

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

Stephen Margiotta,

Petitioner,

v.

New Jersey Department of Education, Office of  
Student Protection,

Respondent.

**Synopsis**

Petitioner appealed the decision of the respondent New Jersey Department of Education, Office of Student Protection (OSP), disqualifying him from employment with any educational institution under the supervision of the Department of Education. Petitioner had been involved in a motor vehicle accident in 2017, in which his car hit a guardrail, struck two trees, and struck another vehicle. Petitioner contended that he had been unable to breathe, blacked out, and has no memory of the accident. A person in the other vehicle died as a result of the crash. Petitioner subsequently pled guilty to reckless vehicular homicide, a crime of the third degree in violation of *N.J.S.A. 2C:11-5(b)(5)*, for failure to maintain a lane.

The ALJ found, *inter alia*, that: the statute governing disqualification, *N.J.S.A. 18A:6-7.1(c)(1)*, disqualifies individuals who are convicted of “a crime involving the use of force or the threat of force to or upon a person or property including, but not limited to, robbery, aggravated assault, stalking, kidnapping, arson, manslaughter and murder.”; petitioner’s conduct in failing to maintain a lane did not involve force or the threat of force, nor was it a gross deviation from the standard of conduct that a reasonable person would observe in a similar situation. The ALJ concluded that the petitioner should not be disqualified from employment in public education.

Upon review, the Commissioner concurred with the ALJ that petitioner’s conviction for reckless vehicular homicide for failure to maintain a lane does not warrant disqualification from employment in public education. The Commissioner found that while petitioner’s conduct might be considered reckless under *N.J.S.A. 2C:11-5(b)(5)* with regard to his failure to maintain a lane, it does not demonstrate force or threat of force by petitioner and is not on the same level as the crimes enumerated in *N.J.S.A. 18A:6-7.1(c)(1)*, *i.e.* robbery, aggravated assault, stalking, kidnapping, arson, manslaughter and murder. Accordingly, the OSP’s decision to disqualify petitioner from public education employment was reversed.

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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OAL Dkt. No. EDU 11575-19

Agency Dkt. No. 157-7/19

## New Jersey Commissioner of Education

### Final Decision

Stephen Margiotta,

Petitioner,

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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, as have the exceptions filed by the New Jersey Department of Education, Office of Student Protection (OSP), pursuant to *N.J.A.C. 1:1-18.4*. The petitioner did not file a reply.

In this matter, petitioner challenges his permanent disqualification from employment with an educational institution under the supervision of the Department of Education. Petitioner was involved in a motor vehicle accident on September 23, 2017, in which his car hit a guardrail, struck two trees, and struck a vehicle. Petitioner contends that he felt like he could not breathe, took a deep breath, and then does not remember the accident. A person in the other vehicle died as a result of the crash. In June 2019, petitioner pled guilty to reckless vehicular homicide, a crime of the third degree, in violation of *N.J.S.A. 2C:11-5(b)(5)*, for failure

to maintain a lane.<sup>1</sup> Petitioner also pled guilty to assault by auto, a crime of the fourth degree, in violation of *N.J.S.A. 2C:12-1(c)(1)*, which is not a disqualifying offense. On June 18, 2019, the OSP sent a permanent disqualification notice to petitioner, which petitioner appealed.

Following a hearing, the Administrative Law Judge (ALJ) found that petitioner should not be disqualified from employment in public education. The statute governing disqualification, *N.J.S.A. 18A:6-7.1(c)(1)*, disqualifies individuals who are convicted of “a crime involving the use of force or the threat of force to or upon a person or property including, but not limited to, robbery, aggravated assault, stalking, kidnapping, arson, manslaughter and murder.” The ALJ found petitioner’s conduct in failing to maintain a lane did not involve force or the threat of force, nor was it a gross deviation from the standard of conduct that a reasonable person would observe in a similar situation.

