

# AUTOMATIC F: REFORMING TEACHER DISQUALIFICATION LAWS IN NEW JERSEY

## INTRODUCTION

In 1971, when Peter Bond was about twenty years old, he was convicted of a drug offense.<sup>1</sup> He served his penalty: one year probation.<sup>2</sup> By fifty-nine years old, Bond had become a district manager of a food service company and was responsible for supervising the food operations of “nearly 100 schools.”<sup>3</sup> After spending thirty-nine years committing no other crimes, he received a letter in the mail that turned his life upside down.<sup>4</sup> Due to the conviction nearly four decades earlier, he was forbidden by law from working in any educational institution in New Jersey.<sup>5</sup> On the brink of losing his job, Bond applied for emergent relief<sup>6</sup> challenging his disqualification.<sup>7</sup> The administrative law judge denied the application for emergent relief.<sup>8</sup> Why? In large part, his application was denied because there was no “reasonable probability of ultimate success on the merits” that he would be able to reverse his disqualification.<sup>9</sup>

This result is not an anomaly, nor was the judge using her discretion to be harsh—in fact, she was left with no choice. In New Jersey, any individual who has been convicted of a controlled dangerous substance offense is automatically and permanently disqualified from working in schools, with no room for judicial discretion and no chance for the applicant to prove rehabilitation.<sup>10</sup> This means that people like Peter Bond will never have the

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1. Order for Emergent Relief, *Bond v. N. J. State Dep’t of Educ.*, No. EDU6007-10, 2010 N.J. AGEN LEXIS 1020, at \*1 (N.J. Off. Admin. L. June 22, 2010) (initial decision).

2. *Id.* at \*3–4.

3. *Id.*

4. *Id.* at \*2.

5. *Id.*

6. Petitions for emergent relief allow individuals “subject to the jurisdiction of the Commissioner” to quickly receive interim relief pending a final decision by the Commissioner. N.J. ADMIN. CODE § 6A:3-1.6. To qualify for emergent relief, the plaintiff must demonstrate:

1. The petitioner will suffer irreparable harm if the requested relief is not granted;
2. The legal right underlying petitioner’s claim is settled;
3. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and
4. When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.

*Id.*

7. *Bond*, 2010 N.J. AGEN LEXIS at \*2–3.

8. *Id.* at \*15.

9. *Id.* at \*11 (citing *Crowe v. DeGioia*, 447 A.2d 173, 177 (N.J. 1982)).

10. See N.J. STAT. ANN. § 18A:6-7.1 (West 2011).

opportunity to work in any public school in New Jersey.<sup>11</sup> This outcome traces its roots to a legislative desire to protect children.<sup>12</sup> This Note argues that New Jersey's legislature has lost sight of this original aim, resulting in an unnecessarily strict teacher disqualification statute that ultimately harms students and the education system.

In Part I, this Note analyzes New Jersey's teacher disqualification legislation. In Part II, New York's teacher disqualification statute is analyzed and compared to its counterpart in New Jersey. Part III explains the unfavorable impact of New Jersey's statute on certain groups, and why this is not only inequitable but also hinders students from receiving the best possible education. Finally, Part IV proposes a preferable framework that New Jersey should adopt. Under this proposed framework, the primary intent behind teacher disqualification statutes returns to its original intent: promoting the safety of students.<sup>13</sup> The framework proposes that crimes of safety and crimes of morality should be categorized separately,<sup>14</sup> with crimes of safety remaining automatically and permanently disqualifying while crimes of morality are left to a court's discretion.<sup>15</sup> Rehabilitation will be considered for any morality crime disqualification.<sup>16</sup> Lastly, the framework will include an appeals process for any disqualification due to a morality crime.<sup>17</sup>

## I. TEACHER DISQUALIFICATION IN NEW JERSEY

New Jersey law mandates that no school can employ any person if that person has a criminal history "which would disqualify that individual from being employed or utilized in such capacity or position."<sup>18</sup> The list of disqualifying crimes is broad, with some listed offenses including endangerment or neglect of child welfare;<sup>19</sup> "[a]n offense involving the manufacture, transportation, sale, possession, distribution or habitual use of

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11. New Jersey's teacher disqualification statute applies to any "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." *Id.*

12. *See infra* Section I.A.

13. *See infra* Section IV.A.

14. *See infra* Section IV.B.

15. *See infra* Section IV.C.

16. *See infra* Section IV.D.

17. *See infra* Section IV.E.

18. N.J. STAT. ANN. § 18A:6-7.1 (West 2011). Although this Note primarily focuses on teachers, the statute applies to 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." *Id.*

19. *Id.* § 18A:6-7.1(a).

a ‘controlled dangerous substance’’,<sup>20</sup> “[a] crime involving the use of force or the threat of force to or upon a person or property”,<sup>21</sup> usury;<sup>22</sup> and perjury.<sup>23</sup> An individual will be permanently disqualified from employment in schools if a criminal history record check reveals any of the enumerated offenses.<sup>24</sup>

Although there used to be a provision allowing for an individual to demonstrate their rehabilitation,<sup>25</sup> this was removed in 1998 without explanation in the legislative record.<sup>26</sup>

#### *A. Purpose of New Jersey Teacher Disqualification Law*

When New Jersey’s teacher disqualification statute was first passed in 1986, Governor Thomas Kean stated that the bill was “yet another step in our ongoing efforts to extend the greatest protection possible to our youngsters in school,” and that it was “tragically unfortunate that children have been subjected to abuses by school district employees who, upon investigation after the fact, have been found to have records of such abuse in the past.”<sup>27</sup> The only permanently disqualifying crimes enumerated in the original statute were those involving a sexual offense, child molestation, and “endangering the welfare of children or incompetents.”<sup>28</sup>

More offenses were gradually added to the list of disqualifying offenses over time. In 1998, drug offenses were added to the statute.<sup>29</sup> Again, the

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20. *Id.* § 18A:6-7.1(b).

