

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

Scott Baron,

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 (NJDOE), Office of Student Protection (OSP), that he is permanently disqualified from employment as a private school bus driver. Petitioner had driven a school bus for a non-public school since 2012; the school was fully aware at the time of his hiring that in 2008, he had pled guilty to two second-degree felonies for misappropriating a former employer's money. Petitioner was granted a school bus license and several subsequent renewals by the Motor Vehicle Commission (MVC), despite the fact that his background checks revealed his 2008 guilty plea. Petitioner was disqualified by OSP in 2019 after submitting to a criminal history background check through the NJDOE pursuant to *N.J.S.A.* 18A:39-19.1, which revealed his 2008 guilty plea; OSP subsequently notified the MVC of the disqualification, and the MVC revoked petitioner's school bus license. The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue here, and the matter is ripe for summary decision; an analysis of applicable statutes indicates that *N.J.S.A.* 18A:39-19.1 applies only to public school bus drivers; private schools have the discretion to employ a person who would be disqualified from public school employment; the Commissioner's powers and responsibilities regarding background checks of nonpublic school employees are limited to determining whether such persons could work in a public school; these powers and responsibilities do not extend to persons employed in non-public schools; and the statutory provisions regarding background checks of nonpublic school employees do not require the Commissioner to notify the MVC regarding revocation of the license of a non-public school employee with a disqualifying offense on his record. The ALJ concluded that a private school has the discretion to employ a bus driver even if that person would be disqualified from public school employment; further, OSP should notify the MVC that petitioner's school bus driver credentials must be restored so that he may resume his employment as a private school bus driver. Accordingly, the ALJ granted the petitioner's motion for summary decision, and dismissed the OSP's cross motion.

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. In so doing, the Commissioner found that *N.J.S.A.* 18A:39-19.1 applies only to bus drivers employed by public schools or other educational entities under the supervision of the NJDOE. With regard to nonpublic school bus drivers, the Commissioner's authority is limited to reporting whether a criminal history record check reveals offenses that would be disqualifying in a public school. The OSP was ordered to notify the MVC to restore petitioner's school bus driver license.

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.

March 13, 2020

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

Scott Baron,

Petitioner,

v.

New Jersey Department of Education,  
Office of Student Protection,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by respondent pursuant to *N.J.A.C.* 1:1-18.4, and petitioner's reply thereto have been reviewed.

In 2008, petitioner pled guilty to two second-degree felonies for misappropriating his former employer's money. In 2012, a nonpublic school, which was aware of his criminal history, hired him as a bus driver. He applied for a school bus driver license through the Motor Vehicle Commission, and he was granted a license and several subsequent renewals even though his background checks revealed his 2008 guilty plea. In 2019, petitioner submitted to a criminal background check through the Department of Education, Office of Student Protection (OSP). The OSP, upon receiving information about petitioner's criminal history, issued a letter stating that petitioner was permanently disqualified from employment as a school bus driver pursuant to *N.J.S.A.* 18A:39-19.1. The OSP notified the Motor Vehicle Commission (MVC) of the disqualification and the MVC revoked petitioner's school bus driver license.<sup>1</sup>

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<sup>1</sup> The MVC has represented that the license will be restored if the Department of Education determines that petitioner is qualified to operate a commercial vehicle for the purpose of transporting school children.

The ALJ analyzed the applicable statutes and concluded that *N.J.S.A. 18A:39-19.1* applies only to public school bus drivers and that a private school has the discretion to employ a person who would be disqualified from public school employment. The Commissioner's powers and responsibilities with respect to background checks of nonpublic school employees are limited to determining whether such persons could work in a public school, not whether such person may work in a private school. Moreover, the statutory provisions pertaining to background checks of nonpublic school employees do not require the Commissioner to notify the MVC to revoke the license of a private school employee with a disqualifying offense on his or her record. The ALJ further found that, because petitioner had obtained a certificate under the Rehabilitated Convicted Offenders Act (RCOA), he could not be disqualified from employment as a bus driver.

In its exceptions, the OSP argues *N.J.S.A. 18A:39-19.1* does not limit the background check requirements to drivers employed by public schools, and that petitioner's disqualification under that statute is mandatory. The OSP further contends that *N.J.S.A. 18A:6-4.13* to *-4.17* define only what a private school employer may do, while the issue here is what the OSP is required to do following a background check. Regarding the RCOA, the OSP argues that *N.J.S.A. 18A:39-19.1* permanently disqualifies individuals convicted of the listed offenses from being a bus driver and that petitioner has not offered any proof to support the assertion that the RCOA negates that requirement.