In its exceptions, the OSP argues that by pleading guilty to reckless vehicular homicide in the third degree, petitioner conceded that he was reckless in failing to maintain a lane. The OSP notes that the Commissioner has previously determined that a third-degree crime involving the use of force, even when caused by recklessness, falls within the purview of the disqualification statute. As such, the OSP argues that petitioner recklessly operated a motor vehicle by failure to maintain his lane, and the force associated with the impact caused a death, such that his conduct warrants permanent disqualification from teaching.

As a threshold matter, when there is a challenge to a disqualification determination by the Office of Student Protection, the Commissioner is not legally mandated to give deference to

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<sup>1</sup> *N.J.S.A. 2C:11-5(b)(5)* provides that: “Reckless Vehicular homicide is a crime of the third degree if the defendant proves by a preponderance of the evidence that the defendant did not commit any conduct constituting driving a vehicle or vessel recklessly other than failing to maintain a lane in violation of *R.S.39:4-88*.”

her staff, but instead determines if the finding was legally appropriate. It is important to recognize that a decision by the OSP, or any office within the Department, is not akin to the appellate review of a final agency decision, which is entitled to an arbitrary, capricious or unreasonable standard of review. Moreover, where the Department of Education has limited the scope of review of a subordinate office or division, it has done so by regulation, *i.e.* appeals filed under *N.J.A.C. 6A:4* challenging a decision of the State Board of Examiners revoking/suspending a certificate, or a decision of the School Ethics Commission. *See, Board of Trustees of the Passaic County Elks Cerebral Palsy Center v. New Jersey Dept. of Educ., Office of Fiscal Accountability and Compliance*, Commissioner's Decision No. 334-14, dated August 14, 2014 (finding that a decision of the Office of Fiscal Accountability and Compliance is not given deference by the Commissioner); *Jessica Walder v. New Jersey Department of Education, State Board of Examiners*, Commissioner's Decision No. 503-14, decided December 29, 2014 (finding that the Commissioner does not give deference to a decision of the State Board of Examiners denying a request for issuance of a certificate). Therefore, the appropriate standard of review of the OSP's June 18, 2019 decision to disqualify petitioner from teaching is whether the decision is consistent with the applicable statutory and regulatory provisions.

Upon review, the Commissioner agrees with the ALJ that petitioner's conviction for reckless vehicular homicide for failure to maintain a lane does not warrant disqualification from employment in public education. Pursuant to *N.J.S.A. 18A:6-7.1(c)(1)*, an individual shall be permanently disqualified from public education employment if he or she is convicted of "[a] crime involving the use of force or the threat of force to or upon a person or property including,

but not limited to, robbery, aggravated assault, stalking, kidnapping, arson, manslaughter, and murder.” Petitioner’s conviction for reckless vehicular homicide in the third degree means that petitioner “did not commit any conduct constituting driving a vehicle or vessel recklessly other than failing to maintain a lane.” *N.J.S.A. 2C:11-5(b)(5)*. While such a determination is very fact specific, the Commissioner finds that petitioner’s conduct in failing to maintain a lane fails to rise to the level of “force or threat of force” as required by *N.J.S.A. 18A:6-7.1(c)(1)*.

The OSP relies on two cases that are distinguishable from the present matter. First, in *Erin Markakis v. New Jersey Department of Education, Office of Criminal History Review*, Commissioner’s Decision No. 369-11, decided September 1, 2011, the petitioner pled guilty to third degree assault by auto in violation of *N.J.S.A. 2C:12-1(c)(2)* after she drove with a blood alcohol level of .197% (more than twice the legal limit), crossed over the center line of the road into oncoming traffic, crashed into a vehicle containing a woman and three young children, which vehicle then collided with a third vehicle containing only the driver. All five individuals were injured in the crash. The Commissioner in that case agreed with the ALJ that:

Petitioner was convicted of a crime, the elements of which are driving recklessly while intoxicated, and in the course of so doing, causing serious bodily injury. A third degree crime of assault by auto involving drunk driving and a resulting serious injury can be deemed to be on the same level as the crimes enumerated as representative of those that are automatic disqualifiers. These crimes also clearly involve the use of force or threat of force. There is no indication in this case that the petitioner intended to use force or threat of force, but she did act recklessly in using force upon another person or property.

