

DHPBL #313-97  
SB # 60-97

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

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

Decided by the State Board of Education, September 3, 1997

Remanded by the State Board of Education, February 4, 1998

Decision on remand by the Commissioner of Education, March 8, 1999

For the Petitioner-Appellant, Bucceri & Pincus (Gregory T. Syrek, Esq., of  
Counsel)

For the Respondent-Respondent, Terri Cutrera, Deputy Attorney General  
(Peter Verniero, Attorney General of New Jersey)

J.W. (hereinafter "petitioner"), who was employed as a school bus driver for the Hudson County Schools of Technology, 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 she had been convicted of possession of drug paraphernalia in March 1992 following an arrest in February 1992. Petitioner appealed her disqualification to the Commissioner of Education, contending that she was rehabilitated.<sup>1</sup>

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<sup>1</sup> We note that petitioner's criminal history record review was conducted prior to the 1998 amendments to N.J.S.A. 18A:6-7.1 and N.J.S.A. 18A:39-19.1 which expressly included possession of drug paraphernalia as a disqualifying offense. The 1998 amendments also eliminated rehabilitation as a basis for

In a letter decision dated June 13, 1997, the Assistant Commissioner of Education, Executive Services, upheld the disqualification,<sup>2</sup> concluding that petitioner had failed to demonstrate clear and convincing evidence of her rehabilitation under the standard set forth in N.J.S.A. 18A:6-7.1.

Petitioner filed an appeal to the State Board of Education. In support of her appeal, petitioner argued for the first time that possession of drug paraphernalia was not a disqualifying offense under N.J.S.A. 18A:39-19.1. The petitioner also renewed her claim that she had demonstrated her rehabilitation. On September 3, 1997, we reversed the Assistant Commissioner's determination to uphold petitioner's disqualification, concluding that a 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 N.J.S.A. 18A:39-19.1.<sup>3</sup>

On September 15, 1997, a Deputy Attorney General representing the Commissioner filed a motion on his behalf to participate in this matter for the purpose of

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challenging a disqualification determination. Thus, all references in this decision are to those statutes as they existed prior to the 1998 amendments.

<sup>2</sup> N.J.S.A. 18A:4-34 authorizes the Commissioner to assign to an assistant commissioner the "hearing and determination of controversies and disputes which may arise under the school laws...."

<sup>3</sup> N.J.S.A. 18A:39-19.1, as then in effect, provided 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.

seeking reconsideration/clarification of our decision. The Deputy Attorney General argued that the statute should be interpreted broadly so as to effectuate the Legislature's intent that possession of drug paraphernalia be considered a disqualifying offense. On February 4, 1998, we granted the Commissioner's motion. In reconsidering our earlier decision, we noted that the legal question raised by this appeal was one of first impression and that the interpretation of the statute urged by the Commissioner did not appear to be unreasonable. However, we observed that such position had not been formally adopted by this agency and that the issue had not previously been litigated. As a result, we concluded that the proper course was to remand this matter to the Commissioner with the direction that he transmit it to the Office of Administrative Law for initial determination in order to consider all of the relevant legal arguments and circumstances relating thereto. We retained jurisdiction.

On January 19, 1999, an Administrative Law Judge ("ALJ") concluded that the broad interpretation of N.J.S.A. 18A:39-19.1 advocated by the Commissioner more closely comported with the true legislative intent. Observing that a conviction for possession of drug paraphernalia required either the use or intent to use a controlled dangerous substance in connection with the paraphernalia, the ALJ stated that:

Viewed in terms of the public interest sought to be served by the statute, the language of N.J.S.A. 18A:39-19.1 is sufficiently broad, and the common understanding of the entire phrase comprising N.J.S.A. 18A:39-19.1b ("involving the manufacture, transportation, sale, possession, or habitual use of a 'controlled dangerous substance'") leads to a commonsensible conclusion that a conviction for possession of drug paraphernalia fits within the scope of a natural reading of the statute. The word "involving" is sufficiently expansive to support such a reasonable interpretation.

Initial Decision on Remand, slip op. at 11.

On March 8, 1999, the Commissioner adopted the ALJ's recommendation, agreeing that the petitioner had properly been disqualified from school employment as a result of her conviction. Like the ALJ, the Commissioner stressed that a conviction for possession of drug paraphernalia was predicated upon an individual's actual use or intent to use the paraphernalia in conjunction with a controlled dangerous substance. The Commissioner added that the fact that "the Legislature has expressly included offenses involving drug paraphernalia in its recent amendments to N.J.S.A. 18A:6-7.1 et seq. and N.J.S.A. 18 A:39-19.1 is not necessarily dispositive of appellant's claim, as she urges, in that the Senate Education Committee in adopting the revisions specified that it 'amended the bill to further refine the list of crimes and offenses for which an individual may be disqualified from employment in a school district.' (emphasis added) (Respondent's Brief at Ra19, Senate Education Committee Statement to S. 851)." Commissioner's Decision, slip op. at 16. Pursuant to our retention of jurisdiction, the Commissioner transmitted this matter back to us.

After a careful review of the record, including written arguments submitted to us by the petitioner subsequent to the Commissioner's decision on remand, we agree with the Commissioner's determination that a conviction for possession of drug paraphernalia constituted a disqualifying offense under N.J.S.A. 18A:39-19.1 as then in effect. We therefore affirm that determination by the Commissioner for the reasons expressed in his decision.

We turn, therefore, to petitioner's contention that she has demonstrated her rehabilitation. In support of her position, petitioner submitted a discharge summary confirming that she had completed outpatient therapy in 1993, a certificate indicating that she had completed an introductory course in data processing in 1994, and several letters of support.

While it appears that petitioner has made progress towards rehabilitation, we agree with the Assistant Commissioner's conclusion in his June 13, 1997 decision that, on the basis of the factors required to be considered, petitioner has not affirmatively demonstrated her rehabilitation by clear and convincing evidence. See N.J.S.A. 18A:6-7.1(e). As the Assistant Commissioner stated in analyzing those factors:

...I find that the nature and responsibility of the position which [petitioner] seeks to occupy, that of a school bus driver, is particularly sensitive, since it charges the individual with the physical care and well-being of potentially large groups of children. Further, I note that [petitioner's] offense, committed when she was almost 42 years of age and, thus, not attributable to immaturity, is very recent and very serious.

Assistant Commissioner's Decision of June 13, 1997, slip op. at 1-2.

We reiterate in that regard that a conviction for possession of drug paraphernalia requires that the individual used or intended to use the paraphernalia in conjunction with a controlled dangerous substance.

We therefore affirm the Commissioner's determination that petitioner was convicted of a disqualifying offense and, in addition, agree that she has failed to affirmatively establish her rehabilitation by clear and convincing evidence as required by N.J.S.A. 18A:6-7.1.

May 5, 1999

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