Upon review, the Commissioner concurs with the ALJ's conclusion that petitioner is not disqualified from employment as a bus driver for a nonpublic school, for the reasons thoroughly explained in the Initial Decision. *N.J.S.A. 18A:6-4.13* provides that nonpublic schools may require prospective employees, including bus drivers, to demonstrate that they have no criminal history that would disqualify them from employment in a public school. Following a criminal history record check, the Department shall provide written notification to the nonpublic school of the "determination as to whether the candidate would be qualified or disqualified for employment in the public schools." *N.J.S.A. 18A:6-4.15*. This provision stands in stark contrast to *N.J.S.A. 18A:39-*

19.1, which provides that following a criminal history record check for a school bus driver, the Department shall notify the applicant “of the applicant’s qualification or disqualification as a school bus driver.” Applying the mandatory disqualification provision of *N.J.S.A.* 18A:39-19.1 to nonpublic school bus drivers would render *N.J.S.A.* 18A:6-4.15 meaningless. The Legislature, which enacted both of these statutes in the same year, cannot be presumed to have intended such a result. The Commissioner therefore finds that *N.J.S.A.* 18A:39-19.1 applies only to bus drivers employed by public schools or other educational entities under the supervision of the Department of Education. With regard to nonpublic school bus drivers, the Commissioner’s authority is limited to reporting whether a criminal history record check reveals offenses that would be disqualifying in a public school.<sup>2</sup>

Accordingly, the Initial Decision of the OAL is affirmed as modified herein.

Petitioner is not disqualified from operating a school bus for a nonpublic school. The OSP shall notify the MVC to restore petitioner’s school bus driver license.

IT IS SO ORDERED.<sup>3</sup>

COMMISSIONER OF EDUCATION

Date of Decision: March 13, 2020  
Date of Mailing: March 16, 2020

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<sup>2</sup> As the relief requested in the Petition of Appeal pertained solely to petitioner’s ability to operate a school bus for a private school not under the jurisdiction of the Department, the Commissioner does not reach the RCOA issue.

<sup>3</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**

**SUMMARY DECISION**

OAL DKT. NO. EDU 11417-19

AGENCY DKT. NO. 207-8/19

**SCOTT BARON,**

Petitioner,

v.

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

Respondent.

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**Scott Baron**, petitioner, pro se

**Sydney Finkelstein**,<sup>4</sup> Deputy Attorney General, for respondent (Gurbir S. Grewal, Attorney  
General of New Jersey, attorney)

Record Closed: January 21, 2020

Decided: January 29, 2020

BEFORE **DEAN J. BUONO**, ALJ:

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<sup>4</sup> Geoffrey Stark, Deputy Attorney General, submitted both the opposition to the motion for summary decision and cross-motion, but has since left the Division of Law.

## **STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

On August 12, 2019, Scott Baron, (petitioner or Baron), filed a Petition of Appeal with the Commissioner of the New Jersey Department of Education. He challenges respondent Department of Education's (DOE) determination that, under N.J.S.A. 18A:6-7.1, he is disqualified from employment as a private school bus driver as a result of his two second-degree felony convictions, and that N.J.S.A. 18A:39-19.1 and N.J.S.A. 39:3-10.1 required the DOE to notify the Motor Vehicle Commission (MVC) of Baron's employment disqualification so that the MVC could immediately revoke his school bus driver credentials.

As part of this matter, Baron seeks to amend his petition to add the MVC as a party, and the parties have filed cross-motions for summary decision on the issue of whether the school and motor vehicle laws requiring public school bus drivers' disqualification from employment and loss of licensure for certain criminal offenses also apply to private school bus drivers.

It was subsequently transmitted to the Office of Administrative Law (OAL) on August 19, 2019, as an application for emergent relief. However, after discussing the matter with the parties the application was withdrawn.

On November 15, 2019, Baron filed a motion for summary decision challenging his disqualification from employment as a private school bus driver. The DOE filed a cross-motion for summary decision. The undersigned provided the parties time for briefs. Oral argument was not requested, and on January 21, 2020, the record closed with respect to the motions for summary decision.

The question for me to decide is whether a private school bus driver is disqualified from employment or subject to license revocation if his criminal history includes an offense that would otherwise disqualify him from employment and subject him to license revocation if he were a public-school bus driver.

## FACTUAL DISCUSSION

The essential facts of this case are not in dispute and as such **I FIND AS FACT** that Baron is a former attorney who, in 2008, pled guilty to two second-degree felonies for misappropriating his employer's money for his personal use. He served several months in prison for his crimes.

In 2012, Baron started a new career as an office clerk and a school bus driver for The Hebrew Academy (THA), which is a toddler through grade eight private school in Marlboro that his own children attended.

In July of that year, Baron applied to the MVC for the commercial driver's license (CDL) and P (Passenger) and S (School Bus) endorsements that he needed to work as a school bus driver for THA. The application stated that "an applicant must be fingerprinted as part of the background records check" under either the procedure for "school bus operators under the jurisdiction of the Dept. of Education (N.J.S.A. 18A:39-19.1)" or for "school bus drivers for private/parochial school . . . not under the jurisdiction of the Dept. of Education (N.J.S.A. 39:3-10.1)." Petitioner's Ex. D. Because THA is a private school, Baron selected the latter option—that he would not "be transporting school-age children under the jurisdiction of the Department of Education"—and submitted his fingerprints for a criminal background check by the MVC under N.J.S.A. 39:3-10.1. Ibid.

In support of his application, THA's Head of School, Yoti Golan, advised the MVC that THA is a private school that is not under the jurisdiction of DOE and that she intended to employ Baron as a school bus driver once he was properly licensed. Petitioner's Ex. E. After completing a background check, MVC issued Baron a CDL with P and S endorsements. Petitioner's Exs. F, F1, and G. In 2013, and again in 2017, the MVC renewed Baron's school bus driver credentials upon a background check in accordance with the procedures for bus drivers for schools not under the jurisdiction of the DOE. Petitioner's Exs. H, I, J, K, L, M, and N.