[*Id.* at 3.]

The Commissioner finds that this matter is readily distinguishable from the present matter because the reckless behavior in driving with a blood alcohol content of more than twice the legal limit and causing injury is significantly different than petitioner's reckless conduct in failing to maintain a lane after blacking out, causing a fatal accident.

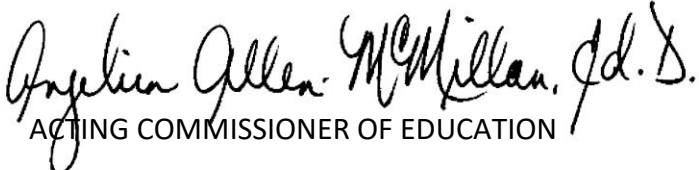
Second, in *Olivia Howard v. New Jersey Department of Education, Office of Criminal History Review, et al.*, Commissioner's Decision No. 355-01, decided October 1, 2001, the petitioner was applying for certification and was disqualified based on a former conviction from 1991 for death by auto, then a crime of the third degree, which is substantially equivalent to second-degree death by vehicular homicide. In the *Howard* case, after meeting at a construction site to discuss their financial difficulties, petitioner and her husband argued in Howard's car; when her husband left the vehicle and walked away, Howard drove after him, catching the passenger door in a construction fence and breaking one of the door hinges. *In re Howard*, 143 N.J. 526, 528 (1996). She continued to drive after her husband, going the wrong way down two one way streets, before pulling into a parking lot where she left the car to seek help from her husband in dealing with the broken door. *Ibid.* Receiving no help, petitioner got back in the car, hit the gas and reached to close the door at the same time. *Ibid.* In so doing, petitioner ran over her husband, who died from his injuries later that day. *Ibid.* The Commissioner adopted the Initial Decision, which found that the petitioner's conduct clearly involved force and she disregarded a substantial and unjustifiable risk that her conduct could injure or kill her husband. In the instant matter, the Commissioner finds that petitioner blacked out while driving and failed to maintain his lane, whereas Howard hit the gas and reached to

close the door at the same time, knowing that her husband was near the car, thereby causing a homicide while driving in a clearly reckless manner.

The Commissioner does not find the OSP's exceptions to be persuasive. While petitioner's conduct may be *per se* reckless under *N.J.S.A. 2C:11-5(b)(5)* with regard to his failure to maintain a lane, such conduct does not demonstrate force or threat of force by petitioner and is not on the same level as the crimes enumerated in *N.J.S.A. 18A:6-7.1(c)(1)*, which are robbery, aggravated assault, stalking, kidnapping, arson, manslaughter and murder. Petitioner explained that he could not breathe and then did not remember failing to maintain his lane and making impact with the other vehicle. Given the unique circumstances in this matter, petitioner's conduct in failing to maintain his lane does not warrant disqualification under *N.J.S.A. 18A:6-7.1(c)(1)*.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter. The OSP's June 18, 2019 decision to disqualify petitioner from employment is hereby reversed.

IT IS SO ORDERED.<sup>2</sup>

  
ANGELINA ALLEN-McMILLAN, Jd. D.  
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 12, 2022  
Date of Mailing: January 12, 2022

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<sup>2</sup> This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A. 18A:6-9.1*. Under *N.J.Ct.R. 2:4-1(b)*, a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



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

**INITIAL DECISION**

**DISMISSAL**

OAL DKT. NO. EDU 11575-19  
AGENCY DKT. NO. 157-7/19

**STEPHEN MARGIOTTA,**

Petitioner,

v.

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

Respondent.

