

125-23

OAL Dkt. No. 00880-23

Agency Dkt. No. 16-1/23

New Jersey Commissioner of Education

Final Decision

Amanda Gomez,

Petitioner,

v.

New Jersey Department of Education,
Office of Student Protection,

Respondent.

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

Upon review, the Commissioner concurs with the Administrative Law Judge, for the reasons detailed in the Initial Decision, that petitioner is permanently disqualified from employment in any school under the supervision of the Department of Education, pursuant to *N.J.S.A. 18A:6-7.1*.

Accordingly, the respondent's motion to dismiss is granted, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.¹


ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 24, 2023

Date of Mailing: April 26, 2023

¹ 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

DISMISSING THE PETITION

OAL DKT. NO. EDU 00880-23

AGENCY DKT. 16-1/23

AMANDA GOMEZ,

Petitioner,

v.

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

Respondent.

Amanda Gomez, petitioner, pro se

Sadia Ahsanuddin, Deputy Attorney General, for respondent (Matthew J. Platkin,
Attorney General of New Jersey, attorney)

Record Closed: March 17, 2023

Decided: March 20, 2023

BEFORE **SUSANA E. GUERRERO**, ALJ:

STATEMENT OF THE CASE

Petitioner, Amanda Gomez (Gomez or petitioner), filed an application for emergent relief seeking a determination by respondent, New Jersey Department of Education,

Office of Student Protection (respondent), challenging her disqualification from employment.

PROCEDURAL HISTORY

On January 27, 2023, the matter was filed with the Office of Administrative Law (OAL). The petitioner initially sought emergent relief. Oral argument on the emergent application was scheduled for February 1, 2023, but during a conference prior to the hearing, the petitioner withdrew her emergent application. The underlying Due Process matter remained with the undersigned. A pre-hearing conference was scheduled for February 16, 2023, however, petitioner failed to appear. The conference was then rescheduled for February 21, 2023, and the petitioner again failed to appear.

On February 16, 2023, respondent filed a Motion to Dismiss in lieu of an Answer. By letter dated February 22, 2023, petitioner was advised to file any written opposition to respondent's motion by March 8, 2023. No opposition or response was received. Another telephone conference was scheduled for March 13, 2023. Again, the petitioner failed to appear. To date, petitioner has not filed any opposition to the motion to dismiss, nor has she contacted this tribunal to explain why she did not appear to any of the prehearing conferences or file an opposition.

FACTS AND CONCLUSIONS OF LAW

Petitioner was employed by Pomptonian Food Services and worked at Clifton High School serving food in the cafeteria. A fingerprint search of Gomez was conducted in December 2022 which revealed that she had been arrested on July 23, 2007 and had been convicted of theft by deception in the third degree, N.J.S.A. 2C:20-4 on August 28, 2007. The New Jersey Department of Education's Office of Student Protection (OSP) informed Gomez that she was permanently disqualified from serving in any position with any educational institution.

Gomez subsequently filed the motion for emergent relief, in which she did not deny the conviction. She wrote, "This is because of a mistake I made 15 years ago. At the

time of the incident I was young and hanging out with the wrong crowd and was not thinking about my future and how it could affect me. The incident [sic] that is on my record had nothing to do with children or put anyone in danger.”

The respondent asserts that the petition should be dismissed because even accepting Gomez’s allegations as true, she has failed to establish a cause of action upon which relief can be granted, pursuant to N.J.A.C. 6A:3-1.10. Gomez did not oppose the motion to dismiss.

N.J.S.A. 18A:6-7.1 requires the permanent disqualification from employment or service of a school cafeteria worker if that individual’s “criminal history record check reveals a record of conviction for any crime of the first or second degree; or . . . 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” N.J.S.A. 18A:6-7.1(c)(2). (emphasis added)

I **FIND** that the record shows that Gomez was convicted for the crime of theft by deception, N.J.S.A. 2C:20-4, which is a crime of the third degree as set forth in Chapter 20 of Title 2C. Pursuant to N.J.S.A. 18A:6-7.1(c)(2), this conviction permanently disqualifies her from serving as a cafeteria worker at the Clifton public school. Gomez has not challenged the accuracy of the disqualifying criminal history record, and only asserts in her petition that it occurred when she was young and hanging out with “the wrong crowd,” and that she needs to provide for her two children. Even if the statements made in the petition are true, it does not constitute sufficient grounds to reverse the disqualification. Permanent disqualification is not discretionary, as the statute reads that the individual “shall be permanently disqualified” upon one of the convictions listed in N.J.S.A. 18A:6-7.1. Therefore, I **CONCLUDE** that Gomez is permanently disqualified from serving as a cafeteria worker with the school, and that her petition must be dismissed.

If, however, Gomez’s record becomes expunged, she may request that the Department of Education reconsider the disqualification.

ORDER

It is hereby **ORDERED** that the motion to dismiss filed by the New Jersey Department of Education, Office of Student Protection is **GRANTED**. It is further **ORDERED** that the petition be and hereby is **DISMISSED** without prejudice.

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

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

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

March 20, 2023
DATE



SUSANA E. GUERRERO, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

jb