

**New Jersey Commissioner of Education**

**Final Decision**

Justin S. Ginion,

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 – pursuant to *N.J.S.A. 18A:6-7.1* – from performing roofing work at public school facilities after a background check revealed that he was convicted of multiple disqualifying drug-related offenses. Petitioner contended that *N.J.S.A. 18A:6-7.1* is inapplicable to him because his roofing work does not involve regular contact with pupils; therefore, his criminal history does not permanently disqualify him from work at public school facilities. The OSP filed a motion to dismiss, which was denied, and a hearing was held on December 1, 2022.

The ALJ found that: petitioner is employed by a roofing company that contracts with school districts throughout the State of New Jersey; between 2008 and 2021, petitioner worked on many school roofing projects in New Jersey; in 2021, petitioner sought employment on a contract with the Sayreville School District and a fingerprint search on petitioner was conducted which revealed petitioner’s criminal convictions in the Commonwealth of Pennsylvania; petitioner did not challenge the accuracy of his criminal history record and admits that his criminal convictions would disqualify him under *N.J.S.A. 18A:6-7.1*, which requires that any person with a history of disqualifying criminal convictions cannot be employed by a New Jersey school in a position involving regular contact with pupils; in this case, based on testimony from petitioner and his employer, petitioner did not and would not have regular contact with pupils while performing roofing work on school grounds. Accordingly, the ALJ concluded that petitioner is not barred from employment on school roofing projects and should not be permanently disqualified from working for his employer on such projects.

Upon review, the Commissioner adopted the ALJ’s well-reasoned Initial Decision as the final decision in this matter. In so doing, the Commissioner noted that determining whether a third-party contractor such as petitioner has regular contact with pupils while working on school grounds is a fact-sensitive inquiry that must be evaluated carefully on a case-by-case basis. Accordingly, the Commissioner’s holding in this matter is limited to the unique facts presented herein. The respondent’s determination permanently disqualifying petitioner from performing roofing work at school facilities 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.

205-23

OAL Dkt. No. 07977-21

Agency Dkt. No. 118-8/21

## New Jersey Commissioner of Education

### Final Decision

Justin S. Ginion,

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 and considered.

This dispute concerns whether *N.J.S.A. 18A:6-7.1* permanently disqualifies petitioner from performing roofing work at public school facilities after a background check revealed that he was convicted of multiple disqualifying drug-related offenses.<sup>1</sup> The crux of the matter is whether petitioner's roofing work "involves regular contact with pupils" as contemplated by *N.J.S.A. 18A:6-7.1*. The statute provides, in relevant part:

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

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<sup>1</sup> Although the Administrative Law Judge (ALJ) found—and respondent maintains—that petitioner was also convicted of conspiracy to commit criminal mischief (charged in December 1999) and resisting arrest (charged in November 2011), the record lacks final disposition information regarding those charges. However, petitioner has not disputed the ALJ's findings in this regard.

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 . . . which would disqualify that individual from being employed or utilized in such capacity or position.

[*N.J.S.A. 18A:6-7.1.*]

*N.J.S.A. 18A:6-7.1* mandates that covered individuals convicted of certain enumerated offenses “shall be permanently disqualified from employment or service under this act.” *Ibid.* Those enumerated offenses include drug-related offenses. *N.J.S.A. 18A:6-7.1(b), (c), (d).*

Respondent determined that petitioner’s convictions, all of which occurred in Pennsylvania, permanently disqualified him from working at public school facilities pursuant to *N.J.S.A. 18A:6-7.1*. Petitioner has never disputed the accuracy of his criminal record; he concedes that if *N.J.S.A. 18A:6-7.1* is applicable to him, then he would be permanently disqualified from work at public school facilities based upon his criminal history. However, petitioner contends that *N.J.S.A. 18A:6-7.1* is inapplicable to him because his roofing work does not involve regular contact with pupils and, as such, his criminal history does not permanently disqualify him from work at public school facilities.

