

DHPBL #313-97
SB # 60-97

IN THE MATTER OF THE DISQUALIFI- :
CATION FROM SCHOOL EMPLOYMENT : STATE BOARD OF EDUCATION
OF J.W. : DECISION

Decided by the Assistant Commissioner of Education, June 13, 1997

For the Petitioner-Appellant, Bucceri & Pincus (Gregory T. Syrek, Esq., of
Counsel)

J.W. (hereinafter "petitioner"), who was employed as a school bus driver for the Hudson County Schools of Technology, was disqualified by the Office of Criminal History Review of the Department of Education from continued employment in the State's schools after a criminal history record review conducted pursuant to N.J.S.A. 18A:39-19.1 revealed that she had been convicted of possession of drug paraphernalia in March 1992 following an arrest in February 1992.

In a letter decision dated June 13, 1997, the Assistant Commissioner of Education, Executive Services, upheld the disqualification,¹ concluding that petitioner had failed to demonstrate clear and convincing evidence of her rehabilitation under the standard set forth in N.J.S.A. 18A:6-7.1.

Petitioner filed the instant appeal to the State Board of Education.

¹ We note that N.J.S.A. 18A:4-33 authorizes the Commissioner to "designate an assistant commissioner as deputy commissioner with full power to act in his place and stead during any absence or inability of the commissioner and at such other times as the commissioner may designate." Such authority expressly includes assignment by the Commissioner of the "hearing and determination of controversies and disputes which may arise under the school laws...." N.J.S.A. 18A:4-34.

After a careful review of the record, we reverse the decision of the Assistant Commissioner. We find that petitioner's conviction for possession of drug paraphernalia is not a disqualifying offense under N.J.S.A. 18A:39-19.1.

N.J.S.A. 18A:39-19.1 provides, in pertinent part:

....A school bus driver shall be disqualified from employment or service if the individual's criminal history record reveals a record of conviction of any of the following crimes and offenses:

a. A crime or offense bearing upon or involving a sexual offense or child molestation or endangering the welfare of children or incompetents, as specified in section 1 of P.L.1986, c.116 (C.18A:6-7.1).

b. 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.

c. A crime or offense involving the use of force or the threat of force to or upon a person or property including: armed robbery, assault, kidnapping, arson, manslaughter and murder.

The New Jersey Controlled Dangerous Substances Act, N.J.S.A. 24:21-1 et seq., defines controlled dangerous substance as "a drug, substance, or immediate precursor in Schedules I through V of article 2 of this act...." The only conviction revealed by petitioner's criminal history review in this case was for possession of drug paraphernalia. N.J.S.A. 2C:36-2.² Drug paraphernalia, however, as defined in N.J.S.A. 2C:36-1, are not listed in Schedules I through V of the Controlled Dangerous Substances Act, N.J.S.A.

² N.J.S.A. 2C:36-2 provides:

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 introduce into the human body a controlled dangerous substance or controlled substance analog in violation of the provisions of chapter 35 of this title. Any person who violates this section is guilty of a disorderly persons offense.

24:21-5 through N.J.S.A. 24:21-8.1, as a controlled dangerous substance.³ As a result, petitioner's conviction for possession of drug paraphernalia was not 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'" so as to constitute a disqualifying offense under subsection (b) of N.J.S.A. 18A:39-19.1. Nor did such conviction involve a sexual offense within subsection (a) of that statute, or the use or threat of force within subsection (c).

Thus, given the clear terms of the statute, we reverse the decision of the Assistant Commissioner disqualifying petitioner from service as a school bus driver. We stress in so doing, however, that while petitioner's conviction for possession of drug paraphernalia is not a disqualifying offense under N.J.S.A. 18A:39-19.1, nothing in our decision herein would require the Hudson County Schools of Technology to reemploy petitioner in her former position.⁴

Ronald K. Butcher abstained.

Donald C. Addison, Jr. and S. David Brandt opposed.

³ N.J.S.A. 2C:36-1 defines "drug paraphernalia" as:

...all equipment, products and materials of any kind which are used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, ingesting, inhaling, or otherwise introducing into the human body a controlled dangerous substance or controlled substance analog in violation of the provisions of chapter 35 of this title....

⁴ We note that, while not necessary for a determination of this case, petitioner has submitted evidence in support of her rehabilitation claim. The director of support services in the Hudson County Schools of Technology commends petitioner as "a productive employee with no indication of current difficulty." A freeholder in Jersey City indicates that petitioner "has performed her duties in a reliable, dependable fashion....She has earned our support and encouragement." Petitioner completed 28 counseling sessions with New Pathways Counseling Services in 1993, and also successfully completed a course in data processing at the Hudson County Area Vocational-Technical Schools in January 1994. There have been no further arrests.

September 3, 1997

Date of mailing _____