

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

Jonathan Wadley,

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), permanently disqualifying him from employment with any educational institution under the supervision of the Department of Education pursuant to *N.J.S.A. 18A:6-7.1*. Petitioner had twice pled guilty, in February 2000 and April 2001, to the second-degree offense of possession of a controlled dangerous substance with intent to distribute on or near a public facility. *N.J.S.A. 2C:35-7.1(a)*. Twenty years after his convictions, petitioner applied to be a substitute teacher and submitted to a background check which revealed his criminal record. The OSP filed a motion to dismiss.

The ALJ found that: *N.J.S.A. 18A:6-7.1* is clear in its requirement that a school cannot employ a staff member if that individual has a disqualifying criminal history record; petitioner's criminal history record check revealed two convictions for drug offenses which are permanently disqualifying for employment in New Jersey schools, even as a substitute teacher; petitioner's arguments that the New Jersey Cannabis Regulatory Enforcement Assistance and Marketplace Modernization Act decriminalizes marijuana possession and therefore his convictions should not bar his ability to work in a public school are without merit, as only certain charges under the Act will be dismissed, vacated, or expunged, and possession of a controlled dangerous substance with intent to distribute on or near a public facility is not one of those enumerated charges. Accordingly, the ALJ granted OSP's motion to dismiss, as petitioner did not make a claim for which relief can be granted.

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

This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

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

Jonathan Wadley,

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v.

New Jersey Department of Education, Office of  
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Respondent.

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

In this matter, petitioner challenges his permanent disqualification from employment with an educational institution under the supervision of the Department of Education (Department). On February 3, 2000, and again on April 6, 2001, petitioner pled guilty to the second-degree offense of possession of a controlled dangerous substance with intent to distribute on or near a public facility. *N.J.S.A. 2C:35-7.1(a)*. Approximately 20 years after his convictions, petitioner applied to be a substitute teacher and submitted to a background check which revealed his criminal record. On August 15, 2022, the Office of Student Protection (OSP) notified petitioner that, pursuant to *N.J.S.A. 18A:6-7.1*, he is permanently disqualified from employment or service in public education. Thereafter, petitioner filed the instant petition.

The Administrative Law Judge (ALJ) found that *N.J.A.C. 18A:7.1(b)* dictates petitioner's disqualification to work in a public school, including as a substitute teacher. The ALJ disagreed with petitioner's arguments that the New Jersey Cannabis Regulatory Enforcement Assistance and

Marketplace Modernization Act (Act) decriminalizes marijuana possession and therefore his convictions should not bar his ability to work in a public school. The ALJ noted that only certain charges under the Act will be dismissed, vacated, or expunged, and possession of a controlled dangerous substance with intent to distribute on or near a public facility is not one of those enumerated charges. As such, the ALJ granted OSP's motion to dismiss as petitioner did not make a claim for which relief can be granted.

The Commissioner agrees with the ALJ that petitioner is disqualified from working in a public institution under the supervision of the Department. Pursuant to *N.J.S.A. 18A:6-7.1*, an individual is permanently disqualified if he or she has been convicted of any crime of the first or second degree. Additionally, a person is permanently disqualified for any offense involving the "manufacture, transportation, sale, possession, distribution or habitual use of a 'controlled dangerous substance' . . . ." *N.J.S.A. 18A:6-7.1(b)*. Petitioner was convicted twice of a second-degree offense, and those convictions involve the possession, sale, or distribution of a controlled dangerous substance. As such, he must be disqualified from employment in public education, in accordance with *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.

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

  
ANGELICA ALLEN McMILLAN, J.D.  
ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 11, 2023  
Date of Mailing: April 12, 2023

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<sup>1</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**

**MOTION TO DISMISS**

OAL DKT. NO. EDU 09223-22

AGENCY DKT. NO. 211-8/22

**JONATHAN WADLEY,**

Petitioner,

v.

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

Respondent.

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**Jonathan Wadley**, petitioner, pro se

**Sydney Finkelstein**, Deputy Attorney General, for respondent (Matthew J. Platkin,  
Attorney General of New Jersey, attorney)

Record Closed: February 13, 2023

Decided: March 10, 2023

BEFORE **TRICIA M. CALIGUIRE**, ALJ:

**STATEMENT OF THE CASE**

Petitioner Jonathan Wadley challenges the decision of respondent New Jersey Department of Education, Office of Student Protection (Department), that he is disqualified from employment in a public school, pursuant to N.J.S.A. 18A:6-7.1(b).

