for summary decision in lieu of an answer to dismiss the petition is **GRANTED** and that petitioner is reinstated to his position effective May 3, 2022. It is further **ORDERED** that the respondent's motion for summary decision in lieu of an answer to dismiss the petition is **DENIED**.

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

This recommended decision may be adopted, modified, or rejected by the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Acting 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 **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**. Exceptions may be filed by email to [ControversiesDisputesFilings@doe.nj.gov](mailto: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.



August 26, 2024

DATE

CARL V. BUCK III, ALJ

Date Received at Agency:

Date Mailed to Parties:  
CVB/lam