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**John Paul Velez**, Esq. for petitioner (Arbore, Velez, LLC)

**Jaclyn M. Frey**, Deputy Attorney General., for respondent (Andrew J. Bruck,  
Acting Attorney General of New Jersey)

Record Closed: October 4, 2021

Decided: October 14, 2021

BEFORE **KIMBERLY A. MOSS**, ALJ:

Petitioner, Stephen Margiotta (Margiotta or petitioner), appeals Department of Education Office of Special Education (DOESP or respondent) decision disqualifying him from employment for his conviction for vehicular homicide for failure to maintain lane.



On June 19, 2019, defendant sent a permanent disqualification letter to petitioner. Petitioner filed an appeal of the disqualification. The Commissioner of Education forwarded the appeal to the Office of Administrative Law (OAL) as a contested matter. A petition was filed with OAL on August 19, 2019. On August 13, 2019, respondent filed a motion to dismiss the petition. Petitioner filed opposition to the motion on September 26, 2019. The Motion was denied on October 3, 2019. The hearing was held on May 5, 2021. The parties closing briefs were filed on October 4, 2021, at which time I closed the record.

## **FACTUAL DISCUSSION**

I **FIND** the following stipulated **FACTS**.

1. Petitioner received a New Jersey Elementary K-6 teaching certification in or about 2008.
2. Petitioner was involved in a motor vehicle accident on September 23, 2017.
3. During the motor vehicle accident, petitioner's vehicle collided with another vehicle, resulting in the death of the driver and bodily injury to the passenger in the other vehicle.
4. On or about January 22, 2019, petitioner was charged with reckless vehicular N.J.S.A. 2C:11-5a, and assault by auto, a crime of the fourth degree, in violation of N.J.S.A. 2C: homicide, a crime of the second degree, in violation of 12-1c (1).2
5. On or about February 19, 2019, petitioner pled guilty to reckless vehicular homicide, a crime of the third degree, in violation of N.J.S.A. 2c:11-5b (5), and assault by auto, a crime of the fourth degree, in violation of N.J.S.A. 2C:12-1c (1).
6. Under N.J.S.A. 2C:11-5b (5) reckless vehicular homicide is a crime of the third degree if the defendant proves by a preponderance of the evidence that the defendant did not commit any conduct constituting driving a vehicle or vessel recklessly other than failing to maintain a lane in violation of R.S. 39:4-88.
7. Under N.J.S.A. 2C:12-1c (1) a person is guilty of assault by auto or vessel when the person drives a vehicle or vessel recklessly and causes either serious bodily injury or bodily injury to another. Assault by auto or vessel is a crime of the fourth degree if serious bodily injury results.

8. By letter dated June 18, 2019, respondent notified petitioner that he was permanently disqualified from serving in any position 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 his conviction for a disqualifying crime.
9. On or about June 28, 2019, a judgment of conviction was entered by the Superior Court of New Jersey, Morris County reflecting the final charges from the guilty plea and sentencing.

## **TESTIMONY**

### James Scaringelli

James Scaringelli (Scaringelli) is an investigator for the DOESP. He has worked there since October 2008. He previously was a police officer. As an investigator, he checks the criminal history of employees and prospective employees. This includes checking fingerprints and determining if there are pending charges or convictions that would disqualify the person. Anyone who has been fingerprinted since February 2003, their records are kept by the state police.

The Office of Student Protection receives a notification from the state police if an employee of the Department of Education or candidate for employment has been arrested. N.J.S.A. 18A:6-7.1 lists crimes that if convicted, a person is disqualified from employment with the Department of Education. The list is not exhaustive. The determination is next made based on the charge and conviction whether the crime is a disqualifying charge according to the statute.

The state police notify the DOE of an arrest of an employee. Scaringelli received the state police notification of arrest for Margiotta, who was charged with vehicular homicide. The notification lists Margiotta as a substitute teacher. Scaringelli checked with the Department of Labor for the last eight quarters. He received notification of Margiotta's employment status from his employer. He spoke with petitioner and petitioner's attorney.