Following a contested hearing, the ALJ issued an Initial Decision in petitioner’s favor and recommended reversal of respondent’s determination permanently disqualifying petitioner from employment at public school facilities. The ALJ agreed with petitioner that he does not have regular contact with pupils while performing roofing work on school grounds. In support

thereof, the ALJ cited: (1) credible testimony from petitioner that he has never had contact with pupils during his prior school roofing work between 2008 and 2021;<sup>2</sup> (2) credible testimony from petitioner’s employer who asserted that school roofing projects are typically completed during the summer months and that work areas are “off limits” to pupils for safety reasons; and (3) the ordinary meaning of “regular contact” as utilized in the statute. The ALJ rejected respondent’s position that petitioner’s “mere presence” on school grounds would create “an opportunity for contact” with pupils tantamount to the “regular contact” with pupils discussed in *N.J.S.A. 18A:6-7.1*.

In their exceptions, respondent argues that the Commissioner should reject the Initial Decision because the ALJ erred when concluding that *N.J.S.A. 18A:6-7.1* does not apply to petitioner. Respondent maintains that petitioner necessarily has regular contact with pupils while working on school grounds when pupils are also present.<sup>3</sup> In reply, petitioner argues that the ALJ’s well-reasoned Initial Decision should be upheld because it is amply supported by the testimony in the record and that respondent’s interpretation of *N.J.S.A. 18A:6-7.1* is overbroad and discriminatory.

Upon review, the Commissioner adopts the ALJ’s comprehensive, well-reasoned Initial Decision as the final decision in this matter. The sufficient, credible evidence in the record—in

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<sup>2</sup> Petitioner was not permanently disqualified until 2021 despite his criminal history because of a glitch in respondent’s computerized tracking system which did not properly identify construction workers (Initial Decision at 5-6).

<sup>3</sup> Alternatively, respondent contends that the ALJ should have granted its motion to dismiss the matter as moot because the school roofing project that petitioner was working on in Sayreville prior to his permanent disqualification was completed during the OAL proceedings. The Commissioner agrees with the ALJ that the matter is not moot. Respondent’s determination permanently disqualifies petitioner from future employment at all public school facilities—not just from the prior roofing project. Moreover, the legal issue raised herein implicates the public’s interest in school safety and is likely to recur. *See State v. Cassidy*, 235 N.J. 482, 491 (2018) (holding that courts will entertain cases that have become moot “when the issue is of significant public importance and is likely to recur”).

particular, the credible testimony from petitioner and his employer—amply supports the ALJ’s legal conclusion that *N.J.S.A.* 18A:6-7.1 is inapplicable to petitioner because he does not have regular contact with pupils during his roofing work at school facilities. That said, the Commissioner notes that determining whether a third-party contractor such as petitioner has “regular contact” with pupils while working on school grounds is a fact-sensitive inquiry that must be evaluated carefully on a case-by-case basis. The Commissioner’s holding in this matter is limited to the unique facts presented herein.

Accordingly, respondent’s determination permanently disqualifying petitioner from performing roofing work at school facilities is reversed.

IT IS SO ORDERED.<sup>4</sup>



ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 12, 2023

Date of Mailing: July 13, 2023

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<sup>4</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**

OAL DKT. NO. EDU 07977-21

AGENCY DKT. NO. 118-8/21

**JUSTIN S. GINION,**

Petitioner,

v.

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

Respondent.

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**Robert L. Grundlock, Jr., Esq.,** for petitioner (Rubin, Ehrlich, Buckley & Przekop,  
P.C., attorneys)

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

BEFORE **WILLIAM T. COOPER, III,** ALJ:

Record Closed: March 1, 2023

Decided: May 30, 2023

**STATEMENT OF THE CASE**

Petitioner, Justin S. Ginion, an employee of Strober-Wright Roofing, Inc. (Strober Roofing) who sought to work on a public school roofing project for the Sayreville School

District (Sayreville) appeals the determination of the New Jersey Department of Education, Office of Student Protection, Criminal History Unit, (OSP) issued on June 7, 2021, to permanently disqualify him from serving in any position, which is under the supervision of the Department of Education.

### **PROCEDURAL HISTORY**

On June 7, 2021, the OSP issued a notice disqualifying petitioner from working at any educational institution under the supervision of the Department of Education (DOE). A timely appeal was filed, and the matter was transmitted to the Office of Administrative Law (OAL) where it was filed as a contested case on September 23, 2021. N.J.S.A. 52:14 B-1 to-15; N.J.S.A. 52:14 F-1 to-13.