In 2019, all THA employees, including Baron, submitted to criminal background checks through the DOE. As a result of that background check, the DOE's Office of Student Protection advised Baron by letter dated July 5, 2019, that, due to his second-degree convictions in 2008, and pursuant to N.J.S.A. 18A:39-19.1, he was "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." Petitioner's Exs. A and R. The DOE also advised THA of the results of Baron's background check and asked THA to "[p]lease notify this office in writing as to the final disposition of [Baron's] employment." Petitioner's Ex. S.

In response, Ms. Golan advised the DOE that THA is a private school that does not receive support from state appropriations and that, therefore, THA is not under the jurisdiction of the DOE and "disqualification of Mr. Baron from employment with a public school is not applicable to THA, a private school." Petitioner's Ex. T. She further advised the DOE that, despite Baron's criminal history, "it is my intention to retain Mr. Baron as an employee of THA." Despite Ms. Golan's protest, the DOE, by letter dated July 22, 2019, notified her that, while the DOE did not object to Baron's continued employment as an office clerk for THA, "[b]y law this office has advised the [MVC] of the DOE's disqualification [of Baron as a school bus driver] and the MVC will be suspending the 'S' endorsement." Petitioner's Exs. T and U.

On or about July 31, 2019, the MVC notified Baron that the agency "has received information from [the DOE] that you have been disqualified as a school bus operator pursuant to N.J.S.A. 18A:39-19.1 because . . . you have been convicted of one of the disqualifying crimes specified in N.J.S.A. 18A:6-7.1." Petitioner's Ex. B. The MVC further notified Baron that, as a result, "pursuant to authority under N.J.S.A. 39:3-10.1, 39:5-30 and N.J.A.C. 13:21-14.5(a) and (c), the Commission has suspended your privilege to operate school buses . . . used in the transportation of school children in New Jersey as of 07/29/2019, for an indefinite period." Ibid. Finally, the MVC advised Baron that "[i]f at some future time the [DOE] determines that you are qualified to operate commercial



vehicles for the purpose of transporting school children, the [DOE] will notify the Commissioner in writing of their decision and your privilege may be restored.” Ibid.

On August 14, 2019, Baron challenged his disqualification from employment as a school bus driver by filing with the Commissioner of Education a petition of appeal, including a separate motion for emergent relief, seeking an order compelling the DOE to vacate his permanent disqualification from driving a school bus for a private school not under the DOE’s jurisdiction, and compelling the DOE to advise the MVC to reinstate his school bus driver credentials. On August 19, 2019, the Commissioner transmitted the petition and motion for emergent relief to the Office of Administrative Law (OAL) for hearing.

Subsequently, Baron withdrew his motion for emergent relief, but filed with the OAL an amended petition to add the MVC as a party to this matter. The parties have also filed cross-motions for summary decision.

In support of his motion for summary decision, Baron argues that public school bus drivers and private school bus drivers are subject to different school and motor vehicle laws and that, although he is disqualified from employment as a public school bus driver as a result of his second-degree felony convictions, his criminal history does not disqualify him from employment as a private school bus driver and the DOE should not have notified the MVC to revoke his school bus driver credentials. In the alternative, Baron argues that, even if the laws requiring a public school bus driver’s employment disqualification and license revocation for certain offenses also apply to private school bus drivers, he has, pursuant to the Rehabilitation of Convicted Offenders Act (RCOA), N.J.S.A. 2A:168A-1 to -16, received from the Superior Court of New Jersey Intensive Supervision Program a certificate suspending any and all disabilities, forfeitures and/or bars that would impede his ability to operate a school bus for employment purposes. In opposition to Baron’s motion and in support of its cross-motion, the DOE maintains that “[t]he statutes governing school-bus-driver licensing and criminal background checks are not conditioned upon a licensee’s employer[;] they apply to all school bus drivers in the state, in part because licensees have the ability to change jobs, or may be employed by a bus

contractor that does business with both public and private schools.” DOE’s December 11, 2019, Brief, p. 8. Thus, according to the DOE, because Baron “was convicted of two second-degree felonies, which are disqualifying offenses under N.J.S.A. 18A:6-7.1, . . . the Commissioner must [pursuant to N.J.S.A. 18A:39-19.1] disqualify [him] from working as a school bus driver, regardless of whether he is currently employed by a public school district, a bus contractor, or, as in [Baron’s] case, a private, religious school” and, pursuant to N.J.S.A. 18A:39-19.1 and N.J.S.A. 39:3-10.1, “the Chief Administrator of the MVC must immediately revoke the school-bus-driver special license” upon notification of a school bus driver’s employment disqualification. Ibid.

### **LEGAL DISCUSSION**

First, I will address the procedural issues and concerns with Baron’s attempt to amend his petition to add the Motor Vehicle Commission (MVC). Generally, under the Uniform Administrative Procedure Rules (UAPR), N.J.A.C. 1:1-1.1 to -21.6, parties may freely amend their pleadings in contested cases “unless precluded by law or constitutional principle.” N.J.A.C. 1:1-6.2. However, because N.J.A.C. 1:1-1.3 specifically precludes third-party joinder in contested case hearings in the absence of statutory authority, and because the school laws, N.J.S.A. 18A:1-1 to -76-4, do not specifically authorize third-party joinder in hearings arising thereunder, Baron cannot amend his pleadings to join the MVC as a party to this matter.