On June 18, 2019, petitioner informed Scaringelli that he was pleading to vehicular homicide. Scaringelli confirmed that through Promise Gavel. He reviewed N.J.S.A. 18A:6-7.1, to determine if the crime was a disqualifying crime. Portion C of the statute states any crime involving force or the use of force against a person or property is a disqualifying offense. Scaringelli spoke to his superior Chris Carabela regarding this matter.

A letter of disqualification was sent to Margiotta on June 18, 2019. The disqualifying charge was vehicular homicide-result of failure to maintain lane. Petitioner also plead guilty to assault by auto, but it is not a disqualifying offense. Scaringelli received the conviction notice from the state police on November 13, 2019.

Scaringelli agrees that reckless can be defined as injuring or creating a risk of injury to an innocent person when he/she consciously disregards a substantial and unjustifiable risk that the injury or risk of injury will result from his/her conduct. He agrees that risk is a gross deviation from a standard of conduct.

N.J.S.A. 18A: 6-7.1 (c) disqualifying crimes lists crimes involving the use of force or the threat of force to or upon a person or property including, but not limited to, robbery, aggravated assault, stalking, kidnapping, arson, manslaughter, and murder; the list is not exhaustive.

Scaringelli knew that there was a change to the vehicular homicide statute N.J.S.A. 2C:11-5(5) in January 2018. He looked at this statute and saw the same reckless element as the statute had prior to the change. He spoke to his superior Carabelli about the statute change. They both agreed that a charge petitioner plead guilty to be a disqualifying crime. Scaringelli believes that petitioner used force when he made impact with the other vehicle which was the cause of the accident. He did not review the police report and does not look at the particulars of a charge.

### Stephen Margiotta

Stephen Margiotta was last employed as an educator at the College Academy Charter School from August 2018 to January 2019. He has been employed in education

since 2008. On September 22, 2017, he was employed at the Aberdeen School in Virginia. He had taken prescription Ambien on September 21, 2017. On September 22, 2017, he drove from Virginia to Scotch Plains, New Jersey to see his parents. He had worked that day prior to driving to New Jersey. His parents have dementia. He arrived at approximately eleven P.M. He slept for six to seven hours, then drove to his home in Midland Park, which took one hour. He was in Midland Park for approximately thirty minutes. He rested for twenty of those minutes.

As he was driving back to his parents' home, he was in the left lane of Route 287, going forty-five miles per hour. He took a deep breath because he felt that he could not breathe and he does not recall the accident. He does recall hitting the guardrail. He was informed that his car struck two trees and a car. Petitioner was injured because of the accident. When he was at the hospital, he was informed that there was a fatality. Petitioner broke three bones in his foot, had a concussion, broke bones in his back and had a sixteen-inch cut. He was charged with vehicular homicide on January 22, 2019.

Margiotta has had difficulty with sleeping for most of his life. He had a sleep study done one year after the accident. It was determined that he had sleep apnea. He also retained an accident reconstruction expert.

Margiotta plead guilty to vehicular homicide as a result of failure to maintain lane. He was sentenced to three years' probation and ninety days in the sheriff labor assistance program.

New Jersey Motor Vehicle Department (Motor Vehicle) sent him a notice of suspension of 660 days for the vehicular homicide conviction. Due to his injuries petitioner could not drive after the accident for two years. He had a hearing at Motor Vehicle where his suspension was reduced to time served. He had to take driver education class and take the written and rode test before he could get his license back.