On February 17, 2022, the petitioner moved for summary decision. On March 11, 2022, the respondent cross-moved for summary decision, and on March 22, 2022, the petitioner filed a reply brief. The motions for summary decision were denied by this tribunal on May 2, 2022.

On July 6, 2022, the respondent moved to dismiss the petition claiming it was moot because the Sayreville school project was completed. A status conference was conducted on July 14, 2022. After respondent was given an opportunity to respond to the motion, oral argument was conducted on August 5, 2022. The motion to dismiss was denied on August 23, 2022.

A hearing was conducted on December 1, 2022. The record remained open until March 1, 2023, for the parties to provide written summations and on that date the record closed.<sup>1</sup>

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<sup>1</sup> An order of extension for filing an initial decision was issued on April 17, 2023, extending the filing of the initial decision to May 30, 2023.

**FACTUAL DISCUSSION AND FINDINGS**  
**TESTIMONY**

For petitioner

**Michael Strober** (Strober) is a commercial roofing contractor and the owner of Strober Roofing. He testified that forty to fifty percent of the work performed by Strober Roofing is on public school buildings. According to Strober, Strober Roofing tries to complete school projects over the summer months when school buildings are empty, and no pupils are attending. Strober testified that work on public school projects are more lucrative for his employees as they are entitled to “prevailing” rate on such projects. He has approximately forty or more employees working at any given time.

Strober testified that the petitioner had been employed by Strober Roofing for ten plus years. During that time the petitioner has worked his way up the ranks from an apprentice to a supervisor. Strober characterized the petitioner as a model employee. Strober noted that petitioner’s disqualification from school projects has had a negative effect on the petitioner’s income and he is currently working on jobs that are below his skill level.

Strober testified that Strober Roofing employees are not in contact with pupils on school projects. He explained that there are several reasons for this: safety standards require that the areas where they are working are off limits to pupils, the projects are done in the summer months while pupils are on vacation, regulations require the installation of a “portable latrine” so the employees are not entering the school building to use the facilities, the location of the work site is on the roof and not inside the building, and a supervisor directs the employees so they know where they are permitted to go. Strober Roofing has never received a complaint of an employee having contact with a pupil.

**Justin Ginion** (Ginion) testified he is forty-two years of age and lives in Bensalem, Pennsylvania with his fiancé and two daughters. He has been employed at Strober Roofing for fourteen years. General work on school buildings moves quickly because



they have a limited time to complete the projects. Typically, the work area is taped off, then ladders go up, the old roof is removed, and the crew installs the new roof.

According to Ginion, the workers never have contact with pupils during construction. Petitioner offered several reasons for this: first, the roofing materials used by Strober Roofing includes chemicals that non-employees are prevented from coming into contact and precautions are taken to ensure this; second, the removal of older roofs often involves asbestoses and there are strict guidelines on handling such materials which include securing the area from entry by non-employees; the materials used in the construction of new roofs generally require the air conditioning to be turned off so that dirt, fumes and unknown particles are not introduced into the school building. According to Ginion he has never had contact with a pupil while working on school projects.

Strober was awarded a contract to perform roofing work on a public-school building located in the Sayreville School District (Sayreville). Petitioner sought to work on the Sayreville School District project, and he submitted to a fingerprint search pursuant to N.J.S.A. 18A:6-7.2.

The fingerprint search revealed that Ginion had the following criminal convictions in the Commonwealth of Pennsylvania: (a) Conspiracy (Criminal Mischief) in December 1999; (b) a violation of the Controlled Substance Abuse Act and resisting arrest in November 2001; (c) a violation of the Controlled Dangerous Substance Act (two counts) in January 2004; (d) a violation of the Controlled Dangerous Substance Act (two counts) in March 2005; (e) a violation of the Controlled Dangerous Substance Act in July 2006; and (f) a violation of the Controlled Substance Act (two counts) in December 2007. Ginion does not challenge the accuracy of his criminal history record or that his criminal convictions would disqualify him under N.J.S.A. 18A:6-7.1.

