

#235-11 (OAL Decision: Not yet available online)

IN THE MATTER OF THE TENURE :
HEARING OF JOHN SOCRATES, : COMMISSIONER OF EDUCATION
SCHOOL DISTRICT OF THE TOWNSHIP: DECISION
OF JACKSON, OCEAN COUNTY. :

SYNOPSIS

The Board certified tenure charges of conduct unbecoming against John Socrates – a tenured teacher – for alleged criminal acts on April 17, 2010. Specifically, respondent was charged with a violation of *N.J.S.A. 2C:14-4(a)*, *N.J.S.A. 2C:35-10(a)(4)* and *39:4-49.1*, and *N.J.S.A. 2C:36-2*. Respondent filed an answer admitting that he had been criminally charged, but denying that he engaged in any criminal activity or conduct unbecoming a teacher. Respondent was granted a stay of the tenure charges pending disposition of the criminal case against him. Subsequently, respondent pled guilty to a violation of *N.J.S.A. 2C:14-4(a)*, and the other charges were dismissed. By letter dated February 17, 2011, the Manager of the Department’s Criminal History Unit advised the Board that respondent had received a conviction for a disqualifying offense enumerated in *N.J.S.A. 18A:6-7.1*, and that he is therefore permanently disqualified from employment in New Jersey public schools. The Board filed a motion for summary decision.

The ALJ found that: there is no genuine issue as to any material fact in dispute, and the matter is ripe for summary judgment; *N.J.S.A. 18A:6-7.1* provides in pertinent part that an individual shall be permanently disqualified from employment as a teacher of children if the individual’s criminal history record check reveals a record of conviction for an offense set forth in Chapter 14 of Title 2C of the New Jersey Statutes; there is no statutory authority for respondent’s position that disqualification is not mandatory and mitigating factors may be presented; accordingly, there is no basis for a hearing or oral argument on the tenure charges. The ALJ concluded that summary decision is appropriately granted to the petitioning Board, and that respondent must be removed as a tenured teaching staff member.

Upon independent review of the record, the Commissioner adopted the Initial Decision of the OAL as the final decision in this matter.

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.
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June 24, 2011

OAL DKT. NO. EDU 12652-10
AGENCY DKT NO. 621-10/10

IN THE MATTER OF THE TENURE :
HEARING OF JOHN SOCRATES, : COMMISSIONER OF EDUCATION
SCHOOL DISTRICT OF THE TOWNSHIP: DECISION
OF JACKSON, OCEAN COUNTY. :

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Respondent's exceptions – filed in accordance with the provisions of *N.J.A.C. 1:1-18.4* – were fully considered by the Commissioner in making his determination herein.

On exception, respondent presents for reconsideration his letter memorandum in opposition to the District's Motion for Summary Judgment submitted to the Administrative Law Judge (ALJ) below. Such letter memorandum requested the ALJ to schedule a hearing or, at the very least, oral argument to determine whether there is a basis for the District's requested Order removing respondent as a tenured teaching staff member without granting him the right to present evidence on his behalf. Respondent cites to Commissioner of Education cases from 1985, 1988, 1989 and 1990 for the proposition that – even when there have been guilty pleas to criminal charges – in making a determination as to penalty in any tenure charge proceedings involving allegations of unbecoming conduct, the factors dictated by *In re Fulcomer*, 93 *N.J. Super.* 404 (App. Div. 1967), *i.e.*, the nature and circumstances of the incidents or charges, the teacher's prior record and present attitude, the

effect of such conduct on the maintenance of discipline among the students, and the likelihood of such behavior reoccurring, must be taken into consideration. (Respondent's letter memorandum in opposition to the District's Motion for Summary Decision, at 1-5)

Upon full consideration, the Commissioner is in complete accord with the ALJ that a summary decision order removing respondent from his tenured teaching position with the School District of the Township of Jackson is appropriately granted to the Board. In so determining, the Commissioner categorically rejects respondent's exception arguments, as this result does not emanate as a consequence of the tenure charges filed against him but, rather, is obligatory as a matter of law. Specifically, due to the overriding need to protect New Jersey's school children from potential harm, effective June 30, 1998, the Legislature significantly amended the statutory provisions governing criminal history record checks of school employees (*N.J.S.A. 18A:6-7.1*), making the statute stricter and removing its prior provision for demonstration of rehabilitation. This statute, in pertinent part, is clear on its face:

...An individual, except as provided in subsection g. of this section,¹ shall be permanently disqualified from employment or service under this act if the individual's criminal history record check reveals a record of conviction for any crime of the first or second degree; or a. [*a*]n offense as set forth in chapter 14 of Title 2C of the New Jersey Statutes, or as set forth in N.J.S. 2C:24-4 and 2C:24-7, or as set forth in R.S. 9:6-1 et seq., or as set forth in N.J.S. 2C:29-2; or...(emphasis supplied)

Here, it is uncontested that on February 16, 2011 respondent pled guilty in Wall Township Municipal Court to a violation of *N.J.S.A. 2C:14-4(a)*. (See District's Motion for Summary Decision, Exhibit E & F) As evidenced above, this offense is specifically identified by *N.J.S.A. 18A:6-7.1* as one for which a conviction renders the individual ineligible for employment in New Jersey's public schools. By letter dated February 17, 2011,

¹ As recognized by the ALJ, subsection g. is not applicable in the instant matter.

Carl H. Carabelli, Manager of the Department of Education's Criminal History Unit, notified the District that, as a consequence of his conviction, respondent had been notified that "he is permanently disqualified for employment with any public school or educational facility under the supervision of the Department of Education or contractor providing service to said school or institution." (See District's Motion for Summary Decision, Exhibit G). As such, the District had the obligation – as a matter of law – to terminate respondent's employment once he was disqualified from school employment and he neither requested nor obtained a stay of such disqualification pending appeal pursuant to *N.J.A.C. 6A:3-1.6*.

Accordingly, the recommended decision of the OAL – as expounded on above – is adopted as the final decision in this matter. Respondent John P. Socrates is removed as a tenured teaching staff member in the School District of the Township of Jackson.

IT IS SO ORDERED.²

ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 24, 2011

Date of Mailing: June 24, 2011

²This 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*)