Having reviewed the testimony and evidence I **FIND** the following additional **FACTS**:

Margiotta had been employed in education since 2008. In September 2017, he was employed by the Aberdeen School in Virginia. On September 21, 2017, he took a prescribed Ambien. On September 22, 2017, he taught at the Aberdeen School in Virginia. After school, he drove from Virginia to Scotch Plane, New Jersey to his parents' house. He arrived in New Jersey at approximately 11:30 pm on September 22, 2017. He slept for six hours. On September 23, 2017, Margiotta drove from his parents' home in Scotch Planes to his home in Midland Park, New Jersey. The drive took one hour. He stayed at his Midland Park home for thirty minutes, he rested for twenty minutes of that time. He then began to drive back to Scotch Planes. He was traveling in he left lane of Route 287, going forty-five miles per hour. He began to feel like he could not breath and took a deep breath. He does not remember the accident, although he does remember hitting the guardrail. Margiotta's was told that after striking the guardrail, car went across the road, struck two trees, and struck a vehicle. A person in the other vehicle died as a result of injuries sustained in the accident. Margiotta broke three bones in his foot, broke bones in his back, and sustained a concussion among other injuries because of the accident.

On February 19, 2019, Margiotta plead guilty before the Honorable David Ironson, J.S.C. in Morris County Criminal Court to Third degree vehicular homicide-result of failure to maintain lane and fourth degree assault by auto-vessel-reckless serious bodily injury. On or about June 18, 2019, Margiotta informed Scaringelli that he pled guilty to vehicular homicide. On June 21, 2019, Margiotta was sentenced by Judge Ironson to three years' probation and ninety days to be served in the sheriff's labor assistance program. On June 18, 2019, a permanent disqualification letter was sent to Margiotta by Carl Carabella, Manager of DOESP.

On or about January 19, 2019, the Motor Vehicle sent Margiotta an Order of suspension because of his involvement in a fatal accident on September 23, 2017. He was required to surrender his driver's license. immediately. The proposed suspension was 660 days. A hearing was held on the motor vehicle suspension on October 3, 2019. The result of the DMV hearing was that Margiotta's driving privileges were suspended for 318 days effective November 7, 2019. In addition, he had to pass the motor vehicle road and written test.

## LEGAL ANALYSIS AND CONCLUSION

N.J.S.A. 2C:11-5 (b)(5) provides:

Reckless Vehicular homicide is a crime of the third degree if the defendant proves by a preponderance of the evidence that the defendant did not commit any conduct constituting driving a vehicle or vessel recklessly other than failing to maintain a lane in violation of R.S.39:4-88.

N.J.S.A. 18A :6-7.1(c) provides:

A facility, center, school, or school system under the supervision of the Department of Education and board of education which cares for, or is involved in the education of children under the age of 18 shall not employ for pay or contract for the paid services of any teaching staff member or substitute teacher, teacher aide, child study team member, school physician, school nurse, custodian, school maintenance worker, cafeteria worker, school law enforcement officer, school secretary or clerical worker or any other person serving in a position which involves regular contact with pupils unless the employer has first determined consistent with the requirements and standards of this act, that no criminal history record information exists on file in the Federal Bureau of Investigation, Identification Division, or the State Bureau of Identification which would disqualify that individual from being employed or utilized in such capacity or position. An 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 section 6 of P.L.1989, c.104 (C.18A:39-19.1). A facility, center, school, or school system under the supervision of the Department of Education and board of education which cares for or is involved in the education of children under the age of 18 may require criminal history record checks for individuals who, on an unpaid voluntary basis, provide services that involve regular contact with pupils. In the case of school districts involved in a sending-receiving relationship, the decision to require criminal history record checks for volunteers shall be made jointly by the boards of education of the sending and receiving districts.

