

**New Jersey Commissioner of Education**

**Final Decision**

Timothy Vandergast,

Petitioner,

v.

New Jersey Department of Education, Office of  
Student Protection,

Respondent.

**Synopsis**

*Pro se* petitioner appealed the determination of the respondent, New Jersey Department of Education, Office of Student Protection (OSP), that he is permanently disqualified from public school employment. Petitioner was disqualified as the result of information revealed during a criminal history background check pursuant to *N.J.S.A.* 18A-6.7.1. Respondent filed a motion to dismiss the petition.

The ALJ found, *inter alia*, that: there are no material facts at issue here, and the matter is ripe for summary decision; petitioner's criminal history background check revealed that in 1985, he was convicted of two disqualifying offenses in the State of North Carolina; at the time, petitioner was 17 years old; petitioner acknowledged that the findings from 1985 are accurate, and did not attempt to challenge the accuracy of his criminal history record; however, petitioner requested that the Commissioner consider the facts surrounding his past crimes and his rehabilitation since that time; further, petitioner sought to demonstrate his rehabilitation through mitigating evidence of his subsequent educational and career achievements; however, the controlling statute here mandates permanent disqualification and does not provide any leniency or discretion in regard to its application. The ALJ concluded that petitioner has failed to advance any basis for relief and the appeal must be dismissed. Accordingly, the ALJ granted the OSP's motion for summary decision, and dismissed the petition with prejudice.

Upon review, the Commissioner concurred with the findings of the ALJ and adopted the Initial Decision of the OAL as the final decision in this matter. The petition was dismissed with prejudice.

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.

February 20, 2020

**New Jersey Commissioner of Education**  
**Final Decision**

Timothy Vandergast,

Petitioner,

v.

New Jersey Department of Education,  
Office of Student Protection

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed and considered. The parties did not file exceptions.

Upon review, the Commissioner concurs with the ALJ that petitioner is permanently disqualified from employment in any educational institution under the supervision of the Department of Education. Petitioner does not challenge the accuracy of his criminal history record but seeks only to present evidence of rehabilitation, which is not permitted under *N.J.S.A. 18A:6-7.1*.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter and the petition is hereby dismissed with prejudice.

IT IS SO ORDERED.<sup>1</sup>

COMMISSIONER OF EDUCATION

Date of Decision: February 20, 2020  
Date of Mailing: February 20, 2020

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<sup>1</sup> 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*).



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. EDU 13245-19

AGENCY DKT. NO. 192-8/19

**TIMOTHY VANDERGAST.,**

Petitioner,

v.

**DEPARTMENT OF EDUCATION OFFICE OF  
STUDENT PROTECTION,**

Respondent.

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**Timothy Vandergast**, petitioner, pro se

**Michael Czarneck**, Esq., Deputy Attorney General, for respondent (Gubir S. Grewal, Attorney General of New Jersey, attorney)

Record Closed: December 18, 2019

Decided: January 15, 2020

BEFORE: **JOANN LASALA CANDIDO**, ALAJ

**STATEMENT OF THE CASE**

Petitioner, Timothy Vandergast, challenges the action of the New Jersey Department of Education Office of Student Protection (respondent/OSP), decision that permanently disqualified him from serving in any position, paid or unpaid, with any educational institution under the supervision of the Department of Education, or with a

contracted service provider under contract with said school or educational facility as a result of information revealed during a criminal background check under N.J. Stat. § 18A:6-7.1.

On June 29, 2019, petitioner filed a response to respondents' disqualification notice of June 26, 2019. On September 13, 2019, the Board filed a Motion to Dismiss the Petition of Appeal. Petitioner requested oral argument on the Motion to Dismiss (that will be addressed as a summary decision motion) that was held on December 18, 2019, on which date the record closed.

The Board seeks relief pursuant to N.J.A.C. 1:1-12.5, which provides that summary decision should be rendered "if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." These provisions mirror the language of Rule 4:46-2 and the Supreme Court's decision in Judson v. Peoples Bank and Trust Co. of Westfield, 17 N.J 67 Agency Final Decision (1954). Under N.J.A.C. 1:1-12.5(b), the determination to grant summary judgment should be based on the papers presented as well as any affidavits, which may have been filed with the application. For the adverse, i.e., the non-moving party to prevail in such an application, responding affidavits must be submitted showing that there is indeed a genuine issue of fact, which can only be determined in an evidentiary proceeding. The Court in Brill v. Guardian Life Insurance Co. of American, 142 N.J 520, 523 (1995), set the standard to be applied when deciding a motion for summary judgment. Therein the Court stated:

The determination whether there exists a genuine issue with respect to a material fact challenged requires the Motion Judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party... are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party.

Petitioner sought a license to teach in the State of New Jersey. The Board sent a notice to Petitioner dated June 26, 2019, that stated his fingerprint search returned results of a

felony conviction and in turn he is permanently disqualified from serving in any position, paid or unpaid, with any educational institution under the supervision of the Department of Education, or with a contracted service provider under contract with said school or educational facility. The Board attached Addendum A, which displays that Petitioner was convicted of crimes in North Carolina in 1985.

Petitioner was convicted of larceny of a firearm, and a crime considered to be disqualifying in nature, breaking and entering a vehicle, which is akin to burglary under N.J. Stat. § 2C:18-2. Petitioner initiated a pro se appeal of the Board's decision on August 1, 2019. Petitioner acknowledged that "the findings from 1975 are accurate" and does not attempt to challenge the accuracy of his criminal history record. See Ex. C. In his appeal, Petitioner simply requests that the Commissioner of Education consider the facts surrounding his past crimes and his rehabilitation since then.

I **CONCLUDE** that this matter is ripe for summary decision. There are no material disputed facts which require a plenary hearing, and the respondent is entitled to judgment as a matter of law.

Petitioner has failed to set forth any grounds to contest the decision in this matter since he does not challenge the accuracy of his criminal record, nor the Department of Education's classification of his offenses being akin to burglary under N.J.S.A. 2C:18-2 and therefore disqualifying. This mandates permanent disqualification of any public-school employee who has regular contact with pupils where that person has been convicted of a third-degree crime as set forth in Chapter 20 of Title 2C of the NJ Statutes. Burglary, a third-degree crime under the statute, is specifically listed as a disqualifying offense under N.J.S.A. 18A:7-7.1(c)(2). The statute only provides for the petitioner to appeal the accuracy of the disqualifying criminal history record. Here, petitioner does not challenge the accuracy or OSP's determination that he was convicted of the crime so stated, nor does he contest that those crimes are substantially equivalent to those enumerated in N.J.S.A. 18A:6-7.1(c)(2). The petitioner instead requests a review of his case and a chance to demonstrate his rehabilitation by using mitigating evidence. The statute mandates permanent disqualification and does not provide any leniency or

discretion in regard to its application. Therefore, because Petitioner has failed to advance any basis for relief, the appeal must be dismissed with prejudice.

**ORDER**

Based upon the foregoing, respondent's motion for summary decision is hereby **GRANTED**. Accordingly, the petition filed in this matter is **DISMISSED WITH PREJUDICE**.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



January 15, 2020

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DATE

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**JOANN LASALA CANDIDO, ALAJ**

Date Received at Agency:

January 15, 2020  
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Date Mailed to Parties:

ljb  
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