362-25
OAL Dkt. No. EDU 09893-24 (EDU 03883-24 on remand)
Agency Dkt. No. 75-3/24

New Jersey Commissioner of Education

Final Decision

Birunthan Ganaganayagam,

Petitioner,

v.

New Jersey Department of Education, Office of Student Protection,

Respondent.

The record of this matter, the March 7, 2025 hearing transcript, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by respondent Office of Student Protection (OSP) pursuant to *N.J.A.C.* 1:1-18.4, and petitioner's reply thereto, have been reviewed and considered.

In this matter, petitioner challenges OSP's decision to permanently disqualify him from public school employment pursuant to *N.J.S.A.* 18A:6-7.1. The statute provides that an individual shall be permanently disqualified if his criminal record check reveals a conviction for one of the New Jersey crimes identified in the statute or if he was convicted under a similar statute in another state "for a substantially equivalent crime or other offense." *N.J.S.A.* 18A:6-7.1. Third degree crimes as set forth in Chapter 20 of Title 2C are permanently disqualifying crimes. *N.J.S.A.* 18A:6-7.1(c)(2).

OSP determined that petitioner's 2006 New York Class A misdemeanor conviction, pursuant to *N.Y.P.L.* § 165.40, of criminal possession of stolen property in the fifth degree was substantially equivalent to *N.J.S.A.* 2C:20-2(b)(2)(a), third degree theft. *N.Y.P.L.* § 165.40 provides that "A person is guilty of criminal possession of stolen property in the fifth degree when he knowingly possesses stolen property, with intent to benefit himself or a person other than an owner thereof or to impede the recovery by an

owner thereof." Pursuant to *N.J.S.A.* 2C:20-3(a), "A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with purpose to deprive him thereof." Theft constitutes a crime of the third degree if the amount involved exceeds $500 but is less than $75,000. *N.J.S.A.* 2C:20-2(b)(2)(a).

The Administrative Law Judge (ALJ) denied OSP's motion for summary decision and held a contested hearing. The only disputed material fact was the dollar amount of the theft, which allegedly involved cell phones stolen from a shopping mall kiosk. During its investigation, OSP informed petitioner in writing that it "need[ed] to know the value of the stolen property" and asked petitioner to provide documentation regarding same. Petitioner obtained and provided all available documentation pertaining to the conviction. Notably, the Clarkstown Police Department confirmed in writing that its records pertaining to the incident were no longer available. Neither the Certificate of Conviction nor other court documents specified the exact amount involved.

Robert Cowden, Investigator 1 for OSP, who testified during the contested hearing at the OAL, conceded that he did not know the value of the stolen property at issue as same was not contained in the documents OSP reviewed. However, Cowden explained that OSP was "required to come up with a monetary value to conduct a comparative analysis." Hearing Transcript, at 16. Thus, OSP estimated, following an unspecified computer search, that the average cost of a cell phone in 2005 was between $100 and $400. Hearing Transcript, at 56, 63. Consequently, OSP permanently disqualified petitioner from public school employment because its "estimates exceeded $500." Hearing Transcript, at 58.

The ALJ found that the record was "inconclusive as to whether, and under what circumstances, [petitioner] was involved in a cell-phone theft operation." Initial Decision, at 6. The ALJ also found that OSP did not prove that the theft "was in an amount over $500." *Ibid.* Accordingly, the ALJ concluded that OSP failed to establish that *N.Y.P.L.* § 165.40, criminal possession of stolen property in the fifth degree, was substantially equivalent to *N.J.S.A.* 2C:20-2(b)(2)(a), third degree theft. The ALJ explained that OSP

relied "heavily on uncorroborated hearsay to support its determination that Petitioner's prior actions amount to a third-degree theft in New Jersey" and that "as to the amount of the theft, the evidentiary record is simply lacking in any competent, non-hearsay evidence to determine what precisely occurred." *Ibid.* Additionally, the ALJ declined to "take judicial notice of the price of cell phones from twenty years ago as posited by the OSP." *Id.* at 4.