An individual, except as provided in subsection g. of this section, 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

- c. (1) A crime involving the use of force or the threat of force to or upon a person or property including, but not limited to, robbery, aggravated assault, stalking, kidnapping, arson, manslaughter, and murder; or
- (2) A crime as set forth in chapter 39 of Title 2C of the New Jersey Statutes, a third degree crime as set forth in chapter 20 of Title 2C of the New Jersey Statutes, or a crime as listed below:

Recklessly endangering another person N.J.S.2C:12-2  
Terroristic threats N.J.S.2C:12-3  
Criminal restraint N.J.S.2C:13-2  
Luring, enticing child into motor vehicle, structure, or isolated area  
P.L.1993, c.291 (C.2C:13-6)  
Causing or risking widespread injury or damage N.J.S.2C:17-2  
Criminal mischief N.J.S.2C:17-3  
Burglary N.J.S.2C:18-2  
Usury N.J.S.2C:21-19  
Threats and other improper influence N.J.S.2C:27-3  
Perjury and false swearing N.J.S.2C:28-3  
Resisting arrest N.J.S.2C:29-2  
Escape N.J.S.2C:29-5

Bias intimidation N.J.S.2C:16-1; or

(3) Any crime of the fourth degree involving a victim who is a minor; or  
(4) Conspiracy to commit or an attempt to commit any of the crimes described in this act.

Recklessly endangering another person N.J.S.2C:12-2 was repealed in January 2016, prior to the accident in this case.

The New Jersey Model Criminal Jury Charge for vehicular homicide define reckless as:

A person acts recklessly when he/she consciously disregards a substantial and unjustifiable risk that death will result from his/her conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the defendant's conduct and the circumstances known to him/her, disregard of the risk involves a gross deviation from the standard of conduct that a reasonable person would observe in the defendant's situation.

In other words, in order for you to find that the defendant drove a vehicle [or vessel] recklessly, the State must prove beyond a reasonable doubt that the defendant was aware he/she was operating a vehicle [or vessel] in such a manner or under such circumstances as to create a substantial and unjustifiable risk of death to another. The State must also prove beyond a reasonable doubt that the defendant consciously disregarded this risk and that the disregard of the risk was a gross deviation from the way a reasonable person would have conducted himself/herself in the situation.

Recklessness is a condition of the mind that cannot be seen and that can often be determined only from inferences from conduct, words, or acts. It is not necessary for the State to produce a witness to testify that the defendant stated that he/she acted with a particular state of mind. It is within your power to find that proof of recklessness has been furnished beyond a reasonable doubt by inferences that may arise from the nature of the facts and circumstances surrounding the conduct in question.

In Markakis v. N.J. State Dept of Educ., Office of Crim Hist Rev. OAL DKT. No. EDU 13275-10 Initial Decision (June 11, 2011) adopted Comm'r Final Decision (September 1, 2011) Markakis was driving with a blood alcohol of 197 which is twice the legal limit. While driving, she crossed over the center lane into oncoming traffic and collided with a sport utility van.

Markakis was convicted of a crime, the elements of which are driving recklessly while intoxicated, and in the course of so doing, causing serious bodily injury. A third-degree crime of assault by auto involving drunk driving and a resulting serious injury can be deemed to be on the same level as the crimes enumerated as representative of those that are automatic disqualifiers. These crimes also clearly involve the use of force or threat of force. There is no indication in this case that the petitioner intended to use force or threat of force, but she did act recklessly in using force upon another person or property.

This can be distinguished from the present case because Markakis was driving while intoxicated and Margiotta was not driving while intoxicated.

In Olivia C. Howard v. Carl H. Carabelli OAL Dkt EDU 10197-00 Initial Decision (August 13, 2001) adopted Comm'r Final Decision (October 1, 2021) the petitioner applied for a teaching certificate. A criminal record check revealed that on February 15, 1991, petitioner was convicted by a jury of death by auto, N.J.S.A. 2C:11-5, then a crime of the third degree. In 1995, this statute, entitled death by vehicular homicide, was changed to raise the crime to a second-degree offense. It defines criminal homicide as vehicular homicide when it is caused by driving a vehicle or vessel recklessly. The facts in that matter were:



On July 3, 1989, the Howards met to discuss some of their financial difficulties. Using Mrs. Howard's car, they drove to a construction site so they could talk. An argument ensued. Mr. Howard, who was in the front passenger seat, exited the car. When Mrs. Howard backed up the car to follow her husband, the passenger door "flew open" and became caught in some fencing at the construction site. The door hinge broke, and the door dragged on the ground as Mrs. Howard drove.