21. *Id.* § 18A:6-7.1(c)(1).

22. *Id.* § 18A:6-7.1(c)(2).

23. *Id.*

24. *Id.* § 18A:6-7.1.

25. Rehabilitation is commonly understood as “[t]he process of seeking to improve a criminal’s character and outlook so that he or she can function in society without committing other crimes.” *Rehabilitation*, BLACK’S LAW DICTIONARY (11th ed. 2019). The New Jersey legislature, in an act promoting the hiring of rehabilitated individuals, has stated that an individual is rehabilitated when “the proposed employment would not be incompatible with the welfare of society.” N.J. STAT. ANN. § 2A:168A-3 (West 2011). See *infra* Section II.C for more information regarding rehabilitation in New Jersey in relation to prospective teachers. See § 2A:168A-3 for more information regarding the removal of the opportunity for potential teachers to overcome a disqualifying conviction by demonstrating that they have been rehabilitated.

26. See, e.g., N.J. S. Educ. Comm. Statement, 208th Legis., S.B. 851 (May 14, 1998).

27. Press Release, N.J. Off. of the Governor, News Release for S.223 (Oct. 8, 1986), <https://repo.njstatelib.org/bitstream/handle/10929.1/10503/L1986c116.pdf?sequence=1&isAllowed=y> [<https://perma.cc/SEL2-CTX7>].

28. 1986 N.J. Laws 736.

29. 1998 N.J. Sess. Law. Serv. 248 (West). See *infra* Section I.B for a discussion of the same bill’s elimination of the previously included rehabilitation provision. See also Press Release, N.J. Off. of the Governor, News Release for S.851 (“The bill expands the list of disqualifying crimes; deletes a provision authorizing the employment of a persons with a disqualifying crime if rehabilitation has been demonstration and prohibits schools from provisionally hiring candidates pending completion of their criminal history record checks, except in limited circumstances.”),

purported purpose was to protect children, but the inclusion of drug offenses expanded the statute's reach from those offenses that directly endangered physical safety of children to "screen[ing] for the type of past behavior that could pose a threat to the safety of our children."<sup>30</sup> This shift away from crimes that directly impacted the safety of students continued, and more crimes unrelated to physical safety were added to the disqualifying statute. Today, usury,<sup>31</sup> perjury and false swearing,<sup>32</sup> resisting arrest,<sup>33</sup> and escape<sup>34</sup> are among those that will automatically disqualify an individual from becoming a teacher or school employee.<sup>35</sup> As compared to offenses such as child molestation, usury has little relation to the safety of children. Instead, barring individuals convicted of usury from becoming teachers suggests that New Jersey's legislature believes that these individuals are morally unfit to educate the state's youth, gradually moving away from the original purpose: protecting the physical safety of children.

### *B. Rehabilitation in New Jersey*

Despite the fact that rehabilitation is generally looked upon favorably under New Jersey law, the courts have not allowed rehabilitation to overcome a disqualification under New Jersey's teacher disqualification statute.<sup>36</sup> Under New Jersey's Rehabilitated Convicted Offenders Act (RCOA),<sup>37</sup> persons generally "shall not be disqualified or discriminated against by any licensing authority because of any conviction for a crime."<sup>38</sup> This general rule gives way when "the conviction relates adversely to the occupation, trade, vocation, profession or business for which the license or

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[https://repo.njstatelib.org/bitstream/handle/10929.1/20067/a1902\\_1.pdf?sequence=2&isAllowed=y](https://repo.njstatelib.org/bitstream/handle/10929.1/20067/a1902_1.pdf?sequence=2&isAllowed=y)  
[<https://perma.cc/9Y5G-DQE9>].

30. N.J. S. Sponsor's Statement, S. 3513 (1989), <https://repo.njstatelib.org/bitstream/handle/10929.1/10262/L1989c156.pdf?sequence=1&isAllowed=y> [<https://perma.cc/85KS-LR46>].

31. See N.J. STAT. ANN. § 2C:21-19 (West 2010) (generally applies to individuals who loan "money or other property at a rate exceeding the maximum rate permitted by law").

32. See *id.* § 2C:28-3 (West 1981) (making written false statements that the individual "does not believe to be true" to authorities).

33. See *id.* § 2C:29-2 (West 2000) ("[A] person is guilty of a disorderly persons offense if he purposely prevents or attempts to prevent a law enforcement officer from effecting an arrest.").

34. See *id.* § 2C:29-5 (West 1991) ("A person commits an offense if he without lawful authority removes himself from official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited period.").

35. *Id.* § 18A:6-7.1 (West 2011).

