

**New Jersey Commissioner of Education**

**Final Decision**

Tierra Gourdine,

Petitioner,

v.

New Jersey Department of Education,  
Office of Student Protection,

Respondent.

**Synopsis**

Petitioner – formerly employed as a teacher in Hillsborough – challenged the determination of the New Jersey Department of Education, Office of Student Protection, to disqualify her from employment in a public school pursuant to *N.J.S.A. 18A:6-7.1* after a criminal history background check revealed that in January 2023, petitioner was charged with, and pled guilty to, the third-degree offense of assault by automobile, in violation of *N.J.S.A. 2C:12-1(c)*, and the third-degree offense of endangering another person, in violation of *N.J.S.A. 2C:24-7.1(a)(3)*. The Department filed a motion to dismiss petitioner’s appeal.

The ALJ found, *inter alia*, that: *N.J.S.A. 18A-6.7-7.1 (e)* provides an opportunity for a teacher to challenge their disqualification from employment when the conviction was disclosed by a criminal background check performed pursuant to the act by challenging the accuracy of the disqualifying criminal record; in this case, petitioner did not challenge the accuracy of her criminal history record but conceded that she pled guilty to a lesser charge as it was the only choice available to her; without challenging the accuracy of the conviction, the above statute dictates petitioner’s disqualification to work (or volunteer) in a public school in any capacity, including as a substitute teacher. The ALJ concluded that petitioner has not made a claim upon which relief can be granted. Accordingly, the ALJ granted the Department’s motion to dismiss.

Upon review, the Commissioner concurred with the ALJ that petitioner’s criminal history disqualifies her from working in a public school. Accordingly, the Initial Decision was adopted was the final decision in this matter, and the petition of appeal 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.

310-23  
OAL Dkt. No. 04217-23  
Agency Dkt. No. 28-2/23

## New Jersey Commissioner of Education

### Final Decision

Tierra Gourdine,

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 that petitioner's criminal history disqualifies her from working in a public school.

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed.

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

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

Date of Decision: October 18, 2023

Date of Mailing: October 19, 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 04217-23

AGENCY DKT. NO. 28-2/23

**TIERRA GOURDINE,**

Petitioner,

v.

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

Respondent.

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**Tierra Gourdine**, petitioner, pro se

**David L. Kalisky**, Deputy Attorney General, for respondent (Matthew J. Platkin,  
Attorney General of New Jersey, attorney)

Record Closed: September 5, 2023

Decided: September 12, 2023

BEFORE **NICOLE T. MINUTOLI**, ALJ:

**STATEMENT OF THE CASE**

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

## **PROCEDURAL HISTORY**

On January 27, 2023, respondent notified petitioner that she was permanently disqualified from serving in any position, paid or unpaid, with any educational institution under the supervision of the Department of Education.

On February 2, 2023, petitioner filed a petition of appeal with the New Jersey Department of Education, Office of Controversies and Disputes. On March 14, 2023, 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 May 17, 2023, 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 parties appeared for a telephone prehearing conference on July 6, 2023, during which a briefing schedule for respondent's motion to dismiss was issued. On August 21, 2023, petitioner filed a response in opposition to respondent's motion to dismiss. Respondent did not file a reply and the motion is now ripe for review.

## **FACTUAL DISCUSSION AND FINDINGS**

I accept the following **FACTS** as true and accordingly, I **FIND**:

1. Petitioner is an adult female. Petitioner began her teaching career approximately seventeen and a half years ago at Hillsborough High School.
2. On March 18, 2022, petitioner resigned from her position at Hillsborough High School due to mental health issues but continued coaching in the Franklin Township School District.
3. On January 23, 2023, petitioner was charged with, and pled guilty to, the third-degree offense of assault by automobile, in violation of N.J.S.A. 2C:12-

1(c), and the third-degree offense of endangering another person, in violation of N.J.S.A. 2C:24-7.1(a)(3).

4. 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).
5. On January 26, 2023, petitioner emailed respondent's Criminal History Review Unit (CHRU) to inquire whether her January 23, 2023, guilty plea would disqualify her as a teacher. Later the same day, petitioner emailed CHRU once more to explain the circumstances surrounding her criminal conviction contending that after the Coronavirus pandemic, returning to the building for work was difficult and required her to seek therapy. She tried to resolve her psychiatric issues but was unable to do so. Petitioner stated that she then tried to take her life by driving off the road.
6. By email notice dated January 27, 2023, respondent notified petitioner, based on the records revealed by a criminal history background check, that she was "permanently disqualified from serving in any position, paid or unpaid, with any educational institution under the supervision of the Department of Education. . . [and that she had] 14 days from the date of this written notice of disqualification to challenge the accuracy of [her] criminal record."
7. On February 1, 2023, Department investigator James Scarangelli responded to petitioner's January 26, 2023, emails, informing her that the "Office of Student Protection is guided by the requirements of N.J.S.A. 18A:6-7.1" and . . . "[b]ased upon your conviction for Assault by Automobile (3rd degree) on January 23, 2023, the Office of Student Protection had to adhere to the requirements of the aforementioned statute and disqualify you from school employment." The investigator's email also stated that "[t]he Office of Student Protection is not charged with the ability to consider the information contained in your letter, however, you may file a formal appeal

with the New Jersey Department of Education Office of Controversies and Disputes.”

8. 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 v. Sharp

Electronics Corp., 116 N.J. 739, 746 (1989) (citing R. 4:6-2(e)); Velantzas, 109 N.J. 189, 192 (1988); 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 her own, without the assistance of counsel. For that reason, her 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).]

N.J.S.A. 18A-6.7-7.1 (e), provides an opportunity to challenge their disqualification from employment when the conviction was disclosed by a criminal background check performed pursuant to this act by challenging the accuracy of the disqualifying criminal

record. Here, petitioner does not challenge the accuracy of her criminal history record but concedes that she pled guilty to a lesser charge as it was the only choice available. Therefore, without challenging the accuracy of the conviction, 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.

### **ORDER**

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

September 12, 2023  
DATE



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NICOLE T. MINUTOLI, ALJ

Date Received at Agency: September 12, 2023

Date Mailed to Parties: September 12, 2023

NTM/dw