In its exceptions, OSP contends that the ALJ erred by denying its motion for summary decision because the question presented—whether petitioner's conviction is substantially equivalent to a disqualifying offense under *N.J.S.A.* 18A:6-7.1—is a legal one that should be resolved by comparing the statutory language at issue. OSP also contends that the ALJ erred by placing the burden of proof on OSP to demonstrate the substantial equivalence of the crimes at issue and establish whether the amount involved exceeded $500; by refusing to admit the "judgment of conviction"[1] into evidence; and by failing to take judicial notice of the value of nearly sixty cell phones.

In reply, petitioner contends that the ALJ properly denied the motion for summary decision because there were disputed issues of material fact regarding the value of the property involved, the existence and authenticity of court documents, and whether petitioner personally stole or possessed more than $500 worth of cell phones. In addition, he contends that the ALJ correctly rejected uncorroborated hearsay evidence, including the "judgment of conviction." Finally, he contends that the ALJ properly declined to take judicial notice of the price of cell phones from twenty years ago.

"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 [his] staff, but instead determines if the finding was legally appropriate." *Margiotta v. N.J. Dep't of Educ., Office of*

[1] While the ALJ admitted the certificate of conviction into evidence, she did not admit pages 6 and 7 of R-3—which Cowan referred to as the "judgment of conviction" during his testimony. Hearing Transcript, at 34-37. However, the document is not titled as such. It appears to be an accusatory instrument that was converted to an information when the charges against petitioner were reduced to a misdemeanor. *See* OSP's Exceptions, at 32 (citing *N.Y. CPL* § 180.50).

Student Prot., Commissioner Decision No. 2-22 (Jan. 12, 2022) at 2-3. The appropriate standard of review is whether OSP's "decision is consistent with the applicable statutory and regulatory provisions." *Id.* at 3.

Upon careful review, given the absence of competent evidence in the record to establish whether the amount of the theft exceeded $500, the Commissioner is constrained to conclude that petitioner's conviction under *N.Y.P.L.* § 165.40 for criminal possession of stolen property in the fifth degree is not substantially equivalent to a third degree theft conviction in New Jersey under *N.J.S.A.* 2C:20-2(b)(2)(a). Consequently, the Commissioner holds that OSP's decision to permanently disqualify petitioner from public school employment is inconsistent with the applicable statutory and regulatory provisions.

Initially, the ALJ's denial of OSP's motion for summary decision was appropriate. Absent evidence regarding the amount of the theft, OSP is not entitled to summary decision. The amount involved is material in this case because it involves a substantial equivalency analysis. As noted, OSP asserts that *N.Y.P.L.* § 165.40, criminal possession of stolen property in the fifth degree, is substantially equivalent to *N.J.S.A.* 2C:20-2(b)(2)(a), third degree theft, and permanently disqualified petitioner on that basis. A review of the statutory language at issue reveals that theft constitutes a crime of the third degree only if the amount involved exceeds $500. *N.J.S.A.* 2C:20-2(b)(2)(a). OSP fully acknowledged the materiality of this information when it wrote to petitioner during its investigation, stated that it "need[ed] to know the value of the stolen property," and asked petitioner to provide documentation regarding same. Through no fault of either party, the police report documenting the incident at issue is no longer available.

Next, the Commissioner disagrees with OSP that the ALJ improperly shifted the burden of proof to OSP to demonstrate the substantial equivalence of the crimes at issue and establish whether the amount involved exceeded $500. To determine whether OSP's decision is consistent with applicable statutory provisions, it is necessary and appropriate for the Commissioner to assess whether competent evidence in the record—put forth by either party—establishes that the amount involved exceeded $500. *See, e.g., Thomas v. N.J. Dep't of Educ., Office of Student Prot.*, OAL Dkt. No. EDU 00914-23, Initial Decision

at 12 (May 17, 2024), *adopted*, Commissioner Decision No. 231-24 (June 14, 2024) (explaining that the dollar value of the theft must be considered as part of the analysis when determining whether a federal conviction of possession of stolen bank checks was substantially equivalent to third degree theft in New Jersey).