Ginion indicated that he was in his twenties when he faced criminal charges and blamed his past behavior on a difficult and troubled childhood. He admitted to being in prison, however, he viewed it in a positive manner indicating that he learned how to read and write while incarcerated. Further, he became involved in Alcoholic Anonymous and Narcotics Anonymous, organizations which he is still involved with. Ginion noted that the

greatest positive change in his life occurred when he became a father. Ginion testified he has had no further criminal convictions since 2007.

Ginion advised that he has worked on numerous school projects for Strober without any issues from 2008 to 2021. Since June 7, 2021, after he was advised he could not work on school projects, and his income was cut by fifty percent. Based upon the permanent ban he is still unable to work on school projects.

For respondent

**James Scaringelli** (Scaringelli) has been employed with the New Jersey Department of Education, Office of Student Protection, as an investigator for fourteen years. Scaringelli testified to his responsibilities and his day-to-day work at OSP. He explained that OSP oversees the criminal history background check process for new applicants that are coming to seek employment either in school facilities or with contractors who provide services to school districts throughout the state.

Scaringelli advised that an applicant's criminal history is reviewed to determine if they have any convictions for the disqualifying crimes enumerated in N.J.S.A. 18A:6-7.1. If an applicant has a conviction for a disqualifying crime, then that individual is ineligible for employment. Scaringelli further testified that disqualification notifications are sent to the applicant as well as the prospective employer and to The Motor Vehicle Commission so that those agencies can take whatever action they deem appropriate.

According to Scaringelli, Ginion was deemed to be permanently disqualified from his desired employment on a school roofing project due to his prior criminal history. Ginion was notified of this permanent disqualification as were the "two perspective employers," Jackson Township and Sayreville School Districts.

Scaringelli advised that OSP started to track individuals who identified themselves as construction workers within the last eighteen months. The OSP found that construction workers, such as roofers or employees of third-party service contractors were not being identified properly in the OSP system. School districts did not have a specific code entry

for construction workers, and often would use a “custodial position” or “other” code when identifying them. School districts would assume that construction workers were employees of third-party contractors and were not direct school district employees, so that disqualification notices did not apply. To correct this issue a new position code, “construction workers” was added to the OSP system. Since this change was implemented, approximately 2,000 people have been identified as construction workers in the OSP system.

Scaringelli admitted that he had no knowledge if Ginion would have contact with pupils while performing his job but insisted that Ginion’s “mere presence” on school grounds would establish contact with pupils if the school “was open and pupils were present.” It was his opinion that the intent of the legislation was to keep individuals with criminal records from working on or in public schools.

**Dr. Jamar Purnsely** (Purnsely) is employed by the Department of Education as the Director of Fiscal Accountability and Compliance. He testified to his responsibilities and how N.J.S.A. 18A:6-7.1 is enforced. He testified that the unit looks at the backgrounds of individuals seeking employment if there were any criminal convictions at which point, they were reviewed to determine if the offense was one of the enumerated offenses under the statute. If the conviction includes one of the enumerated offenses, then the individual is disqualified, and the parties were notified.

## **FINDINGS**

For testimony to be believed, it must not only come from the mouth of a credible witness, but it also must be credible. It must elicit evidence that is from such common experience and observation that it can be approved as proper under the circumstances. See Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination requires an overall assessment of the witnesses’ story in light of its rationality or internal consistency and the manner in which it “hangs together” with other evidence. Carbo v. United States, 314 F.2d 718, 749 (9<sup>th</sup> Cir. 1963). Also, “the interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in

disbelieving his testimony.” State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted).

A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super 282, 287 (App. Div. 1958).

There was no indication that any of the witnesses in this matter had any interest, motive or bias that would affect their testimony. As such I accept all four of the witnesses as credible.