Besides, the MVC is not a necessary party to this matter. When the MVC notified Baron of his license revocation, the agency advised him that “[i]f at some future time the [DOE] determines that you are qualified to operate commercial vehicles for the purpose of transporting school children, the [DOE] will notify the Commissioner in writing of their decision and your privilege may be restored.” Thus, if Baron ultimately prevails in this matter, the DOE, which is a party to this matter, can provide Baron the relief he seeks without the MVC’s involvement as a party.

Under the UAPR, the standards for summary decision are that “[a] party may move for summary decision upon all or any of the substantive issues in a contested case.”

N.J.A.C. 1:1-12.5(a). Such motion “shall be served with briefs and with or without supporting affidavits” and “[t]he decision sought may 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.” N.J.A.C. 1:1-12.5(b). When the motion “is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding.” Ibid.

In 1989, the Legislature passed two separate laws concerning criminal history checks of school bus drivers. Under one law, L. 1989, c. 104, the Legislature made criminal history checks of public school bus drivers mandatory. Under the other law, L. 1989, c. 229, the Legislature made criminal history checks of private school bus drivers optional.

First, through L. 1989, c. 104, the Legislature created procedures at N.J.S.A. 18A:39-19.1 for background checks of public school bus drivers and required their disqualification from public school employment for certain offenses. Specifically, under N.J.S.A. 18A:39-19.1, “[p]rior to employment as a school bus driver, and upon application for renewal of a school bus driver’s license, a bus driver shall submit to the Commissioner of Education the driver’s name, address, and fingerprints” for a criminal history check by the FBI and the State Police. The law further dictates that “[a] school bus driver . . . shall be permanently disqualified from employment or service if the individual’s criminal history record reveals a record of conviction for which public school employment candidates are disqualified pursuant to [N.J.S.A. 18A:6-7.1], which includes “any crime of the first or second degree.” N.J.S.A. 18A:39-19.1(a); N.J.S.A. 18A:6-7.1.

N.J.S.A. 18A:39-19.1 also requires the Commissioner to notify the MVC and “[t]he local board of education or the school bus contractor and the County Superintendent of Schools” of the bus driver applicant’s disqualification from employment. N.J.S.A. 18A:39-19.1(d). Finally, the MVC “shall, upon notice of disqualification from the Commissioner

of Education, immediately revoke the applicant's special license issued pursuant to [N.J.S.A. 39:3-10.1] without necessity of a further hearing." Ibid.

Through L. 1989, c. 104 the Legislature also amended N.J.S.A. 18A:6-7.1 and N.J.S.A. 39:3-10.1 to account for the new procedures at N.J.S.A. 18A:39-19.1. N.J.S.A. 18A:6-7.1, which requires criminal record searches for all prospective public school employees whose jobs would involve regular interaction with pupils and lists the criminal offenses that permanently disqualify such individuals from public school employment, was amended to specifically state that "[a]n individual employed by a board of education or a school bus contractor holding a contract with a board of education, in the capacity of a school bus driver, shall be required to meet the criminal history record requirements pursuant to [N.J.S.A. 18A:39-19.1]." N.J.S.A. 18A:6-7.1.

And N.J.S.A. 39:3-10.1, which is a motor vehicle law governing licensure of school bus drivers, was also amended by L. 1989, c. 104 to reflect the license revocation requirement under N.J.S.A. 18A:39-19.1, such that "[n]otwithstanding the provisions of any law to the contrary, the chief administrator shall, upon notice of disqualification from the Commissioner of Education pursuant to [N.J.S.A. 18A:39-19.1], immediately revoke the special license . . . without the necessity of a further hearing."<sup>5</sup> N.J.S.A. 39:3-10.1.

Second, under L. 1989, c. 229, the Legislature gave nonpublic schools the choice of requiring candidates for employment, including bus drivers, to undergo criminal history checks facilitated by the Commissioner. That law, which is now codified as N.J.S.A. 18A:6-4.13 to -4.17, provides that "[a]ny nonpublic school may require all final candidates for employment or service under contract with the school as a . . . bus driver . . . to demonstrate that no criminal history record information exists . . . which would disqualify that individual from employment in the public schools of this State pursuant to [N.J.S.A. 18A:6-7.1]." N.J.S.A. 18A:6-4.13.

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<sup>5</sup> The law originally referred to "the director," but was subsequently amended to refer to "the chief administrator" to reflect a change in title for the head of the MVC.

Based on the results of the check, the Commissioner shall “determin[e] whether the applicant would be qualified or disqualified for employment in the public schools and shall inform the applicant of his determination in writing” and “[t]he commissioner shall also provide written notification to the chief administrator of the nonpublic school, which requires the criminal history record check as a condition of employment, of his determination as to whether the candidate would be qualified or disqualified for employment in the public schools.” N.J.S.A. 18A:6-4.15.

