

#323-11 (OAL Decision: Not yet available online)

BILLY PERRY, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
NEW JERSEY STATE DEPARTMENT : DECISION
OF EDUCATION, CRIMINAL HISTORY
REVIEW UNIT, :
RESPONDENT. :

SYNOPSIS

Petitioner – a former custodian in a New Jersey charter school – challenged respondent’s determination, pursuant to *N.J.S.A. 18A:6-7.1*, that he is permanently disqualified from school employment as a result of his convictions on multiple drug offenses. Petitioner contended that recent statutory amendments exclude him from the reach of *N.J.S.A. 18A:6-7.1*, and that he has been rehabilitated and should be allowed to continue as a school employee. Respondent asserted that *N.J.S.A. 18A:6-7.1* mandates petitioner’s permanent disqualification from school employment based on his criminal record.

The ALJ found that: *N.J.S.A. 18A:6-7.1* is clear in its requirement that a school cannot employ a staff member if that individual has a disqualifying criminal history record; petitioner’s criminal history record check revealed at least nine convictions for crimes which are permanently disqualifying for employment in schools; the statute applies prospectively, and contains no waiver or appeal process to determine whether an individual is rehabilitated. Accordingly, the ALJ affirmed the respondent’s action to disqualify petitioner from school employment, and dismissed the petition.

The Commissioner concurred with the ALJ that the petitioner’s appeal must be dismissed, finding that petitioner clearly violated, *inter alia*, *N.J.S.A. 18A:6-7.1(b)*, and the statute contains no provisions for allowing mitigation for alleged rehabilitation. 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.

August 17, 2011

OAL DKT. NO. EDU 11359-10
AGENCY DKT. NO. 478-8/10

BILLY PERRY, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 NEW JERSEY STATE DEPARTMENT : DECISION
 OF EDUCATION, CRIMINAL HISTORY :
 REVIEW UNIT, :
 :
 RESPONDENT. :

Review of the record, Initial Decision and respondent's exceptions reveals that petitioner – a former custodian in a charter school – has been convicted of multiple drug offenses. When a June 18, 2010 fingerprinting exposed this fact, petitioner was notified by respondent that – pursuant to *N.J.S.A.* 18A:6-7.1 – he was permanently disqualified from school employment.¹

The Commissioner regards as meritless petitioner's arguments 1) that recent statutory amendments exclude him from the reach of *N.J.S.A.* 18A:6-7.1, and 2) that his alleged rehabilitation allows the Commissioner the discretion to save him from the penalty for breach of *N.J.S.A.* 18A:6-7.1. Petitioner clearly violated, *inter alia*, *N.J.S.A.* 18A:6-7.1(b), and the statute contains no provisions allowing mitigation for alleged rehabilitation. The petition is accordingly dismissed.

IT IS SO ORDERED.²

ACTING COMMISSIONER OF EDUCATION

Date of Decision: August 17, 2011
Date of Mailing: August 18, 2011

¹ The Initial Decision also cites *N.J.S.A.* 18A:6-4.13, but that statute extends the reach of *N.J.S.A.* 18A:6-7.1 to non-public schools. As petitioner's employer was a charter school – which is a public school (see *N.J.S.A.* 18A:36A-3) – *N.J.S.A.* 18A:6-4.13 is inapposite.

² This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L.* 2008, *c.* 36. (*N.J.S.A.* 18A:6-9.1)