Regarding the purported "judgment of conviction" (pages 6 and 7 of R-3), which appears to be what is known under New York law as an accusatory instrument converted to an information, the proper name of the document is irrelevant. Even assuming the ALJ should have admitted the document into evidence on relevancy grounds as OSP asserts, the document contains a hearsay description of events and neither identifies the type of cell phones at issue nor specifies the exact amount of the theft. Thus, the Commissioner holds that failure to admit the document in evidence was harmless because it does not establish whether the amount involved exceeded $500.

Finally, the Commissioner finds that the ALJ did not err by failing to take judicial notice of the value of the cell phones. *N.J.A.C.* 1:1-15.2(a) states: "Official notice may be taken of judicially noticeable facts as explained in *N.J.R.E.* 201 of the New Jersey Rules of Evidence." Pursuant to *N.J.R.E.* 201, judicially noticeable facts are:

> (1) such specific facts and propositions of generalized knowledge as are so universally known that they cannot reasonably be the subject of dispute;
>
> (2) such facts as are so generally known or are of such common notoriety within the area pertinent to the event that they cannot reasonably be the subject of dispute;
>
> (3) specific facts and propositions of generalized knowledge which are capable of immediate determination by resort to sources whose accuracy cannot reasonably be questioned; and
>
> (4) records of the court in which the action is pending and of any other court of this state or federal court sitting for this state.

Nothing in the record specifies what type of cell phones were involved in the incident. Moreover, it is not known whether the cell phones were operational. The Commissioner agrees with the ALJ that the 2005

value of cell phones of an unspecified make and model is not a judicially noticeable fact or proposition of generalized knowledge so common or universally known that it cannot reasonably be the subject of dispute.

Accordingly, for the reasons stated herein, the Initial Decision is adopted as the final decision in this matter. OSP's decision to permanently disqualify petitioner from public school employment pursuant to *N.J.S.A.* 18A:6-7.1 is reversed.

IT IS SO ORDERED. [2]

COMMISSIONER OF EDUCATION

Date of Decision: July 16, 2025
Date of Mailing: July 17, 2025

[2] 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 09893-24
AGENCY DKT. NO. 75-3/24
(ON REMAND)
OAL DKT. NO. EDU 03883-24

BIRUTHAN GANAGANAYAGAM,

Petitioner,

v.

NEW JERSEY DEPARTMENT OF EDUCATION,
OFFICE OF STUDENT PROTECTION,

Respondent.

Biruthan Ganaganayagam, pro se

Luke D. Hertzel-Lagonikos, Esq., Deputy Attorney General, for Respondent, (New Jersey Department of Education, Office of Student Protection, Matthew J. Platkin, Attorney General of New Jersey)

Record Closed: March 7, 2025 Decided: April 17, 2025

BEFORE **DANIELLE PASQUALE**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

In March 2024 Petitioner, a newly-hired teacher of the Newark City Board of Education (the "Petitioner" or "Mr. Ganaganayagam") initially requested emergent and final relief from the New Jersey Department of Education's, Office of Student Protection's ("NJDOE" or "OSP") disqualification from his employment with the Newark City Board of Education at the North Star Academy Charter School and OSP's subsequent denial of the Petitioner's request to rescind their termination of his employment due to an arrest found during his background check.

The case was transmitted to the Office of Administrative Law (OAL) for emergent relief on March 21, 2024 and assigned to me that day. I conferenced the case on March 22, 2024 in an attempt to identify the issues and possibly resolve the matter. The parties could not reach a resolution, so I heard oral arguments via Zoom on March 26, 2024. I granted the relief sought. (C-1). After granting emergent relief, I also determined that the law was clear that there was no substantially equivalent New Jersey crime that could be proved, and thus returned the file to the agency as I determined all of the issues had been resolved.

The case was returned on Remand, with a new Deputy Attorney General ("DAG"), and assigned to me on or about July 18, 2024. The Remand ordered me to allow the Respondent to present its proofs so that I could make pertinent findings of fact and conclusions of law. The Remand file included a Motion for Summary Decision for which I reserved on stating my broad authority to prevent further undue delay. Instead of receiving witness lists with corresponding proffers for the March 7, 2025 hearing date, I received a Motion to Stay, which I denied. At that point, the Respondent asked for interlocutory review of my denial of the stay. On March 3, 2025, the Commissioner ordered me to make a determination on the Motion for Summary Decision prior to the hearing. As such, I addressed those issues and denied the Motion for Summary Decision. (C-2). Four days later, on March 7, 2025, I heard the case in person to consider any additional proofs.