Thus, in the same year, the Legislature created procedures for mandatory criminal history checks of public school bus drivers under one law, and optional criminal history checks of nonpublic school bus drivers under a separate law. Moreover, that N.J.S.A. 18A:39-19.1 applies exclusively to public school bus drivers, while N.J.S.A. 18A:6-4.13 to -4.17 applies exclusively to private school bus drivers, seems obvious. First, the opening sentence of N.J.S.A. 18A:39-19.1 states that, “[p]rior to employment as a school bus driver, and upon application for renewal of a school bus driver’s license, a bus driver *shall submit to the Commissioner of Education* the driver’s name, address, and fingerprints” for a background check. N.J.S.A. 18A:39-19.1(a) (emphasis added). While this sub-provision does not modify “school bus driver” with public or nonpublic, it is clear that this requirement applies only to *public* school bus drivers, because prospective private school bus drivers are not required to submit to criminal history checks through the Commissioner *unless* the private school so chooses under N.J.S.A. 18A:6-4.13 to -4.17.

Second, N.J.S.A. 18A:39-19.1 is rife with specific references as to public schools, which are governed by local boards of education, but makes no mention of nonpublic schools, which are not governed by local boards of education. See, e.g., N.J.S.A. 18A:39-19.1(a) (“the commissioner shall notify the employing board of education or contractor, and the board or contractor shall take appropriate action;” “[t]he commissioner shall notify the employing board of education or contractor that the driver is no longer eligible for employment”); N.J.S.A. 18A:39-19.1(d) (“[t]he local board of education or the school bus contractor and the County Superintendent of Schools shall also be notified of the disqualification”).

Finally, N.J.S.A. 18A:6-4.13 specifically lists bus drivers among the nonpublic school employment candidates who may be required to undergo a background check, and cross-references N.J.S.A. 18A:6-7.1 for the procedures the Commissioner shall follow to conduct such checks, but neither N.J.S.A. 18A:6-4.13 nor any of the other provisions governing criminal history checks of nonpublic school employment candidates references N.J.S.A. 18A:39-19.1.

And although there are similarities between the separate laws, there are also important differences. Unlike N.J.S.A. 18A:39-19.1, the provisions governing private school background checks, N.J.S.A. 18A:6-4.13 to -4.17, do not explicitly state that a school bus driver whose criminal history includes an offense listed under N.J.S.A. 18A:6-7.1 cannot be hired by a nonpublic school, and N.J.S.A. 18A:6-4.13 to -4.17 do not include MVC notification or license revocation requirements.

The differing language in these related laws that were enacted in the same year is important because “a comparative analysis of the language of contemporaneous statutes may, because of contrasting language applicable to similar subject matter, be indicative of an intent or purpose on the part of the Legislature to provide different treatment.” Malone v. Fender, 80 N.J. 129, 136 (1979) (citing Smith v. Twp. of Hazlet, 63 N.J. 523, 527 (1973)).

Thus, in Smith v. Twp. of Hazlet, 63 N.J. 523, the Supreme Court addressed the difference between two contemporaneous statutes—one providing for the creation of police departments in cities (L. 1899, c. 135) and the other providing for the creation of police departments in townships (L. 1899, c. 169)—and concluded that:

Where two comprehensive statutes are enacted by the same legislative body in the same year, one dealing with a certain class of cities and the other dealing with townships, and where the former designates the office of chief of police and accords the holder of the office some measure of statutory authority, while on the same subject the latter is silent, the inference is permissible that the distinction is a purposeful one.

[Id. at 527.]

Like in Smith, the fact that N.J.S.A. 18A:39-19.1 requires the Commissioner to notify the MVC if a public school bus driver applicant has a disqualifying criminal record and requires the MVC to revoke the bus driver's license, but N.J.S.A. 18A:6-4.13 to -4.17 are silent on the same subjects (and do not reference N.J.S.A. 18A:39-19.1), leads to the permissible inference that the distinction between public school bus drivers and private school bus drivers is a purposeful one, and that the Legislature intended to treat the two classes of drivers differently. Specifically, there is a permissible inference under the laws governing background checks of private school bus drivers that the Commissioner is not required to notify the MVC of an offense that would be disqualifying for public school employment, the MVC is not required to revoke the license of a private school bus driver applicant for such an offense, and a private school has the discretion to employ a bus driver even if such person would be disqualified from public school employment.

This conclusion is reinforced by the fact that, unlike the mandatory criminal background checks of public school employment applicants under N.J.S.A. 18A:39-19.1 (“a bus driver *shall* submit” to a background check) and N.J.S.A. 18A:6-7.1 (a public school bus driver “*shall be required* to meet the criminal history record requirements pursuant to [N.J.S.A. 18A:39-19.1]”), criminal history checks of applicants for private school employment, including bus drivers, are optional, such that “[a]ny nonpublic school *may require*” criminal background checks.<sup>6</sup> N.J.S.A. 18A:6-4.13 (emphasis added). And if the private school so chooses, and the Commissioner determines that a private school bus driver applicant “*would be . . . disqualified for employment in the public schools,*” N.J.S.A. 18A:6-4.15 (emphasis added), there is nothing in N.J.S.A. 18A:6-4.13 to -4.17 that prohibits the private school head from nonetheless employing that person as a school bus driver (unless, of course, that person had previously applied for public school employment and had his driver's license revoked pursuant to N.J.S.A. 18A:39-19.1).<sup>7</sup>

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<sup>6</sup> The only caveat under N.J.S.A. 18A:6-4.13 is that a private school that elects to require background checks must apply the requirement uniformly to all applicants.

