

NINA L. CHAVIS, :  
PETITIONER, :  
V. : COMMISSIONER OF EDUCATION  
NEW JERSEY STATE DEPARTMENT : DECISION  
OF EDUCATION, OFFICE OF :  
CRIMINAL HISTORY REVIEW, :  
RESPONDENT. :  
\_\_\_\_\_ :

SYNOPSIS

Former school teacher, now employed in a new position as Parent Center Educator, sought nullification of the Department's determination disqualifying her from school employment pursuant to *N.J.S.A. 18A:6-7.1*, as a consequence of her conviction on child abuse charges resulting from hitting her 8 year-old son with a plastic jump rope. Petitioner contended that in her new position – which is not enumerated in the statute – she has no regular contact with students, and should therefore not be subject to the disqualification law.

The ALJ found that the petitioner is not employed in a school but in an administrative office, in a building that does not house classrooms, and therefore is not employed in a position that has regular contact with students. The ALJ concluded that the criminal history record check law does not apply to petitioner, and she is therefore not disqualified from the position of Parent Center Educator.

The Commissioner rejected the Initial Decision, finding that: the ALJ misread and misapplied the controlling statute, which is properly interpreted to encompass any position with a potential for access to students; petitioner has full access to school grounds and the ability to hold or observe parent education classes in school buildings while school is in session; and there are no safeguards in place that would prevent petitioner from coming into contact with unattended children. The Commissioner determined that there is no basis for concluding that the criminal history disqualification law does not apply in this case, and dismissed the petition.

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.

May 30, 2008

OAL DKT. NO. EDU 8547-07  
AGENCY DKT. NO. 248-9/07

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have exceptions filed by the Department of Education (Department) pursuant to *N.J.A.C. 1:1-18.4*.<sup>1</sup>

On exception, the Department urges rejection of the Initial Decision and reiterates its stance that *N.J.S.A. 18A:6-7.1* must be interpreted broadly so as to effectuate the legislative intent of protecting public school students from persons deemed to be a danger to them, as reflected in that statute. According to the Department, *N.J.S.A. 18A:6-7.1* applies on its face – without regard to particular assignment or location – to all teaching staff members and to a number of other specifically enumerated positions, several of which – such as school secretaries and maintenance workers – do not typically entail student contact in the performance of job duties; therefore, the Department asserts, the Legislature plainly intended its prohibition against school employment by persons convicted of a disqualifying offense to apply to *any* person whose position or credentialing provides potential access to the district’s schools, and

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<sup>1</sup> Petitioner did not reply to the Department’s exceptions.

hence, regular opportunity for contact with students. The Department contends that petitioner – by virtue of her qualifications, duties and compensation status as detailed at hearing – is both a teaching staff member and in a position providing unfettered access to district schools, so that *N.J.S.A. 18A:6-7.1* must be read to preclude her employment in New Jersey public schools. (Department’s Exceptions at 6-10; see also Letter Brief in Lieu of Answer and in Support of Motion to Dismiss at 4-9, Letter Brief in Reply to Petitioner’s Brief in Opposition to Motion to Dismiss at 2-4, and Post-Hearing Brief at 6-11)

Upon careful review and consideration, the Commissioner must concur with the Department that the Administrative Law Judge (ALJ) has misread and misapplied the controlling statute in finding that the criminal history record check law does not apply to petitioner.

Preliminarily, the Commissioner finds that the language of *N.J.S.A. 18A:6-7.1* applies categorically to all of the positions it specifically enumerates, regardless of their particular individual character. This being so, the ensuing phrase “or any other person serving in a position which involves regular contact with pupils” must necessarily be understood, as contended by the Department, in a similarly expansive manner – encompassing any position with a potential for access to students comparable to that of the enumerated positions.

