

IN THE MATTER OF THE :  
DISQUALIFICATION FROM : COMMISSIONER OF EDUCATION  
SCHOOL EMPLOYMENT OF J.W. : DECISION  
\_\_\_\_\_ :

SYNOPSIS

Matter of disqualification of a school bus driver was remanded by the State Board to the Commissioner for reconsideration and clarification because no cases existed regarding the disqualification of a school employee upon conviction for possession of drug paraphernalia, and the question presented was one of first impression. Commissioner transmitted the remanded matter to OAL for hearing and determination consistent with the State Board's February 4, 1998 decision, which limited the remand to the specific directive relating to the legal issue presented and not on the question of rehabilitation.

ALJ concluded that after analysis of the situation presented, the Legislature intended that a criminal conviction of a person for possession of drug paraphernalia disqualifies that individual from employment as a school bus driver, pursuant to *N.J.S.A. 18A:39-19.1*. ALJ granted summary decision to the Office of Criminal History Review and denied appellant's cross-application for summary decision. Appeal was dismissed subject to transmittal to the Commissioner and thereafter to the State Board.

Commissioner concurred with the ALJ's conclusion that J.W. was properly disqualified from school employment. In response to the State Board's directive that the Commissioner consider whether inchoate crimes also come within the purview of *N.J.S.A. 18A:39-19.1* and *N.J.S.A. 18A:6-7.1*, in light of the absence of legislation on this question, the Commissioner finds that the recent amendments to those statutes, which now expressly include conspiracy to commit or an attempt to commit any of the crimes described in the act, render his consideration of this issue unnecessary for purposes of prospective agency policy. Commissioner transmitted the matter to the State Board, which retained jurisdiction.

March 8, 1999

OAL DKT. NO. EDU 1829-98  
AGENCY DKT. NO. DHP-B 46-97

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The record of this matter and the initial decision of the Office of Administrative Law have been reviewed. Appellant’s exceptions and the agency’s reply thereto are duly noted as submitted in accordance with *N.J.A.C.* 1:1-18.4, and were considered by the Commissioner in rendering the within decision.

Upon careful and independent review of the record in this matter, the Commissioner concurs with the Administrative Law Judge’s (ALJ) conclusion that J.W. was properly disqualified from school employment in that a conviction for the Possession of Narcotic Equipment, or Drug Paraphernalia, *is*

A crime or offense *involving* the manufacture, transportation, sale, possession, or habitual use of a “controlled dangerous substance” as defined in the “New Jersey Controlled Dangerous Substances Act,” P.L. 1970, c. 226 (C. 24:21-1 *et seq.*). (emphasis added) *N.J.S.A.* 18A:39-19.1b.

J.W. was convicted in 1992 for Possession of Narcotic Equipment, in violation of *N.J.S.A.* 2C:36-2. That statute provides that

It shall be unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, ingest, inhale, or otherwise to introduce into the human body a controlled

dangerous substance or controlled substance analog in violation of the provisions of chapter 35 of this title. \*\*\**N.J.S.A. 2C:36-2*

Thus, a conviction pursuant to this section is predicated upon an individual's *actual use* of drug paraphernalia with a controlled dangerous substance (CDS) or upon a person's *intent to use* the drug paraphernalia in conjunction with a CDS. Indeed, respondent notes that the Attorney General's February 9, 1981 Guidelines Governing Enforcement of The New Jersey Drug Paraphernalia Act state, in pertinent part, that "[a] prosecution for use [of drug paraphernalia] or possession with intent to use [drug paraphernalia] may not be undertaken unless the object is found near CDS or contains residue, or the possessor makes an inculpatory statement." (Respondent's Brief, Appendix at Ra21)\* It can be reasonably concluded, therefore, that a person convicted under *N.J.S.A. 2C:36-2*, was either *using or intending to use* the drug equipment with a CDS and as such, has committed an offense "involving the manufacture, transportation, possession, sale or use of a CDS" so as to disqualify her from school employment pursuant to *N.J.S.A. 18A:39-19.1b* and *N.J.S.A. 18A:6-7.1 et seq.*, as these statutes existed prior to their amendment on July 1, 1998. The Commissioner, therefore, rejects appellant's argument that the Department of Education's interpretation of *18A:39-19.1 et seq.* and *N.J.S.A. 18A:6-7.1 et seq.*, "adds something" to the criminal history record check statutes which is not there in order to effectuate a policy concern. (Appellant's Exceptions at p. 5)

Moreover, as the ALJ observes *and appellant does not refute*, J.W.'s affidavit may reasonably be read to conclude that her "crime. . .involv[ed] the. . .transportation [and] possession. . ." of a CDS, as she admits that she drove a friend to a location where he could

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\* In this regard, the Commissioner finds it noteworthy that when adopting *P.L. 1980, c. 133*, the predecessor to *N.J.S.A. 2C:36-1 et seq.*, the Law, Public Safety and Defense Committee "agreed that requiring that an object be used or intended for use in connection with illicit drugs to determine if it can be considered to be drug paraphernalia is adequate and provides 'fair warning' to persons in possession of property potentially subject to this bill."

purchase cocaine, then, after he purchased the drugs, “drove the car away from the area.” (Appellant’s Brief before the State Board of Education, July 17, 1997, at Aa5; Initial Decision at p. 9) Appellant “acknowledged her guilt” as to her violating *N.J.S.A. 2C:36-2*. (Appellant’s Brief at p. 3)

Like the ALJ, the Commissioner rejects the significance of the Legislature's express inclusion of the term “drug paraphernalia” in statutes such as *N.J.S.A. 2C:35-16.1* and *N.J.S.A. 2A:18-61.1*, where such statutes bear no convincing nexus to the criminal history record check statutes. Moreover, that the Legislature has expressly included offenses involving drug paraphernalia in its recent amendments to *N.J.S.A. 18A:6-7.1 et seq.* and *N.J.S.A. 18 A:39-19.1* is not necessarily dispositive of appellant’s claim, as she urges, in that the Senate Education Committee in adopting the revisions specified that it “amended the bill to *further refine the list of crimes and offenses* for which an individual may be disqualified from employment in a school district.” (emphasis added) (Respondent’s Brief at Ra19, Senate Education Committee Statement to S. 851)

Finally, in response to the State Board’s direction that the Commissioner consider whether inchoate crimes also come within the purview of *N.J.S.A. 18A:39-19.1* and *N.J.S.A. 18A:6-7.1*, in light of the absence of legislation on this question, the Commissioner finds that the recent amendments to *N.J.S.A. 18A:6-7.1* and *18A: 39-19.1*, which now expressly include conspiracy to commit or an attempt to commit any of the crimes described in the act, (Respondent’s Brief at Ra28) render his consideration of this issue unnecessary for purposes of prospective agency policy.

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(Respondent’s Brief, Appendix at Ra17, Assembly Judiciary, Law, Public Safety and Defense Committee, S. No. 1021)

Accordingly, the initial decision of the ALJ is modified, as set forth above. The Commissioner transmits this matter to the State Board of Education which has retained jurisdiction.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

March 8, 1999