## **PROCEDURAL HISTORY**

On August 15, 2022, petitioner filed a petition of appeal with the New Jersey Department of Education, Office of Controversies and Disputes. On October 11, 2022, respondent filed an answer and motion for dismissal. The Commissioner of Education did not rule on the motion but transmitted it with the petition to the Office of Administrative Law (OAL) on October 13, 2022, for hearing as a contested case, pursuant to N.J.S.A. 52:14B-1 to -15, and N.J.S.A. 52:14F-1 to -13.

The matter was scheduled for a telephone prehearing conference on December 8, 2022, but petitioner failed to appear or to contact the OAL to explain his absence. The telephone prehearing conference was rescheduled for January 11, 2023, but petitioner failed to appear. In response to an email from the OAL, petitioner stated that he was unable to get away from work for the prehearing conference and asked that it be rescheduled. The parties appeared for a telephone prehearing conference on January 26, 2023, during which a briefing schedule for respondent's motion to dismiss was issued. On January 31, 2023, petitioner filed a response in opposition to respondent's motion to dismiss. Respondent replied on February 13, 2023, and the motion is now ripe for review.

## **FACTUAL DISCUSSION AND FINDINGS**

The following **FACTS**<sup>1</sup> are not in dispute and accordingly, I **FIND**:

1. Petitioner is an adult male. On or before August 1, 2022, petitioner applied to serve as a substitute teacher in a New Jersey high school. This application was denied, as described below.
  
2. On February 3, 2000, at the approximate age of nineteen years old, petitioner was charged with, and pled guilty to, the second-degree offense

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<sup>1</sup> Most of the documents transmitted by the Department are illegible and therefore, to establish background and non-disputed facts, I relied mainly on statements made by the parties in their moving and responsive papers which were not challenged by the other party.

of possession of a controlled dangerous substance with intent to distribute on or near a public facility, in violation of N.J.S.A. 2C:35-7.1(a).<sup>2</sup>

3. On April 6, 2001, petitioner was charged with, and pled guilty to, the second-degree offense of possession of a controlled dangerous substance with intent to distribute on or near a public facility, in violation of N.J.S.A. 2C:35-7.1(a).
4. On December 9, 2001, petitioner completed a six-month drug program conducted by the Mercer County, New Jersey Drug Court Program.
5. On June 7, 2006, petitioner completed five years of probation. There was no evidence presented of additional criminal charges.
6. By statute, any person applying for employment with, or to volunteer at, a public school in New Jersey must submit to a background check. N.J.S.A. 18A:6-7.1(b). The background check conducted following petitioner's application for employment as a substitute teacher revealed his above-described criminal record.<sup>3</sup>
7. Petitioner stated that he has completed college, has been accepted into the Screen Actors Guild (actors' union), and has found steady employment in the television industry. He is a father of four and grandfather of two and believes he is well qualified to work with children.
8. On August 26, 2022, after enactment of the New Jersey Cannabis Regulatory, Enforcement Assistance and Marketplace Modernization Act, P.L. 2021, c. 19 (the Act), petitioner applied to have his above-described criminal record expunged. His expungement application is pending.

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<sup>2</sup> Petitioner now claims that he was improperly charged; the action of the Trenton Police Department in charging petitioner more than twenty years ago is not at issue in this proceeding.

<sup>3</sup> Again, the documentary record provided by the parties was incomplete or illegible, but this can be presumed based on the requirements of the statute and the content of the notice respondent gave petitioner of his disqualification for employment in a New Jersey public school.

9. On August 15, 2022, respondent notified petitioner in writing that 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.”
10. This appeal was timely filed by petitioner.

### **LEGAL ANALYSIS AND CONCLUSIONS**

The rules of procedure governing petitions of appeal filed with the Commissioner permit a respondent to submit a motion to dismiss in lieu of (or with) an answer “on the grounds that the petitioner has advanced no cause of action even if the petitioner’s factual allegations are accepted as true or for lack of jurisdiction, failure to prosecute or other good reason.” N.J.A.C. 6A:3-1.5(g); N.J.A.C. 6A:3-1.10. However, these education rules do not offer any guidance on the standards by which such motions should be assessed.

The Uniform Administrative Procedure Rules (UAPR), N.J.A.C. 1:1-1.1 to -21.3, also do not address the standards for such motions. However, the UAPR, which “shall be construed to achieve just results, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay,” state that, “[i]n the absence of a rule, a judge may proceed in accordance with the New Jersey Court Rules, provided the rules are compatible with these purposes.” N.J.A.C. 1:1-1.3(a).

Here, the court rule that fills the void is R. 4:6-2 which, like N.J.A.C. 6A:3-1.5(g) and N.J.A.C. 6A:3-1.10, allows for motions for judgment on the pleadings. And since R. 4:6-2 serves the interests of time and expense and may help achieve just results, it is compatible with the UAPR’s purposes, and thus it is appropriate to assess respondent’s motion to dismiss in lieu of an answer under the standards used by the courts in applying R. 4:6-2.