36. See, e.g., *Vandergast v. Dep't of Educ.*, No. EDU 13245-19, 2020 N.J. AGEN LEXIS 22, at \*4 (N.J. Off. Admin. L. Jan. 15, 2020) (initial decision) ("The petitioner . . . requests a review of his case and a chance to demonstrate his rehabilitation . . . . The statute mandates permanent disqualification and does not provide any leniency or discretion in regard to its application."), aff'd, 2020 N.J. AGEN LEXIS 276, at \*1 (Feb. 20, 2020) (final agency decision). See also *infra* note 47.

37. N.J. STAT. ANN. § 2A:168A-1 (West 1982).

38. *Id.*

certificate is sought.”<sup>39</sup> In determining whether the conviction adversely relates to the vocation, the licensing authority is to consider factors such as the “nature and duties of the . . . vocation,” the nature of the crime, the age of the individual when they committed the crime, and circumstances surrounding the commission of the crime.<sup>40</sup> If the applicant receives a “certificate of the Federal or State Parole Board, or of the Chief Probation Officer . . . who has supervised the applicant’s probation” stating that the employment “would not be incompatible with the welfare of society,” a licensing authority may not disqualify an individual based on that offense.<sup>41</sup> Though law enforcement agencies are specifically exempted within the Act,<sup>42</sup> no such exception is provided within the Act applying to schools or teachers.

Despite the fact that the RCOA is meant to prevent bars to certification “[n]otwithstanding any law to the contrary,”<sup>43</sup> the Act has been consistently treated as inapplicable to individuals disqualified under New Jersey’s teacher disqualification statute.<sup>44</sup> Rationales for this nonapplicability have included the vulnerability of children,<sup>45</sup> explicit language in the teacher disqualification statute stating its permanent nature,<sup>46</sup> and lack of leniency provided in the statute.<sup>47</sup>

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39. *Id.*

40. *Id.* § 2A:168A-2.

41. *Id.* § 2A:168A-3.

42. *Id.* § 2A:168A-6.

43. *Id.* § 2A:168A-7. *Notwithstanding* means “[d]espite; in spite of.” *Notwithstanding*, BLACK’S LAW DICTIONARY (11th ed. 2019). Therefore, this statement indicates that this Act is to supersede other contrary laws. *See also* ANTONIN SCALIA & BRYAN A. GARNER, READING LAW 127 (2012) (“Drafters often use *notwithstanding* in a catchall provision . . . [T]he catchall *notwithstanding* is a fail-safe way of ensuring that the clause it introduces will absolutely, positively prevail.”).

44. *See, e.g.*, Order Denying Emergent Relief, *Tyson v. Dep’t of Educ.*, No. EDU 8469-08, 2008 N.J. AGEN LEXIS 879, at \*10-11 (N.J. Off. Admin. L. Sep. 2, 2008) (initial decision), (“the Legislature intended the petitioner . . . to be ‘permanently disqualified’ from employment or service in a local school district . . . [U]nder the school laws, the petitioner appears to be disqualified from employment by the local school district.”), *aff’d*, 2008 N.J. AGEN LEXIS 1079, at \*1 (Oct. 14, 2008) (final agency decision); *Perry v. N.J. State Dep’t of Educ.*, No. EDU 11359-10, 2011 N.J. AGEN LEXIS 856, at \*2 (N.J. Off. Admin. L. Aug. 17, 2011) (final agency decision) (“[N.J. STAT. ANN. § 18A:6-7.1] contains no provisions allowing mitigation for alleged rehabilitation.”); *Vandergast v. Dep’t of Educ.*, No. EDU 13245-19, 2020 N.J. AGEN LEXIS 22, at \*4-5 (N.J. Off. Admin. L. Jan. 15, 2020) (initial decision) (“The statute mandates permanent disqualification and does not provide any leniency or discretion in regard to its application.”), *aff’d*, 2020 N.J. AGEN LEXIS 276, at \*1 (Feb. 20, 2020) (final agency decision).

45. *Tyson*, 2008 N.J. AGEN LEXIS at \*9-10 (“The Rehabilitated Convicted Offenders Act does not expressly repeal the relevant school laws and there is a strong presumption against repeal of a statute by implication . . . The cited school laws are more specific to the general subject matter and the Department’s construction of those laws is consistent with the well-known legislative intent to protect vulnerable school children.”).

46. *Perry*, 2011 N.J. AGEN LEXIS at \*2 (“[N.J. STAT. ANN. § 18A:6-7.1] contains no provisions allowing mitigation for alleged rehabilitation.”).

47. *Vandergast*, 2020 N.J. AGEN LEXIS, at \*4-5 (“The statute mandates permanent disqualification and does not provide any leniency or discretion in regard to its application.”).

Although New Jersey's teacher disqualification statute has been applied consistently to public school teachers and workers, the law is shifting to allow more discretion in hiring in nonpublic schools, allowing rehabilitation to be considered in such cases. In one recent case involving a private school bus driver convicted for misappropriation of an employer's money, the Commissioner of Education found the RCOA controlling and allowed for that individual to demonstrate rehabilitation.<sup>48</sup> That decision is distinguished from others under the teacher disqualification statute because private schools have "the discretion to employ a person who would be disqualified from public school employment," and the Commissioner of Education lacks power to determine whether an individual may work in a private school.<sup>49</sup> Although not mentioned in the final agency decision, the administrative law judge noted that the RCOA should apply to the case because "it is doubtful that [a school bus driver] could be considered 'a position that has access to sensitive information that could threaten the public health, welfare, or safety.'"<sup>50</sup> Strangely, there have yet to be any cases involving public schools that focused on the same language in the RCOA, though an argument on this ground could alter the relationship between the two acts.<sup>51</sup>