FACTUAL DISCUSSION

As the facts surrounding the timeline are largely undisputed, they will be discussed and found as **FACT**. In 2005, Petitioner had a charge in New York that resulted in a Conditional Discharge. The pertinent facts and testimony are detailed in my first Order granting Emergent Relief and thereby resolving the entire case, dated April 11, 2024 and such facts are incorporated herein by reference. (C-1). In addition, the pertinent facts and testimony are further detailed in the remand file, in my Order Denying Summary Decision and such facts are incorporated by reference. (C-2). In response to the question posed by the Commissioner on Remand, his decision on Interlocutory Review, and after having had the opportunity to hear and observe the witnesses' in-person testimony as well as reviewing the corresponding exhibits, I **FIND** the following additional facts:

1) I **FIND** no new relevant or admissible information was offered at trial as it relates to the Initial Decision that I issued on the Emergent Matter that I determined resolved the entire matter. (C1).
2) I **FIND** no new relevant or admissible information was offered at trial as it relates to my Order Denying Summary Decision. (C2).
3) I **FIND** that the exhibits offered at hearing were identical to the ones I reviewed in reaching my opinion on the emergent application and the motion for summary decision.
4) I agree with the Commissioner, and I **FIND** that I initially did reserve on the motion for summary decision (on Remand) and thus did not render a decision on the motion previously in order to "preserve calendar availability and to assist in resolving matters expeditiously."
5) To that end, I also agree with the Commissioner and **FIND** that I directed the parties to submit witness lists and scheduled the hearing date for that purpose.
6) I also agree with the Commissioner, and I **FIND** that I have broad authority and the discretion to manage the proceedings of the matters pending before me pursuant to N.J.A.C. 1:1-14.6(p).
7) In doing so, I **FIND** I communicated to the parties that was my intent in order to give the petitioner due process and not cause further delay.

8) I **FIND** that I communicated to the parties that evidence would need to be provided at hearing in order to prove the matter as a third-degree theft—no further evidence has been shown. Specifically, the certification and now testimony from a different investigator who is merely familiar with the process and not the factual basis supporting the "theft" from twenty years ago is not considered additional evidence. I **FIND** that I cannot take judicial notice of the price of cell phones from twenty years ago as posited by the OSP.

9) I still **FIND** for the reasons stated in my original decisions that in order to prove that Petitioner should be disqualified from public school employment in New Jersey that the OSP would need a fact witness, or other document, to prove that the amount exceeds the statutory amount to bring it to the level of a third-degree crime. Anything less is NOT a disqualifier.

10) I **FIND**, as communicated at length to the parties, that I already considered the proofs ordered in the Motion for Summary Decision as it was filed with the remand file.

11) I **FIND** that at the onset of receiving this matter on remand, since the DAG was new to this case, I gave clear, patient, and repeated reasoning as to why my initial decision stood and should resolve all of the outstanding issues in this case.

12) I **FIND** that I gave counsel ample opportunity to find a witness who had firsthand knowledge of the facts surrounding the incident that took place twenty years ago, or other reliable evidence.

13) I **STILL FIND** as outlined at length in my original decision on the Emergent matter and my Order denying summary decision that without such a witness, or a transcript of the factual basis for the Conditional Discharge, that it could not be proved. (C-1 and C2).

14) To that end, I still **FIND** that the newer "proofs" do not rise to the level of a disqualifying event.

15) The State produced Chief Investigator Robert Cowden at hearing. He testified credibly that he supervises the day-to-day operations and oversight of the OSP within the NJDOE and has done so for the last 8 months. While he has served the State of New Jersey for 31 years as a State Trooper, he is new to this role.

16) Chief Investigator Cowden admitted at hearing that he has no firsthand knowledge of the charges that gave rise to the Petitioner's Conditional Discharge. He also admits that he could not contact the police officer who did have firsthand knowledge of the facts surrounding the Petitioner's Conditional Discharge.