In the present matter, the Atlantic City school district has attempted to accommodate petitioner’s wish for continued employment, following her disqualification as a teacher, by fashioning a position intended to remove her from the purview of *N.J.S.A. 18A:6-7.1*. However, the record is clear that petitioner continues to function in a manner that subjects her to the strictures of that statute: First, notwithstanding that the job description for Parent Center Educator (Exhibit P-2/R-10) permits a four-year college degree to serve as an alternative credential to teaching certification, the duties of the position are fully consistent with those of a

certified teaching staff member;<sup>2</sup> accordingly, they command commensurate compensation, and petitioner was hired to perform them specifically based on her certification status and past experience as a teacher. Moreover, although petitioner's office may be in a separate administration building, it was uncontroverted on record that 1) parent education classes – which petitioner both teaches and supervises – can be held in school buildings while school is in session, 2) petitioner, as an administrator, has full access to school grounds, and 3) no safeguards are in place that would prevent petitioner from coming into contact with unattended children. (Testimony of Donna Haye,<sup>3</sup> as recited by the Department in Exceptions at 3-5<sup>4</sup> without objection from petitioner<sup>5</sup>) Under these circumstances, the Commissioner cannot reasonably find that petitioner's status and opportunity for contact with students are materially outside the scope of coverage envisioned by the Legislature; thus, there can be no basis for concluding, as did the ALJ, that the criminal history disqualification law does not apply to petitioner.

In so holding, the Commissioner is fully aware that application of the statute in this instance may appear unduly harsh; however, the inquiry in this matter is not – and *cannot* be, in light of the Legislature's 1998 action expressly foreclosing it – whether petitioner's

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<sup>2</sup> Duties include assisting the principal in determining parent needs, providing demonstration lessons and technical assistance, assisting the principal in the development of instructional programs and evaluation procedures of program participants, and assisting appropriate administrative personnel in all matters relating to the Parent Center. The Parent Center Educator job description was presumably not submitted to the County Superintendent for review pursuant to *N.J.A.C.* 6A:9-5.5 (the record is silent on this point); however, the position arguably should not be held by an uncertificated employee.

Additionally, according to hearing testimony referenced by both petitioner and the Department, petitioner was actually hired as a "Parent Coordinator" (supervisor of Parent Center Educators) rather than as a Parent Center Educator; however, no job description for that position was brought to the record and all employment actions by the Atlantic City Board of Education refer to petitioner as a Parent Center Educator. (Petitioner's Post-hearing Brief at 2; Department's Post-hearing Brief at 4-5; Department's Exceptions at 4-5; Exhibits R-11, R-12 and R-13)

<sup>3</sup> Assistant Superintendent Donna Haye is erroneously referenced, at various places in the Initial Decision, as Donna Hays or Donna Hayes. Her name appears correctly in the parties' papers, as verified through the district's staff directory at <http://www.acboe.org>.

<sup>4</sup> Reiterating its Post-hearing Brief at 3-5.

<sup>5</sup> The record of this matter did not include a transcript of the February 6, 2008 hearing, erroneously identified by the ALJ (Initial Decision at 2) as having occurred on February 7, 2008.

employment should be allowed because she poses no danger to children notwithstanding her conviction for a disqualifying offense, and will be eligible to have her conviction expunged in about two years. Although it is evident from the record that both the Atlantic City school district and the ALJ were influenced by their belief to this effect (Initial Decision at 2 and 4; Testimony of Donna Haye, Exhibit R-8), there can be no question that *N.J.S.A.* 18A:6-7.1 – as amended by P.L. 1998, c. 31 – no longer allows considerations such as the specific parameters of an applicant’s position, the nature, seriousness, date and circumstances of an applicant’s offense, and the applicant’s history vis-à-vis other offenses and evidence of rehabilitation to enter into a determination of qualification for school employment. Were the Commissioner to hold otherwise, she would fail in her obligation to effectuate the Legislature’s unequivocal intent to preclude judgment of individual applicants in the interest of ensuring the maximum degree of protection for children.

Accordingly, the Initial Decision of the OAL is rejected for the reasons set forth herein, and the petition of appeal is dismissed.<sup>6</sup>

IT IS SO ORDERED.<sup>7 8</sup>

#### COMMISSIONER OF EDUCATION

Date of Decision: May 30, 2008

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<sup>6</sup> The Initial Decision (at 5) erroneously dismisses “the petition seeking to disqualify petitioner from her position as a Parent Center Educator filed herein.”

<sup>7</sup> The Commissioner stresses that the within decision does not preclude petitioner from applying for a new criminal history record check if her conviction is expunged as anticipated “on or about 2010” (Exhibit R-8).

<sup>8</sup> This decision may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6A:4-1.1 *et seq.*