

DHPBL #311-97  
SB # 61-97

IN THE MATTER OF THE DISQUALIFI- :  
CATION FROM SCHOOL EMPLOYMENT : STATE BOARD OF EDUCATION  
OF R.J.B. : DECISION

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Decided by the Deputy Commissioner of Education, June 13, 1997

For the Petitioner-Appellant, R.J.B., pro se

R.J.B. (hereinafter "petitioner"), who was employed as a school bus driver by the Bayonne Board of Education, was disqualified by the Office of Criminal History Review of the Department of Education from continued employment in the State's schools after a criminal history record review conducted pursuant to N.J.S.A. 18A:39-19.1 revealed that he had been convicted of possession of drug paraphernalia in February 1997 following an arrest in May 1996.<sup>1</sup>

In a letter decision dated June 13, 1997, the Assistant Commissioner of Education, Executive Services, upheld the disqualification,<sup>2</sup> concluding that petitioner

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<sup>1</sup> We note that petitioner had been charged with possession of a controlled dangerous substance but had subsequently pleaded guilty to a reduced charge of possession of drug paraphernalia. We note, in addition, that petitioner had been convicted of a disqualifying offense, possession of marijuana, following an arrest in June 1983. However, in 1992, the Office of Criminal History Review determined that he had been rehabilitated and approved his school employment. Consequently, the only offense currently before us is for possession of drug paraphernalia in May 1996.

<sup>2</sup> N.J.S.A. 18A:4-33 authorizes the Commissioner to "designate an assistant commissioner as deputy commissioner with full power to act in his place and stead during any absence or inability of the commissioner and at such other times as the commissioner may designate." Such authority expressly includes assignment by the Commissioner of the "hearing and determination of controversies and disputes which may arise under the school laws...." N.J.S.A. 18A:4-34.

had failed to demonstrate clear and convincing evidence of his rehabilitation under the standard set forth in N.J.S.A. 18A:6-7.1.

Petitioner filed the instant appeal to the State Board of Education.

After a careful review of the record, we reverse the decision of the Assistant Commissioner. We find that petitioner's conviction for possession of drug paraphernalia is not a disqualifying offense under N.J.S.A. 18A:39-19.1. However, we do find that petitioner is disqualified from employment as a school bus driver through September 21, 1997 as a result of the suspension of his driving privileges.

N.J.S.A. 18A:39-19.1 provides, in pertinent part:

...A school bus driver shall be disqualified from employment or service if the individual's criminal history record reveals a record of conviction of any of the following crimes and offenses:

a. A crime or offense bearing upon or involving a sexual offense or child molestation or endangering the welfare of children or incompetents, as specified in section 1 of P.L.1986, c.116 (C.18A:6-7.1).

b. A crime or offense involving the manufacture, transportation, sale, possession, or habitual use of a "controlled dangerous substance" as defined in the "New Jersey Controlled Dangerous Substances Act," P.L.1970, c.226 C.24:21-1 et seq.

c. A crime or offense involving the use of force or the threat of force to or upon a person or property including: armed robbery, assault, kidnapping, arson, manslaughter and murder.

A school bus driver shall also be disqualified if the individual's bus driver's license is currently revoked or suspended by the Division of Motor Vehicles in accordance with R.S. 39:3-10.1.

The New Jersey Controlled Dangerous Substances Act, N.J.S.A. 24:21-1 et seq., defines controlled dangerous substance as "a drug, substance, or immediate precursor in Schedules I through V of article 2 of this act...." The only conviction before

us in this appeal is for possession of drug paraphernalia. N.J.S.A. 2C:36-2.<sup>3</sup> Drug paraphernalia, however, as defined in N.J.S.A. 2C:36-1, are not listed in Schedules I through V of the Controlled Dangerous Substances Act, N.J.S.A. 24:21-5 through N.J.S.A. 24:21-8.1, as a controlled dangerous substance.<sup>4</sup> As a result, petitioner's conviction for possession of drug paraphernalia was not a "crime or offense involving the manufacture, transportation, sale, possession, or habitual use of a 'controlled dangerous substance' as defined in the 'New Jersey Controlled Dangerous Substances Act'" so as to constitute a disqualifying offense under subsection (b) of N.J.S.A. 18A:39-19.1. Nor did such conviction involve a sexual offense within subsection (a) of that statute, or the use or threat of force within subsection (c).

However, the record reveals that petitioner's driver's licenses are currently suspended as the result of his drug paraphernalia conviction. As previously noted, a school bus driver is disqualified from employment in such capacity if his or her bus driver's license is currently revoked or suspended. N.J.S.A. 18A:39-19.1. Thus, although possession of drug paraphernalia is not a disqualifying offense under the

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<sup>3</sup> N.J.S.A. 2C:36-2 provides:

It shall be unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, ingest, inhale, or otherwise introduce into the human body a controlled dangerous substance or controlled substance analog in violation of the provisions of chapter 35 of this title. Any person who violates this section is guilty of a disorderly persons offense.

<sup>4</sup> N.J.S.A. 2C:36-1 defines "drug paraphernalia" as:

...all equipment, products and materials of any kind which are used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, ingesting, inhaling, or otherwise introducing into the human body a controlled dangerous substance or controlled substance analog in violation of the provisions of chapter 35 of this title....

statute, petitioner is disqualified from employment as a school bus driver through September 21, 1997, the expiration of that suspension.

In sum, given the clear terms of the statute, we are compelled to reverse the decision of the Assistant Commissioner disqualifying petitioner from service as a school bus driver pursuant to N.J.S.A. 18A:39-19.1 on the basis of his conviction for possession of drug paraphernalia. Nonetheless, we conclude that petitioner is disqualified from such employment through September 21, 1997 as the result of the suspension of his driver's licenses. We stress, in addition, that while petitioner's conviction for possession of drug paraphernalia is not a disqualifying offense under N.J.S.A. 18A:39-19.1, nothing in our decision herein would require the Bayonne Board to reemploy him following the expiration of his current disqualification.<sup>5</sup>

Ronald K. Butcher abstained.

September 3, 1997

Date of mailing \_\_\_\_\_

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<sup>5</sup> We note that, while not necessary for a determination of this case, petitioner has submitted letters in support of his rehabilitation claim. Petitioner's supervisor in Bayonne asserts that his "attendance, punctuality, and overall knowledge towards his position are excellent....[Petitioner's] dedication towards his position has been above the normal standards....All results of testing done since the original incident have proven that [petitioner] has not been involved in any type of drugs." Petitioner's supervisor at a part-time position commends him as "reliable, honest and trusting." Another supervisor in a part-time position praises petitioner as displaying "honest and honorable ethics." Petitioner participated in individual and group substance abuse therapy, and random drug tests administered between June 1996 and March 1997 were negative. He complied with all the conditions of his probation, and there have been no further arrests.