

C #245-03DHP-L
C #295-03DHP-L
SB # 27-03

LEONARD J. MARANO, :
 :
 PETITIONER-APPELLANT, :
 : STATE BOARD OF EDUCATION
V. :
 : DECISION
NEW JERSEY STATE DEPARTMENT OF :
EDUCATION, :
 :
 RESPONDENT-RESPONDENT. :
_____ :

Decision on motion by the Commissioner of Education, May 14, 2003

Decided by the Commissioner of Education, June 17, 2003

For the Petitioner-Appellant, Bendit Weinstock (William J. Fitzsimmons,
Esq., of Counsel)

For the Respondent-Respondent, Allison C. Eck, Deputy Attorney General
(Peter C. Harvey, Attorney General of New Jersey)

Petitioner in this case was employed as a teacher by the Board of Education of the City of East Orange ("East Orange Board") when he was notified by letter dated April 8, 2003 that he was permanently disqualified from employment in the public schools pursuant to N.J.S.A. 18A:6-7.1 as a result of his conviction in 1996 for two counts of federal tax evasion. On April 22, 2003, he filed a petition of appeal with the Commissioner of Education seeking reinstatement to the teaching position he had held with the East Orange Board.

In a letter decision dated June 17, 2003, the Commissioner dismissed the petition. In doing so, the Commissioner rejected petitioner's claim that he was not disqualified from employment in the public schools since theft and theft-related offenses were not disqualifying under N.J.S.A. 18A:6-7.1 until the statute was amended in 1998, subsequent to his conviction. Petitioner argued that N.J.S.A. 18A:6-7.1(g) limits the disqualification of an individual employed by a district board who is required to undergo a criminal history record check upon employment with another board to offenses enumerated in N.J.S.A. 18A:6-7.1 prior to the effective date of the 1998 amendments. The Commissioner concluded that the limitation set forth in N.J.S.A. 18A:6-7.1(g) did not apply to petitioner since he was not employed by a board of education when the statutory amendments became effective in 1998.

On appeal to the State Board of Education, petitioner contends that N.J.S.A. 18A:6-7.1(g) does not require that an individual be continuously employed by a board of education in order for the statutory limitation to apply, and he renews his argument that he cannot be disqualified on the basis of his 1996 conviction since the offense he committed was not disqualifying under N.J.S.A. 18A:6-7.1 prior to amendment of the statute in 1998.

After carefully considering the arguments of counsel, the State Board of Education affirms the decision of the Commissioner substantially for the reasons expressed in his letter decision of June 17, 2003. We find that N.J.S.A. 18A:6-7.1(g) was intended to apply to individuals employed by a board of education when the 1998 amendments became effective. It was not intended to provide an individual whose employment had been terminated prior to that time as a consequence of conduct

resulting in a conviction for an offense which is disqualifying under those amendments with the ability to work in the public schools.

We cannot ignore the fact that the Board of Education of the Borough of Lincoln Park (“Lincoln Park Board”) certified tenure charges against petitioner in December 1993 seeking his dismissal from the position of Administrator/Board Secretary on the grounds that he had misappropriated funds from the district. In the Matter of the Tenure Hearing of Leonard J. Marano, remanded by the State Board, May 1, 2002 (previous history omitted). Those charges were rendered moot when petitioner pled guilty in U.S. District Court to two counts of tax evasion and, as a consequence, the New Jersey Superior Court in an order dated September 20, 1996 deemed that petitioner had forfeited his position with the Lincoln Park Board as of November 2, 1995 pursuant to N.J.S.A. 2C:51-2. Id.

As the Commissioner noted in his decision of June 17, 2003, since petitioner is permanently disqualified from employment in the public schools under N.J.S.A. 18A:6-7.1, we need not resolve whether he is forever disqualified from holding any position with the State or its administrative or political subdivisions pursuant to N.J.S.A. 2C:51-2(d). However, we cannot ignore the fact that, in addition to being incarcerated for 16 months and spending two years under supervised release as well as being required to pay fines, petitioner forfeited his position with the Lincoln Park Board as a result of his conviction. It would be ludicrous to find that the Legislature intended to limit the application of N.J.S.A. 18A:6-7.1 so as to permit an individual in circumstances such as these to serve as a teacher in New Jersey’s public schools.

In fact, we are troubled by the fact that petitioner was able to obtain employment as a teacher with the East Orange Board. We are also disturbed by the fact that the notice of petitioner's disqualification was not issued until April 8, 2003. In this respect, we stress that N.J.S.A. 18A:6-7.1 prohibits a district board from employing an individual as a teacher without first determining that there is not any criminal history record information which would disqualify the individual from being employed in that capacity. A district board may employ an individual for three months pending completion of a criminal history record check only if it demonstrates to the Commissioner that special circumstances exist which justify the emergent employment and the applicant has submitted a sworn statement attesting to the fact that he has not been convicted of an offense enumerated in the statute. N.J.S.A. 18A:6-7.1c. In the event that a background check is not completed within that three-month period, the board may petition the Commissioner for an extension which cannot exceed two months. Id.

Under the circumstances, we refer this matter to the State Board of Examiners for consideration of whether revocation of petitioner's certification is warranted.

October 1, 2003

Date of mailing _____