<sup>7</sup> The fact that N.J.S.A. 18A:6-4.15 is written in the conditional tense with reference to public school employment—“would be . . . disqualified for employment in the public schools”—is also indicative of the Legislature's intent to refrain from requiring permanent disqualification from private school employment for offenses that would disqualify a person from public school employment.

And again, N.J.S.A. 18A:39-19.1 requires the MVC to revoke the school bus driver license of a public school applicant or employee with a disqualifying criminal offense on his record, while N.J.S.A. 18A:6-4.13 to -4.17 do not. Thus, unlike a public school, a private school does not have to run background checks on prospective employees and may hire a school bus driver even if a criminal history check would reveal that he had been convicted of an offense listed under N.J.S.A. 18A:6-7.1.

And there is nothing in N.J.S.A. 18A:6-4.13 to -4.17 that prohibits a private school that does require background checks of its employment candidates or employees from hiring a candidate or continuing to employ an individual whose criminal history includes an offense listed under N.J.S.A. 18A:6-7.1. N.J.S.A. 18A:6-4.15 simply requires that, after the results of a criminal history search are known, the Commissioner “provide written notification to the chief administrator of the nonpublic school, which requires the criminal history record check as a condition of employment, of his determination as to whether the candidate *would be qualified or disqualified for employment in the public schools.*” (Emphasis added).

Thus, the Commissioner’s powers and responsibilities with respect to background checks of nonpublic school employment candidates and employees is limited to a determination of whether such persons could work in a public school, not whether such person may work in a private school.<sup>8</sup> That decision is left to the head of a private school, who may choose to employ an individual even if he or she “would be . . . disqualified for employment in the public schools” due to a criminal history that includes a disqualifying offense under N.J.S.A. 18A:6-7.1. And, in the case of a private school bus driver, N.J.S.A. 18A:6-4.13 to -4.17 do not require or direct the Commissioner to notify the MVC to revoke the license of an applicant or employee with a disqualifying criminal offense on his or her record.

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<sup>8</sup> These provisions may also apply to employees pursuant to N.J.S.A. 18A:6-4.15, which states that “[f]ollowing qualification for employment pursuant to this section, the State Bureau of Identification shall immediately forward to the Commissioner of Education any information which the bureau receives on a charge pending against an employee of the nonpublic school which requires a criminal history record check as a condition of employment” and that “[i]f the charge is for one of the crimes or offenses enumerated in section 1 of P.L. 1986, c.116 (C.18A:6-7.1), the commissioner shall notify the chief administrator of the nonpublic school.”



The motor vehicle laws implicated by the education laws regarding criminal history checks of school bus drivers further supports the conclusion that public school bus drivers and private school bus drivers are treated differently with respect to permanent employment disqualification and license revocation. N.J.S.A. 39:3-10.1 provides that “any person applying for a special license and any person who is the holder of a special license . . . for the transporting of children to and from schools, pursuant to N.J.S.18A:39-1 et seq., shall comply with the provisions of . . . [N.J.S.A. 18A:39-19.1]” and “[n]otwithstanding the provisions of any law to the contrary, the chief administrator shall, upon notice of disqualification from the Commissioner of Education pursuant to . . . [N.J.S.A. 18A:39-19.1], immediately revoke the special license granted under authority of this section without the necessity of a further hearing.” That is, N.J.S.A. 39:3-10.1 specifically references N.J.S.A. 18A:39-19.1, which only applies to public school bus drivers, and not N.J.S.A. 18A:6-4.13 to -4.17, which governs private school bus drivers. Thus, by its terms, N.J.S.A. 39:3-10.1 only applies to public school bus drivers, and the Commissioner is only required to notify the MVC, and the MVC shall only revoke a school bus driver’s license, in the event the driver has a disqualifying criminal offense and applies for a job with a public school or the driver commits a disqualifying offense while employed by a public school.

The motor vehicle regulation implementing N.J.S.A. 39:3-10.1 also distinguishes between public and private school bus drivers. Under N.J.A.C. 13:20-30.14(b), “[a] school bus driver shall submit to a criminal history record check at the time of his or her initial application and any renewal application for a Commercial Driver License with School Bus Endorsement authorizing the driver to operate a school bus by providing to the Department of Education his or her name, address, and fingerprints[.]”

In contrast, under N.J.A.C. 13:20-30.14(c), “[a] school bus driver who provides services only to a nonpublic school shall not be required to undergo a criminal history record check through the Department of Education pursuant to N.J.S.A. 18A:6-4.13 provided that the chief administrator of the nonpublic school provides written documentation indicating that the school bus driver is not required to undergo a criminal

history record check as a condition of employment or service under contract.” And while, regardless of the education laws, both public and private school bus drivers must undergo criminal record checks through the MVC, N.J.A.C. 13:20-30.14(d), the standards for revocation under the motor vehicle laws and the education laws are different.