Based upon the testimony heard and documents entered in evidence, I **FIND** the following as **FACT**:

1. Ginion is employed by Strober Roofing, as a roofer/supervisor. Strober Roofing contracts with numerous schools and Board of Educations throughout the State of New Jersey. From 2008 to 2021 Ginion worked on many such school projects.
2. Strober Roofing was awarded a contract to perform roofing work on a public-school building located in the Sayreville School District (Sayreville). Petitioner sought to work on the Sayreville School District project, and he submitted to a fingerprint search pursuant to N.J.S.A. 18A:6-7.
3. The fingerprint search revealed that Ginion had the following criminal convictions out the Commonwealth of Pennsylvania: (a) Conspiracy (Criminal Mischief) in December 1999; (b) a violation of the Controlled Substance Abuse Act and resisting arrest in November 2001; (c) a violation of the Controlled Dangerous Substance Act (two counts) in January 2004; (d) a violation of the Controlled Dangerous Substance Act (two counts) in March 2005; (e) a violation of the Controlled Dangerous Substance Act in

July 2006; and (f) a violation of the Controlled Substance Act (two counts) in December 2007.

4. Ginion does not challenge the accuracy of his criminal history record or that his criminal convictions would disqualify him under N.J.S.A. 18A:6-7.1.
5. Based upon his criminal history Ginion was notified that 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 any contracted service provider under contract with any “school or educational facility.” (R-1.)
6. In an email dated June 7, 2021, Scaringelli notified Sayreville that Ginion has been disqualified from “school employment,” and directed to ensure that Strober Roofing did not assign Ginion to work at any school facility. (R-2.)
7. Strober has never received a complaint of an employee having contact with a pupil because several factors preclude pupil contact: Safety standards require that the areas where they are working be off limits to pupils; the projects are done in the summer months while pupils are not in school; regulations require the installation of a “portable latrine” so the employees were not entering the school building; the location of the work site is on the roof and not the interior; and a supervisor directs the employees where and where not to be.
8. From 2008 to 2021 Ginion never had interactions with pupils while working on school projects for Strober Roofing.
9. Ginion has had no further criminal involvement since 2007.

## LEGAL ANALYSIS

The issue here is the applicability of N.J.S.A. 18A:6-7.1 to an employee of a third-party contractor, and whether such an employee is in a position that involves regular contact with students.

N.J.S.A. 18A:6-7.1, provides in part as follows:

**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. (Emphasis added).**

### Petitioner's argument

Petitioner argues that the OSP misapplied N.J.S.A. 18A:6-7.1 to his position as a roofer for a third-party employer. The statute expressly limits job place discrimination based upon criminal history to employees of the school system “for pay or contract for paid services of any teaching staff member, 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.” The petitioner claims that the OSP improperly adds “construction worker” to the list of employees identified. Further, even if the statute were applicable to him petitioner claims

that there is no evidence that a roofer would have “regular contact” with pupils on the Sayreville project, or any other roofing job.

Additionally, the petitioner contends that the statutory list of employees does not include employees of a third-party entity such as Strober. The category of employees and workers identified are those who would necessarily encounter pupils as part of their job, or regularly work inside of schools and thereby encounter pupils as part of their job. According to the petitioner he does not fit into any of these categories.

Finally, petitioner submits that the actions by the OSP are contrary to the provisions and intent of N.J.S.A. 34:6B-11 “Opportunity to Compete Act” and N.J.S.A.10:5–12 “New Jersey Law Against Discrimination.”

#### Respondent’s argument

Respondent argues that N.J.S.A. 18A:6-7.1 applies to employees of a third-party contractor since it includes the following phrase, “any other person serving in a position which involves regular contact with pupils.” Respondent offers that petitioner’s mere presence on school grounds creates the potential that petitioner would have access to pupils.

Respondent further argues that petitioner has not presented any evidence that there would be “barriers or obstacles” that would prevent him from “getting in contact with pupils” and that he has numerous criminal convictions that require his permanent disqualification. Respondent notes that the stated intent of the statute was to protect pupils from individuals who were convicted of specific criminal offenses and, therefore, no leniency can be afforded to him.

Finally, respondent argues that N.J.S.A. 34:6B-11 "Opportunity to Compete Act" and N.J.S.A.10:5-12 "New Jersey Law Against Discrimination" are inapplicable in light of the plain language and intent of N.J.S.A. 18A:6-7.1.