### *C. Appeals in New Jersey*

New Jersey's teacher disqualification statute does not allow for appeals of disqualifications, other than an appeal "to challenge the accuracy of the disqualifying criminal history record."<sup>52</sup> This lack of opportunity to challenge such a finding is evidenced by the case of Peter Bond presented at the outset of this Note.<sup>53</sup> Even four decades after his conviction of a crime seemingly unrelated to his ability to work in schools, Bond was unable to seek recourse to save his career due to the disallowance of appeals in New Jersey.<sup>54</sup>

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48. Baron v. N.J. Dep't of Educ., No. EDU 11417-19, 2020 N.J. AGEN LEXIS 209, at \*1 (N.J. Off. Admin. L. Mar. 13, 2020) (final agency decision).

49. *Id.* at \*2.

50. Baron v. N.J. Dep't of Educ., No. EDU 11417-19, 2020 N.J. AGEN LEXIS 82, at \*27 (N.J. Off. Admin. L. Jan. 29, 2020) (initial decision), *aff'd*, 2020 N.J. AGEN LEXIS 209 (Mar. 13, 2020) (final agency decision).

51. The above analysis of the RCOA indicates that even if the teacher disqualification statute is not amended, there may be opportunity to instead narrow its scope using the RCOA.

52. N.J. STAT. ANN. § 18A:6-7.1(e) (West 2011).

53. Order for Emergent Relief, Bond v. N. J. State Dep't of Educ., No. EDU6007-10, 2010 N.J. AGEN LEXIS 1020 (N.J. Off. Admin. L. June 22, 2010) (initial decision).

54. *Id.*

#### *D. Alternative Methods of Disqualification in New Jersey*

A review of alternative methods of teacher disqualification reveals that there are already alternative frameworks in place to disqualify teachers who are not automatically disqualified under the New Jersey's teacher disqualification statute. This demonstrates the feasibility of adopting a less strict method of disqualification for some crimes, and calls into question the strict and rigid nature of the disqualification statute.

In New Jersey, the State Board of Examiners—the agency responsible for issuing teachers' certificates required for public school employment<sup>55</sup>—can deny a teacher's certificate for any reason set forth in New Jersey Administrative Code § 6A:9B-4.4.<sup>56</sup> These reasons include “demonstrated inefficiency, incapacity, conduct unbecoming a teacher, or other just cause.”<sup>57</sup> The use of these statutes is not rare.<sup>58</sup> The reasons for denial are broad enough to cover an extremely wide range of potential offenses. For example, conduct unbecoming a teacher is often defined as “conduct ‘which adversely affects the morale or efficiency of the [department]’ or ‘has a tendency to destroy the public respect for [government] employees and confidence in the operation of [public] services.’”<sup>59</sup> A short list of offenses that have been found to be conduct unbecoming include the use of corporal

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55. “The State Board of Examiners is the educator licensing agency in New Jersey . . . It issues all certificates that are required for public school employment.” *State Board of Examiners*, STATE OF N.J. DEP’T OF EDUC., <https://nj.gov/education/license/sbe.htm> [https://perma.cc/K2EE-J67Q] (last visited Mar. 30, 2023).

56. N.J. ADMIN. CODE § 6A:9B-4.1 (West 2015).

57. *Id.* § 6A:9B-4.4.

58. See, e.g., Kelly Heyboer, *N.J. Is Yanking More Teachers' Licenses. Here's How It Happens*, NJ.COM (Apr. 12, 2018, 10:08 AM), [https://www.nj.com/education/2018/04/why\\_nj\\_is\\_yanking\\_so\\_many\\_teachers\\_licenses\\_explai.html](https://www.nj.com/education/2018/04/why_nj_is_yanking_so_many_teachers_licenses_explai.html) [https://perma.cc/DE2P-3PMQ] (“Seventy six times last year the state Board of Examiners revoked a teacher’s license with a quick, usually-unanimous vote . . . [the Board] essentially said the teachers had done something so heinous, so unforgivable, they were banned from ever working in a New Jersey public school again.”).

59. *Bound Brook Bd. of Educ. v. Ciripompa*, 153 A.3d 931, 937 (N.J. 2017) (quoting *In re Young*, 995 A.2d 826, 835 (N.J. 2010)) (alteration in original).

punishment,<sup>60</sup> bribery unrelated to the individual's teaching position,<sup>61</sup> a conviction for resisting arrest and eluding,<sup>62</sup> and cocaine use.<sup>63</sup>

Teachers have an opportunity to respond to allegations against them by the Board of Examiners, which may proceed to a hearing at the Office of Administrative Law.<sup>64</sup>

## II. TEACHER DISQUALIFICATION IN NEW YORK: A BETTER ALTERNATIVE

New York law offers much more flexibility than New Jersey's when it comes to school employee disqualification. In New York, if a criminal history record check reveals a criminal conviction, the New York State Education Department must determine whether a clearance should be issued, and must consider Sections 752 and 753 of the New York Correction Laws in making this determination.<sup>65</sup> Under Section 752 of the New York