In this regard, while N.J.S.A. 39:3-10.1 provides that “the chief administrator *shall*, upon notice of disqualification from the Commissioner of Education pursuant to [N.J.S.A. 18A:39-19.1], immediately revoke the special license . . . without the necessity of a further hearing,” the same provision leaves the chief administrator with discretion in all other instances, such that “[t]he chief administrator *may* suspend or revoke a license granted under authority of this section for a violation of any of the provisions of this subtitle, or on other reasonable grounds, or where, in the chief administrator’s opinion, the licensee is either physically or morally unfit to retain the same.”<sup>9</sup> (Emphases added). The inference here is that the Chief Administrator must revoke a license pursuant to N.J.S.A. 18A:39-19.1, but that, in the absence of any reference to N.J.S.A. 18A:6-4.13 to -4.17, he or she does not necessarily have to revoke the license of a private school bus driver who would be disqualified from public school employment. And again, there is nothing in N.J.S.A. 18A:6-4.13 to -4.17 that requires or directs the Commissioner to notify the MVC of a disqualifying offense or that requires the MVC to revoke a license.

Based on the foregoing analysis of the school and motor vehicle laws governing school bus drivers, and because there are no genuine issues of material fact, Baron is entitled to summary decision because the DOE improperly determined that, under N.J.S.A. 18A:39-19.1 and N.J.S.A. 18A:6-7.1, Baron is permanently disqualified from working as a school bus driver for a private school due to his second-degree felony convictions, and the DOE should not have, under N.J.S.A. 18A:39-19.1 and N.J.S.A. 39:3-10.1, notified the MVC to revoke Baron’s school bus driver credentials.

In 1989, the Legislature decided to disparately treat public school bus drivers and private school bus drivers with respect to criminal background checks and the employment and licensure consequences for those drivers whose criminal histories

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<sup>9</sup> See also N.J.A.C. 13:21-14.5 for revocation and suspension standards for passenger endorsements.

include any offenses listed under N.J.S.A. 18A:6-7.1. Through N.J.S.A. 18A:39-19.1, the Legislature provided for mandatory criminal background checks, and for employment disqualification and license revocation, for *public* school bus drivers convicted of any of the criminal offenses listed under N.J.S.A. 18A:6-7.1; through N.J.S.A. 18A:6-4.13 to -4.17, the Legislature provided for optional criminal background checks, but no mandatory employment disqualification and license revocation, for *private* school bus drivers convicted of any of the criminal offenses listed under N.J.S.A. 18A:6-7.1.

Baron's appeal arises from DOE's determination that, pursuant to N.J.S.A. 18A:39-19.1, 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," and his school bus driver credentials had to be revoked.

As already discussed, N.J.S.A. 18:6-4.13 to -4.17, not N.J.S.A. 18A:39-19.1, governs private school bus drivers such as Baron, and those provisions do not authorize the Commissioner or DOE to permanently disqualify Baron from private school employment or advise the MVC to revoke his license. However, it is also important to note that the DOE's determination letter suffers from another contradiction. Baron does not dispute that he is permanently disqualified from working for "any educational institution under the supervision of the Department of Education." Instead, the problem with the DOE's determination is that THA is not under the supervision of the DOE.

Under N.J.S.A. 18A:4-23, "[t]he commissioner shall have supervision of all schools of the state receiving support or aid from state appropriations, except institutions of higher education[.]" Ms. Golan explained to the DOE that, as a private school that does not receive support from state appropriations, THA is not under the supervision of the DOE. Moreover, there is nothing in N.J.S.A. 18A:6-4.13 to -4.17 that suggests that a private school that avails itself of the DOE's background check services consequently becomes an educational institution over which the Commissioner has supervision and cedes its hiring or firing discretion.

Instead, in light of the above discussion, summary decision in favor of Baron is appropriate, and I **CONCLUDE** that the DOE should notify the MVC to restore Baron's school bus driver credentials so that he may resume his employment as a private school bus driver.<sup>10</sup>

Even if N.J.S.A. 18A:39-19.1 and N.J.S.A. 18A:6-7.1 apply to private school bus drivers, such that Baron's criminal history disqualifies him from employment as a private school bus driver, Baron received a certificate removing the bar from his employment as a school bus driver. Assuming for argument's sake that, due to his criminal record, N.J.S.A. 18A:39-19.1 and N.J.S.A. 18A:6-7.1 require the Commissioner to permanently disqualify Baron from employment as a school bus driver for both public schools and private schools and to notify the MVC to revoke his school bus driver credentials, Baron has, pursuant to the RCOA, received a certificate that removes the bar to his employment as a school bus driver under N.J.S.A. 18A:39-19.1 and N.J.S.A. 18A:6-7.1. Specifically, on January 2, 2020, Ernest M. Caposela, A.J.S.C., and Joseph Rosa, J.S.C., of the Superior Court of New Jersey Intensive Supervision Program, issued Baron a certificate that, under N.J.S.A. 2A:168A-7, is presumptive evidence of his rehabilitation and relieves him of "any and all disabilities, forfeitures and/or bars that would impede [his] ability to operate a school bus for employment purposes."