**The statute clearly directs local school districts to "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."**

Here, petitioner is not employed by a local school district in any of the positions enumerated in the statute, therefore, the focus is whether he is "a person serving in a position which involves regular contact with pupils." Respondent's argument is that petitioner's mere presence on school grounds provides an opportunity for contact and thus he should be permanently disqualified from such projects. This position is rejected as it overlooks the plain language of the statute which requires regular contact with pupils.

Merriam-Webster defines "regular" as: (a) a recurring, or functioning at fixed, uniform, or normal intervals; regular income, a regular churchgoer; (b) Orderly, Methodical; regular habits. Vocabulary.com defines "regular" as 1. conforming to a standard or pattern; 2. in accordance with fixed order or procedure or principle; 3. in accordance with regular practice or procedure; 4. not deviating from what is normal; 5. relating to a person who does something regularly; 6. officially full-time; 7. a regular patron; 8. a dependable follower; 9. Occurring at fixed intervals. From the foregoing it is clear that the definition of regular contact would not include "mere presence," or "an opportunity for contact."

The statutory list of employees does not include employees of a third-party entity such as Strober Roofing. The category of employees and workers identified in the statute are those who would necessarily encounter pupils as part of their jobs, or those who regularly work inside of schools and thereby encounter pupils as part of their jobs. Ginion does not fit into any of these categories.



Roofing projects are typically completed during the summer months while students are not in attendance. The work sites are off limits to all but the roofers. Scaringelli testified that he has never received a complaint from an employee having contact with a pupil. The petitioner testified that in his fourteen years working on such projects he has never had contact with a pupil. Applying the law to the facts, I **CONCLUDE** that the petitioner, as an employee of a roofing contractor, is not in a position to have regular contact with pupils.

Petitioner also argues that respondent's actions in this matter run counter to the Opportunity to Compete Act, N.J.S.A. 34:6B-11. That act prohibits an employer from requiring an employee to complete an application that inquiries about criminal records and prohibits the employer from seeking such information from a third party during the initial application process. However, N.J.S.A. 34:6B-16 provides exceptions to the prohibited actions by employers. N.J.S.A. 34:6B-16(b) provides the following:

The employment sought or being considered is for a position where a criminal history record background check is required by law, rule or regulation, or where an arrest or conviction by the person for one or more crimes or offenses would or may preclude the person from holding such employment as required by any law, rule or regulation, or where any law, rule, or regulation restricts an employer's ability to engage in specified business activities based on the criminal records of its employees.

Petitioner's argument is unpersuasive as a criminal background check is required by law for certain individuals working in or for school districts. Accordingly, I **CONCLUDE** that the Opportunity to Compete Act does not apply here. I further **CONCLUDE** that as the petitioner has no regular contact with pupils or the opportunity to have regular contact with pupils when working as a roofing contractor at public school facilities while pupils are not present, he is not barred from such employment. Therefore, he should not be permanently disqualified from working for Strober Roofing on school projects.

**ORDER**

It is hereby **ORDERED** that the determination by the New Jersey Department of Education, Office of Student Protection issued on June 7, 2021, to permanently disqualify Justin Ginion from working for Strober-Wright, Inc. on school roofing projects is **REVERSED**.

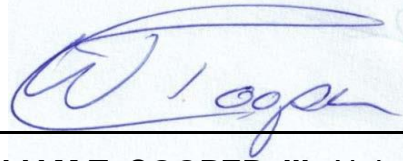
I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

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.

May 30, 2023

DATE



WILLIAM T. COOPER, III, ALJ

Date Received at Agency:

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Date E-Mailed to Parties:

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WTC/am

**APPENDIX**

**WITNESSES**

**For petitioner**

Michael Strober

Justin Ginion

**For respondent**

James Scaringelli

Jamar Purnsley

**EXHIBITS**

**For petitioner**

P-1 written summation

**For respondent**

R-1 June 7, 2021, letter to Justin Ginion

R-2 June 7, 2021, email to Sayreville School District

R-3 N.J.S.A. 18A:6-7.1

R-4 Bucks County Court Summary

R-5 Proposed statement of undisputed facts

R-6 Petitioner's responses to Interrogatories