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60. *In re* Certificates of Lisa Davenport, No. 1718-265 (N.J. Dep't of Educ. State Bd. of Exam'rs Jan. 23, 2020), <https://www.nj.gov/education/legal/examiners/2020/1718-265.pdf> [<https://perma.cc/QE8C-F2UK>]. Davenport "admitted that she did 'swat' a child." *Id.* at 1. The Board of Examiners determined that the incident "clearly indicates a serious lapse in judgment," which led to a finding that this qualifies as conduct unbecoming a teacher. *Id.* at 3. For this conduct, the Board of Examiners ultimately imposed a two-year suspension of Davenport's teaching certificates rather than permanent revocation due to the "lack of detail . . . as to the egregious nature of the corporal punishment and swatting." *Id.*

61. *In re* Certificates of Kesnold T. Baptiste, No. 1617-154 (N.J. Dep't of Educ. State Bd. of Exam'rs Feb. 28, 2020), <https://www.nj.gov/education/legal/examiners/2020/1617-154.pdf> [<https://perma.cc/FFC7-FD7J>]. Baptiste was formerly a chiropractor who "received monetary kickbacks for referring patients to certain MRI facilities." *Id.* at 1. Despite Baptiste's arguments that "his situation is unrelated to his teaching certificates or his fitness to serve as a teacher," the Board of Examiners found that the prior conduct "indicates a serious lapse in judgment," and that "Baptiste's knowledge that he was engaging in criminal behavior, and subsequent disregard for that, is significant." *Id.* at 1, 3. The Board ultimately revoked his certificates. *Id.* at 3.

62. *In re* Certificates of Karen F. Ball, No. 1819-215 (N.J. Dep't of Educ. State Bd. of Exam'rs May 14, 2020), <https://www.nj.gov/education/legal/examiners/2020/1819-215.pdf> [<https://perma.cc/9J9V-FTBU>]. Ball "failed to stop at the instructions of law enforcement after being spotted drinking alcohol at a traffic light." *Id.* at 1. The Board explained that the Teacher Disqualification Statute was "to protect public school pupils from contact with individuals whom it deemed were not proper examples for them." *Id.* at 3. Finding that her conduct "falls far short of a role model," the Board revoked her certificates. *Id.* at 3. Note that the court's explanation of the purpose of the Teacher Disqualification Act is inconsistent with the legislation's actual explicit intent. *Id.* Rather, focusing on whether teachers are role models is more consistent with the Board of Examiners' disqualifications.

63. *In re* Certificates of Melody Giovannetti, No. 1819-135 (N.J. Dep't of Educ. State Bd. of Exam'rs May 14, 2020), <https://www.nj.gov/education/legal/examiners/2020/1819-135.pdf> [<https://perma.cc/3DEM-7SVM>]. After arriving at school "disheveled, off balance and having difficulty articulating her words," Giovannetti failed a drug test, "test[ing] positive for cocaine." *Id.* at 1. The Board ultimately revoked her certificates, finding that her "conduct in coming to school while under the influence of cocaine clearly indicates a serious lapse in judgement." *Id.* at 3.

64. N.J. ADMIN. CODE § 6A:9B-4.6 (West 2015).

65. See N.Y. COMP. CODES R. & REGS. tit. 8, § 87.5 (2021).

Correction Laws, no individual may be denied a license or employment due to their previous convictions unless:

- (1) there is a direct relationship between one or more of the previous criminal offenses and the specific license or employment sought or held by the individual; or (2) the issuance or continuation of the license or the granting or continuation of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.<sup>66</sup>

Thus, under New York law, a person cannot be denied employment because of a criminal conviction unless one of the specific exceptions apply. Section 753 of the New York Corrections Laws sets forth several factors to determine whether a previous criminal conviction disqualifies an individual. These factors include, but are not limited to: public policy considerations, the time that has elapsed since the offense, the individual's age at the time of the offense, and any potential rehabilitation.<sup>67</sup>

Despite the fact that the statutes above allow for some discretion, New York does label some offenses as automatically disqualifying. For example, sex offenses, violent felonies committed against a child when the child was the intended victim, or defrauding the government are all automatically disqualifying offenses.<sup>68</sup> These automatically disqualifying crimes bear resemblance to the small list of automatically disqualifying crimes in New Jersey's first disqualification statute.<sup>69</sup>

#### *A. Intent of New York's Teacher Disqualification Law*

The intent behind the relevant New York law differs in several significant respects from that in New Jersey. The New Jersey law is a statute that actively disqualifies individuals working in schools. Conversely, in New York, Section 752 broadly prevents the unfair discrimination over all professions of individuals previously convicted of crimes,<sup>70</sup> and Section 753 details the factors to be considered in deciding whether a previous crime

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66. N.Y. CORRECT. LAW § 752 (Consol. 2007).

67. *Id.* § 753 (Consol. 2007). See *infra* Section II.D for a list of factors used in determining whether an individual has been rehabilitated are addressed with examples.

68. N.Y. EDUC. LAW § 305(7-a)(c) (Consol. 2022) ("Upon receipt of a certified copy of a criminal history record showing that a teacher has been convicted of a sex offense . . . or a violent felony offense or offenses committed against a child when such child was the intended victim of such offense . . . the commissioner shall automatically revoke and annul the teaching certificate of such teacher without the right to a hearing."); *Id.* § 305(7-b)(a) ("[I]t shall be his or her duty, to revoke and annul . . . the certificate of a school administrator or supervisor convicted of [specific offenses including] defrauding the government as defined in section 195.20 of the penal law, and any such offense in any other jurisdiction which includes all of the elements of such felony . . .").