Although the Commissioner held in In re Krupp, EDU 5196-03, Initial Decision (May 10, 2004), adopted with modification, Comm'r (June 24, 2004), affirmed, State Bd. of Educ. (October 6, 2004), <https://njlaw.rutgers.edu/collections/oal>, that the RCOA does not apply to N.J.S.A. 18A:6-7.1, the RCOA was amended after that 2004 decision. Now, under N.J.S.A. 2A:168A-7, which became effective in 2008, and "[n]otwithstanding any law to the contrary, a certificate may be issued in accordance with the provisions of this act [C.2A:168A-7 et seq.] that suspends certain disabilities, forfeitures or bars to

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<sup>10</sup> Importantly, there is no indication that the MVC would have independently revoked Baron's credentials. Instead, the facts of this case reveal that the MVC originally licensed Baron as a school bus driver in 2012, and renewed his credentials in 2013 and 2017, and that prior to each instance, the MVC ran a criminal history check on him in accordance with N.J.S.A. 39:3-10.1. Thus, even though the MVC was aware of his criminal history, the agency nonetheless granted him a school bus driver license, and twice renewed his license. And as Ms. Golan told the DOE, "it is my intention to retain Mr. Baron as an employee of THA" despite his criminal history.

employment or professional licensure or certification that apply to persons convicted of criminal offenses.” N.J.S.A. 2A:168-7(a).

The law further provides that “[a] certificate issued pursuant to this act shall have the effect of relieving disabilities, forfeitures or bars” to, for example, “public employment” and “qualification for a license or certification to engage in the practice of a profession, occupation or business,” and defines “public employment” as “employment by a State, county, or municipal agency, but shall not include elected office, or employment in law enforcement, corrections, the judiciary, in a position related to homeland security or emergency management, or any position that has access to sensitive information that could threaten the public health, welfare, or safety.” N.J.S.A. 2A:168A-7(b) and (c).

Relevant to this matter, the Legislature specifically excluded from the definition of “public employment” certain occupations, but not others. Critically, a certificate issued pursuant to N.J.S.A. 2A:168A-7 cannot relieve a convicted offender of any bar to “employment in law enforcement, corrections, the judiciary, in a position related to homeland security or emergency management, or any position that has access to sensitive information that could threaten the public health, welfare, or safety,” but there is no similar restriction on pursuing employment in the public schools. And, with respect to Baron’s employment as a school bus driver, it is doubtful that such a position could be considered a “position that has access to sensitive information that could threaten the public health, welfare, or safety.”

The Legislature is presumed to be cognizant of its prior enactments when passing new laws, Mahwah v. Bergen Cnty. Bd. of Taxation, 98 N.J. 268, 279 (1985), such that, in this case, the Legislature was aware of the permanent disqualification and license revocation requirements under N.J.S.A. 18A:6-7.1 and N.J.S.A. 18A:39-19.1 when N.J.S.A. 2A:168A-7 became law. While as the Commissioner pointed out in Krupp, N.J.S.A. 18A:6-7.1 allowed for evidence of rehabilitation until 1998, at which point disqualification became permanent regardless of any potential showing of rehabilitation, it appears that, through N.J.S.A. 2A:168A-7, the Legislature reopened the doors to

employment in the public schools for certain rehabilitated offenders, notwithstanding any law to the contrary, including N.J.S.A. 18A:6-7.1 and N.J.S.A. 18A:39-19.1.

Certainly, there is an incongruity to a discussion about Baron's disqualification from public school employment as a school bus driver and the subsequent removal of his bar from such employment in the public schools when Baron, in fact, does not seek employment in the public schools, and instead seeks to resume his employment as a school bus driver for a private school.<sup>11</sup> However, because the DOE determined that Baron 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," and notified the MVC to revoke his license, it is important to note that, even if the DOE correctly asserts that N.J.S.A. 18A:39-19.1 and N.J.S.A. 18A:6-7.1 applies to a private school bus driver like Baron, any impediments to his employment as a school bus driver, based solely on his criminal history, have been removed pursuant to N.J.S.A. 2A:168A-7.

Therefore, **I FIND AS FACT** that there are no genuine issues of material fact requiring a hearing. **I CONCLUDE** that Baron's motion for summary decision is hereby **GRANTED**. **I FURTHER CONCLUDE** that the DOE's motion for summary decision is hereby **DENIED**.

As such, **I CONCLUDE** that petitioner is entitled to summary decision, it is hereby **ORDERED** that the petitioner's request for summary decision be **GRANTED**. Having **CONCLUDED** that respondent is not entitled to the requested summary decision, it is hereby **ORDERED** that the respondent's request for summary decision be **DENIED**.

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<sup>11</sup> There is also a certain irony to this situation because the N.J.S.A. 2A:168A-7 certificate Baron obtained is inapplicable to private employment and "[a] private employer may, in its sole and complete discretion, consider a certificate issued under this statute in making employment decisions," N.J.S.A. 2A:168A-12, and yet, even before Baron obtained the certificate, THA—a private employer—exercised its discretion to employ Baron despite his criminal history, and wishes to continue to employ Baron as its bus driver despite the DOE's insistence that he is disqualified.

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 29, 2020  
DATE

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**DEAN J. BUONO, ALJ**

Date Received at Agency:

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Date Mailed to Parties:

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