Mrs. Howard followed her husband as he walked away. After going the wrong way down two one-way streets, Mrs. Howard pulled into the driveway of a health clinic. When Mr. Howard approached the car, she got out to seek his assistance with the door. Having had no success, Mrs. Howard got back into the car, hit the gas, and reached for the door at the same time. She ran over her husband, who died later that day as a result of his injuries. In re Howard 143 NJ 526 (1986).

In that matter, the Court stated that although respondent characterizes this tragedy as an accident, she was convicted of criminal homicide caused by driving a vehicle recklessly. N.J.S.A. 2C:11-5. Under this statute, a person acts recklessly when she consciously disregards a substantial and unjustifiable risk that her driving will result in someone's death. The disputed conduct must involve a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. N.J.S.A. 2C:2-2b (3). Thus, despite her contention to the contrary, the jury found that respondent disregarded a substantial and unjustifiable risk that her conduct would kill her husband. *Ibid.* It was determined that Howard's crime involved the use of force and threat of force upon a person.

In the Howard matter Howard hit the gas and reached to close the door at the same time knowing that her husband was near the car causing the homicide. Driving in this manner is clearly reckless.

In the case at bar, an issue is whether failure to maintain lane is a use of force or threat of force. The crimes listed in N.J.S.A.18A:6-7.1. (c) robbery, aggravated assault, stalking, kidnapping, arson, manslaughter, and murder are crimes where physical force or intimidation or threats of the use of force are listed. Margiotta while he was driving had difficulty breathing. He remembers hitting a guardrail and being informed that his vehicle struck two tree and a car and that there was a fatality.

Reckless vehicular homicide because of failure to maintain lane does not involve a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation.

I **CONCLUDE** that Margiotta did not use force or threat of force and his conduct of failure to maintain lane is not a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation.

Accordingly, it is **ORDERED** that respondent's decision to disqualify Margiotta from employment for his conviction for vehicular homicide for failure to maintain lane is hereby **REVERSED**.

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.



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DATE

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**KIMBERLY A. MOSS, ALJ**

Date Received at Agency:

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October 14, 2021

Date Mailed to Parties:

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October 14, 2021

ljb

**WITNESSES**

For Petitioner

None

For Respondent

James Scaringelli

**EXHIBITS**

For Petitioner

- P-1 Not in Evidence
- P-2 Pro Se Petition of Appeal Dated June 28, 2019
- P-3 New Jersey Police Crash Investigation Report
- P-4 Not in Evidence
- P-5 Not in Evidence
- P-6 Waiver and Accusation
- P-7 New Jersey Judiciary Plea Form
- P-8 Not in Evidence
- P-9 Judgement of Conviction
- P-10 NJDMV Order of Suspension Dated January 9, 2019
- P-11 NJDMV Hearing and Petition Dated October 3, 2019
- P-12 NJDMV Order of Suspension dated November 7, 2019
- P-13 Not in Evidence
- P-14 Not in Evidence
- P-15 Not in Evidence
- P-16 Not in Evidence
- P-17 Not in Evidence
- P-18 Not in Evidence
- P-19 Not in Evidence
- P-20 Not in Evidence
- P-21 Not in Evidence
- P-22 Not in Evidence
- P-23 Not in Evidence

P-24 Not in Evidence

P-25 Not in Evidence

P-26 Not in Evidence

For Respondent

R-1 New Jersey State Police Arrest Notification

R-2 New Jersey Promise Gavel Charge/Disposition

R-3 June 18, 2019, Permanent disqualification letter from Carl H. Carabelli to  
Petitioner

R-4 New Jersey State Police State Conviction Notification

R-5 Same as Exhibit P-9