69. See *supra* Section I.A.

70. N.Y. CORRECT. LAW § 752 (Consol. 2007).

should be disqualifying for any given profession.<sup>71</sup> Therefore, instead of a statute specifically targeting the disqualification of teachers, New York's statutes protect potential teachers and limit the ability to remove them.

A legislative memorandum at the time of the New York bill's passage in 1976 explained that the bill's purpose was to "facilitate the obtainment of employment for ex-offenders and to aid their rehabilitation by eliminating many of the obstacles to employment."<sup>72</sup> Governor Hugh Carey expanded on the rationale for pursuing this goal, stating, "[p]roviding a former offender a fair opportunity for a job is a matter of basic human fairness, as well as one of the surest ways to reduce crime."<sup>73</sup>

The intent behind Section 305<sup>74</sup> further distinguishes New York's law from New Jersey's teacher disqualification statute. Section 305 requires New York's Commissioner of Education to "automatically revoke and annul [a teacher's certificate] without the right to a hearing" upon learning that the individual was convicted of a sex offense or a violent offense against a child.<sup>75</sup> At the time of passage, the Counsel and Deputy Commissioner for Legal Affairs of the State Education Department explained that one rationale for the addition of the automatic disqualification provision<sup>76</sup> was that teachers convicted of those crimes "ha[ve] demonstrated a lack of good moral character and, for the protection of the children under that teacher's care, should no longer be allowed access to children."<sup>77</sup> She also noted that the law would remove the need for a full due process hearing.<sup>78</sup>

### *B. Rehabilitation in New York*

Unlike New Jersey, which does not allow disqualified public school applicants to demonstrate rehabilitation in any circumstances,<sup>79</sup> New York allows for demonstrations of rehabilitation for some crimes.<sup>80</sup> The New York statute mandates the consideration of "[a]ny information produced by

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71. *Id.* § 753.

72. Memorandum in Support of S. 4222-C and A. 5393-C, Sen. Ralph J. Marino & Assemb. Stanley Fink (1976) (on file with author).

73. *Id.*

74. *See supra* note 68 and accompanying text.

75. N.Y. EDUC. LAW § 305(7-a)(c) (Consol. 2022).

76. The provision, added in 2008, mandates that the Commissioner automatically disqualify any individual convicted of a sex offense or violence against a minor. 2008 N.Y. Laws ch. 296, § 1 (codified as N.Y. EDUC. LAW § 305).

77. Letter from N.Y. Sen. Kathy A. Ahearn to Counsel to the Governor of N.Y., Recommendation for A. 11500-A (July 1, 2008), *as reprinted in* 2008 N.Y. Laws ch. 296, at 12, <https://digitalcollections.archives.nysesd.gov/index.php/Detail/objects/23103> [<https://perma.cc/B3BG-673Z>].

78. *Id.*

79. *See supra* Section I.B.

80. N.Y. CORRECT. LAW § 753 (Consol. 2007); *see supra* Section II.B.

the person, or produced on his behalf, in regard to his rehabilitation and good conduct.”<sup>81</sup> That statute also specifies that if an individual has a Certificate of Good Conduct<sup>82</sup> for an offense, it “shall create a presumption of rehabilitation” for that offense.<sup>83</sup>

*Thomas v. New York City Department of Education* demonstrates an example of rehabilitation being used to justify a paraprofessional’s return to a position working with children.<sup>84</sup> Petitioner Rodney Thomas began working as a paraprofessional in 2002 and was fired in 2009 after being convicted for a drunk driving incident that occurred in 2006.<sup>85</sup> Thomas spent the next four years without incident and was offered a position at a local school in 2013, but the Department of Education refused to allow his return due to the previous incident.<sup>86</sup> Thomas appealed the Department of Education’s decision, and the court ordered the Department to consider the application “without regard to the crime.”<sup>87</sup> They found it notable that Thomas had a Certificate of Relief from Disabilities, which triggers a presumption of rehabilitation which the Department was required to rebut.<sup>88</sup> The Department was unable to rebut that presumption, leading the court to a finding that Thomas had demonstrated rehabilitation.<sup>89</sup>

### C. Appeals in New York

Individuals denied due to a prior conviction can respond by providing information to the State Education Department “in support of the position

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81. *Id.* § 753.

82. To receive a Certificate of Good Conduct, a minimum amount of time must have elapsed since an individual’s release from custody, and a showing must be made that the individual has “completed/achieved a certain period of good conduct in the community.” *Certificate of Relief/Good Conduct & Restoration of Rights*, N.Y. STATE DEPT. CORR. AND CMTY. SUPERVISION, <https://doccs.ny.gov/certificate-relief-good-conduct-restoration-rights> [<https://perma.cc/SH4J-RS2A>] (last visited Mar. 30, 2023). These certificates are granted by the Department of Corrections and Community Supervision. *Id.*

83. § 753. The significance of this presumption is demonstrated in *Meth v. Manhattan & Bronx Surface Transit Operating Auth.*, 521 N.Y.S.2d 54 (N.Y. App. Div. 1987). In this case, petitioner was sentenced to probation following a conviction of bribe receiving. *Id.* at 55. After receiving a certificate of relief from disabilities, he was denied employment with the Manhattan & Bronx Surface Transit Operating Authority due to his prior conviction. *Id.* The court found for petitioner, because appellants would need to demonstrate “the existence of a direct relationship between driving a bus and a bribe receiving conviction” or that “petitioner would pose an unreasonable risk to the general public” in order to rebut the presumption of rehabilitation, and they were unable to demonstrate this. *Id.*

84. 997 N.Y.S.2d 895 (Sup. Ct. 2014).