Under these standards, if the basis for a motion to dismiss is that the petition has advanced no cause of action, or failed to state a claim upon which relief may be granted, “the test for determining the adequacy of [the] pleading [is] whether a cause of action is ‘suggested’ by the facts,” such that the “inquiry is limited to examining the legal sufficiency of the facts alleged on the face of the complaint.” Printing-Mart Morristown, 116 N.J. at 746 (citing R. 4:6-2(e)); Velantzas, 109 N.J. at 192; Rieder v. Dep’t of Transp., 221 N.J. Super. 547, 552 (App.Div. 1987)).

Importantly, for purposes of the motion, it does not matter whether a petitioner can ultimately “prove the allegation contained in the complaint” because “all facts alleged in the complaint and the legitimate inferences drawn therefrom are deemed admitted.” Ibid. (citing Somers Constr. Co. v. Bd. of Educ., 198 F.Supp. 732, 734 (D.N.J.1961)); Smith v. City of Newark, 136 N.J. Super. 107, 112 (App. Div.1975) (citing Heavner v. Uniroyal, Inc., 63 N.J. 130, 133 (1973); J.H. Becker, Inc. v. Marlboro Twp., 82 N.J. Super. 519, 524 (App. Div. 1964)). While “[a] complaint should not be dismissed . . . where a cause of action is suggested by the facts . . . a dismissal is mandated where the factual allegations are palpably insufficient to support a claim upon which relief can be granted.” Rieder, 221 N.J. Super. at 552.

Petitioner is working on his own, without the assistance of counsel. For that reason, his pleadings are held to a less stringent standard than that by which pleadings drafted by an attorney are judged. Anchorage Poynte Condo. Ass’n. v. Di Christo, 2017 N.J. Super. Lexis 1112 (August 17, 2017), at \*5(citing Haines v. Kerner, 404 U.S. 519 (1972)). Even so, petitioner presents no facts sufficient to negate the application of the following statute:

An individual . . . 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 [an] offense involving the manufacture, transportation, sale, possession, distribution or habitual use of a “controlled dangerous



substance” as defined in the “Comprehensive Drug Reform Act of 1987,” N.J.S.2C:35-1 et al. or “drug paraphernalia” as defined pursuant to N.J.S.2C:36-1 et seq.

[N.J.S.A. 18A:6-7.1(b).]

In response to the motion to dismiss, Wadley notes that the Act “legaliz[es] and regulat[es] cannabis use and possession for adults 21 years and older and decriminaliz[es] marijuana and hashish possession.” Ltr. Br. of Petitioner Opposing Motion to Dismiss (January 31, 2023), at 2. As respondent argues, however, the Act does not expunge the specific crimes as to which petitioner pled guilty, nor does the Act supersede the mandates of N.J.S.A. 18A:6-7.1. Specifically, under the Act, only certain charges are qualified to be dismissed, vacated, and expunged and these enumerated charges do not include possession of a controlled dangerous substance with intent to distribute within 500 feet of a public facility. See Reply Br. of Respondent (February 13, 2023), at 3, citing N.J.S.A. 2C:35-23.1(a).

In his petition and letter brief, petitioner makes policy arguments to support his allegations of unfair and discriminatory treatment by respondent. While it may be that the mistakes petitioner admits making as a young adult would no longer result in criminal charges,<sup>4</sup> and those charges may yet be expunged from his record, until such time as the education laws reflect the recent decriminalization of marijuana possession and use, the above statute dictates petitioner’s disqualification to work (or volunteer) in a public school in any capacity, including as a substitute teacher.

For the above reasons, I **CONCLUDE** that petitioner has not made a claim for which relief can be granted.

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<sup>4</sup> As stated above, petitioner claims he was mischarged with intent to distribute a controlled substance rather than simple possession. Since he was just nineteen years of age at the time of his first arrest, even under the recent change in the law, he still could have been charged as possession of a controlled substance by a person less than twenty-one years of age is illegal. See N.J.S.A. 24:6I-32(b).

**ORDER**

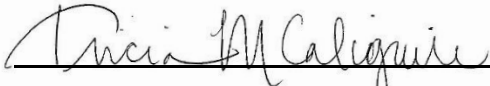
For the reasons set forth above, I **ORDER** that the motion of respondent Department of Education to dismiss the petition of Jonathan Wadley for failure to state a claim upon which relief may be granted is hereby **GRANTED** and the petition of Wadley is hereby **DISMISSED**.

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.

March 10, 2023  
\_\_\_\_\_  
DATE

  
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**TRICIA M. CALIGUIRE, ALJ**

Date Received at Agency: \_\_\_\_\_

Date Mailed to Parties: \_\_\_\_\_

TMC/nn