17) Investigator Cowden was honest in admitting that he has no receipts from the 2005 incident, that he is unaware of what type of phones were allegedly stolen and thus could not establish their current value or certainly their value from twenty years ago.

18) Investigator Cowden does not know what pages 6 and 7 of R-3 are. He spoke with someone at the Town of Clarkstown in Rockland County, who also was not able to give a clear answer as to circumstances surrounding the document. As a result, I explained at length, on the record, that this document was uncorroborated hearsay.

19) Investigator Cowden admitted, when pressed, that he could not say independently what the value of the cell phones were and what the facts were of the underlying conditional discharge or what the Petitioner's role was.

20) Investigator Cowden agreed that the Petitioner was fully responsive to his requests to provide documents surrounding his arrest, noting that the OSP needed to determine the value of the stolen property to confirm his ability to teach in New Jersey.

LEGAL ANALYSIS AND CONCLUSION

The purpose of the hearing on remand, is to determine whether the "prior conviction" in New York rises to the level of a third-degree theft in New Jersey (an amount over $500), and thus whether it is an automatic disqualification of his public-school employment.

Respondent argues that the New York statute for Criminal Possession of Stolen Property in the Fifth Degree is "substantially equivalent" to the New Jersey statute for Theft by Unlawful Taking or Disposition in the Third Degree. The New York statute states that a person is "guilty of criminal possession of stolen property in the fifth degree when he knowingly possesses stolen property, with intent to benefit himself or a person other

than an owner thereof or to impede the recovery by an owner thereof." N.Y. Penal Law § 165.40. It is a class A misdemeanor. Ibid. The New Jersey statute states that a person is "guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with purpose to deprive him thereof." N.J.S.A. 2C:20-3(a). In New Jersey, indictable offenses are separated into four "degrees," with fourth-degree offenses being the least severe. N.J.S.A. 2C:43-1. Third-degree theft is when the "amount involved exceeds $500 but is less than $75,000." N.J.S.A. 2C:20-2(b)(2)(a).

The New York fifth-degree criminal possession of stolen property Conditional Discharge from 2006 exists, however it is only a disqualifying crime in New Jersey if the State can prove that the theft was in an amount over $500. It did not prove that. Therefore, I **FIND** that while Mr. Ganaganayagam may have pled guilty to this fifth-degree misdemeanor offense in New York, the facts upon which this conditional discharge were based are uncertain and unsubstantiated, and the record is inconclusive as to whether, and under what circumstances, Mr. Ganaganayagan was involved in a cell-phone theft operation.

Having considered the parties' submissions in support of, and in opposition to, the motion for summary decision, the prior Emergent matter, as well as the hearing testimony and corresponding exhibits, I **CONCLUDE** that the State has not proved the material fact in dispute (the amount of the theft). The State relies heavily on uncorroborated hearsay to support its determination that Petitioner's prior actions amount to a third-degree theft in New Jersey. Here, as to the amount of the theft, the evidentiary record is simply lacking in any competent, non-hearsay evidence to determine what precisely occurred that led to the criminal charges and conditional discharge upon which the disqualification is based.

ORDER

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.

April 17, 2025 

DATE **DANIELLE PASQUALE**, ALJ

Date Received at Agency: April 17, 2025

Date E-Mailed to Parties: April 17, 2025

lr

attachment

APPENDIX

WITNESSES

Witnesses for Respondent:

Chief Investigator Robert Cowden

Witnesses for Petitioner:

Biruthan Ganaganayagam

EXHIBITS

Respondent's Exhibits:

R-1 Federal Return results

R-2 122 Letter

R-3 Response Documents (Pages 6-7 not in evidence, for identification purposes only)

R-4 110-BB Letter

Court's Exhibits:

C-1 Initial Decision Granting Emergent Relief (Biruthan Ganaganayagam v. N.J. Dep't of Educ., Office of Student Protection, EDU 03882-24, Initial Decision (Mar. 27, 2024) remanded, Comm'r (May 6, 2024)

C-2 Order Denying Summary Decision (Biruthan Ganaganayagam v. N.J. Dep't of Educ., Office of Student Protection, EDU 09893-24, Order Denying Summary Decision (March 4, 2025)