85. *Id.* at 896.

86. *Id.*

87. *Id.* at 899.

88. *Id.*

89. *Id.* *But see Arrocha v. Bd. of Educ.*, 712 N.E.2d 669 (N.Y. 1999) (“[T]he presumption of rehabilitation does not preclude the Board from considering any of the other seven factors, unrelated to rehabilitation, including prior convictions in the context of the license or employment being sought.”). These additional factors are listed in N.Y. CORRECT. LAW § 753(1) (Consol. 2007).

that clearance for employment should be granted, including . . . information in regard to his or her good conduct and rehabilitation.”<sup>90</sup> The standards used in this review are the same as used earlier in Sections 752 to 753.<sup>91</sup> One further round of review is allowed after this point with “a designee of the Commissioner of Education.”<sup>92</sup> This differs from New Jersey law, where individuals cannot appeal their disqualification.<sup>93</sup>

#### *D. Alternative Methods of Disqualification in New York*

New York law provides for other ways in which a teacher may become disqualified. If a teacher commits a crime or other act that “raises a reasonable question as to the individual’s moral character,” that individual’s certificate may be revoked.<sup>94</sup> Notably, some crimes carry the “presumption that the individual so convicted lacks good moral character” specifically if they were committed after certification.<sup>95</sup> Such crimes include drug offenses, “physical or sexual abuse of a minor or student,” crimes committed “on school property or while in the performance of teaching duties,” and crimes involving lying on a criminal history check.<sup>96</sup> This is distinct from New Jersey’s statute, which holds that crimes committed even long before the application period indicate a permanent, debilitating moral character which disallow those individuals from ever working in New Jersey schools.<sup>97</sup>

### III. STRICT TEACHER DISQUALIFICATION LAWS DISPROPORTIONATELY AFFECT MINORITY STUDENTS

In New Jersey, a conviction for any controlled dangerous substance in any jurisdiction is automatically disqualifying.<sup>98</sup> This can lead to disproportional impacts on non-white populations, especially Black Americans. Despite the fact that Black Americans use marijuana at about the same rate as white Americans, they were “3.7 times more likely to be arrested for marijuana possession than whites . . .”<sup>99</sup> When states

90. N.Y. COMP. CODES R. & REGS. tit. 8, § 87.5 (2021).

91. *Id.*

92. *Id.*

93. *See supra* Section I.C.

94. N.Y. COMP. CODES R. & REGS. tit. 8, § 83.1 (2004).

95. *Id.* § 83.4(d) (2013).

96. *Id.*

97. *See supra* Part I.

98. N.J. STAT. ANN. § 18A:6-7.1(b) (West 2011).

99. THE SENT’G PROJECT, REPORT OF THE SENTENCING PROJECT TO THE UNITED NATIONS SPECIAL RAPPORTEUR ON CONTEMPORARY FORMS OF RACISM, RACIAL DISCRIMINATION, XENOPHOBIA, AND RELATED INTOLERANCE 4 (2018) <https://www.sentencingproject.org/app/>

permanently disqualify teachers for convictions of drug possession crimes, these policies disproportionately impact groups that are more likely to be convicted of these crimes and, in turn, make it less likely that members of these groups will have the opportunity to become teachers or pursue employment at a school district. Thus, the disqualified individuals are deprived of job opportunities, and students are deprived of a potentially more diverse classroom environment that would positively impact them.<sup>100</sup>

There is a statistical correlation between students having at least one teacher of the same race as them and their long-term academic success.<sup>101</sup> However, despite the fact that only 40.5% of students in New Jersey public schools are white,<sup>102</sup> 82.9% of New Jersey teachers are white.<sup>103</sup> When states enforce strict teacher automatic disqualification laws—specifically those that strictly disqualify teachers with prior drug offenses—they implicitly make it more difficult for individuals from marginalized groups to obtain positions as teachers. This hurts students by further exacerbating the existing disparity between the percentage of minority students as compared to the percentage of minority teachers.

Direct academic success of minority students is not the only educational benefit of increasing the number of non-white teachers in the teaching workforce. On a more interpersonal level, studies have found that “Latino and Black teachers are more multiculturally aware than their White peers and that higher levels of multicultural awareness are linked to better classroom environments.”<sup>104</sup>

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uploads/2022/08/UN-Report-on-Racial-Disparities.pdf [<https://perma.cc/LV9L-P2W8>] (citing EZEKIEL EDWARDS, WILLIAM BUNTING & LYNDA GARCIA, THE WAR ON MARIJUANA IN BLACK AND WHITE 4 (2013)).

100. See, e.g., SABA BIREDA & ROBIN CHAIT, CTR. FOR AM. PROGRESS, INCREASING TEACHER DIVERSITY: STRATEGIES TO IMPROVE THE TEACHER WORKFORCE 1–2 (2011) (“Increasing the number of teachers of color is not only a matter of a philosophical commitment to diversity in career opportunities. Teachers of color provide real-life examples to minority students of future career paths . . . [T]eachers of color have demonstrated success in increasing academic achievement for engaging students of similar backgrounds.”); Valerie Schneider, *The Prison to Homelessness Pipeline: Criminal Record Checks, Race, and Disparate Impact*, 93 IND. L.J. 421, 428 (2018) (“The effects of mass incarceration on African Americans are felt long after individuals leave jails and prisons, particularly in the arena of housing . . . They may be denied the right to . . . obtain security clearances needed for jobs.”).

101. See, e.g., SETH GERSHENSON, CASSANDRA M. D. HART, CONSTANCE A. LINDSAY & NICHOLAS W. PAPAGEORGE, IZA INST. OF LAB. ECON., THE LONG-RUN IMPACTS OF SAME-RACE TEACHERS 35 (2017), <https://docs.iza.org/dp10630.pdf> [<https://perma.cc/CV88-VM6T>] (“For the most disadvantaged black males, conservative estimates suggest that exposure to a black teacher in primary school cuts high school dropout rates 39%. It also raises college aspirations along with the probability of taking a college entrance exam.”).

102. 2020-2021 New Jersey School Performance Report, N.J. DEP’T OF EDUC., <https://rc.doe.state.nj.us/2020-2021/state/detail/staff?lang=EN> [<https://perma.cc/XS6S-MQUQ>] (last visited Mar. 30, 2023).

103. *Id.*

104. Hua-Yu Sebastian Cherng & Peter F. Halpin, *The Importance of Minority Teachers: Student Perceptions of Minority Versus White Teachers*, 45 EDUC. RESEARCHER 407, 416 (2016).

#### IV. PROPOSALS

The New Jersey legislature's desire to protect students' safety is a legitimate aim,<sup>105</sup> but an aim that the Teacher Disqualification Statute has strayed from.<sup>106</sup> Some judges have concluded that the statute instead reflects a desire to keep children away from bad role models.<sup>107</sup> This, too, is a legitimate aim.<sup>108</sup> But, as it stands today, New Jersey's overly strict statute does not adequately accomplish either of these aims. Ironically and tragically, by automatically disqualifying teachers for a long list of crimes, with no opportunity for rehabilitation, New Jersey prevents some of the individuals most capable of being positive role models from becoming teachers—people who have rehabilitated themselves *in spite of* their flaws. Because of these failings, New Jersey should amend its statute.

##### *A. The Primary Intent of Teacher Disqualification Statutes Should Be Safety*

Though New Jersey's policy was initially enacted for the purpose of protecting students, it is clear from the now broad list of automatically disqualifying crimes that it has moved away from this purpose and instead shifted toward disqualifying individuals who have committed offenses reflecting on their morality.<sup>109</sup> New York's approach is more narrowly tailored towards protecting the safety of students as more narrowly requires disqualification for sexual offenses and violent offenses targeting children.<sup>110</sup>

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105. See, e.g., CHAROL SHAKESHAFT, DEP'T OF EDUC., EDUCATOR SEXUAL MISCONDUCT: A SYNTHESIS OF EXISTING LITERATURE 42–43 (2004) (“targets of educator sexual misconduct report that they suffer emotional, educational, and developmental or health effects . . . . Where educator sexual misconduct is not adequately addressed, the negative effects spread to other staff and students.”).

106. See *supra* Part I for a discussion on the intent of the New Jersey's Teacher Disqualification Statute, and ways in which New Jersey's legislature has strayed from this intent by increasing the number of automatically disqualifying crimes and removing the Teacher Disqualification Statute's rehabilitation provision.

107. See, e.g., *In re Certificates of Karen F. Ball*, No. 1819-215 (N.J. Dep't of Educ. State Bd. of Exam'r's May 14, 2020), <https://www.nj.gov/education/legal/examiners/2020/1819-215.pdf> [<https://perma.cc/9J9V-FTBU>] (“In enacting the Criminal History Review statute [in 1986], the Legislature sought to protect public school pupils from contact with individuals whom it deemed were not proper examples for them.”).

108. See also Aisha Schnellmann & Jeanine Grüter, *Children Look to Teachers as Role Models for how to Treat Their Peers*, BOLD (Jan. 14, 2021), <https://bold.expert/children-look-to-teachers-as-role-models-for-how-to-treat-their-peers> [<https://perma.cc/Z5C4-DH32>] (“Children are very attuned to verbal and non-verbal cues, and look to their teachers as role models for how to treat their peers.”).

109. See *supra* Section I.A.

110. See *supra* Part II.

New York has the better approach here. First, teachers are in short supply.<sup>111</sup> By limiting their intent to the safety of students, New York avoids exacerbating a problem already compounded by the COVID-19 pandemic. Though the pandemic worsened the issue, it did not create the issue; the pandemic simply amplified a problem already occurring.<sup>112</sup> Therefore, even after COVID-related restrictions were lifted, teacher shortages remained.<sup>113</sup> Second, it is not insignificant that the New Jersey legislature enacted the original statute with an express intent, then silently deviated from that intent; this deviance led not only to issues to be discussed in the following sections, but also to situations where courts and the Commissioner of Education infer intents that are less than accurate.<sup>114</sup>

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111. The teacher shortage has been especially pronounced in the time of COVID-19 pandemic; from January 2020 to November 2020, nearly 550,000 teachers in the private-education sector resigned, and over 800,000 resigned in the public-education sector. Kathryn Dill, *Teachers Are Quitting, and Companies Are Hot to Hire Them*, WALL ST. J. (Feb. 2, 2022, 7:26 AM) <https://www.wsj.com/articles/teachers-are-quitting-and-companies-are-hot-to-hire-them-11643634181> [<https://perma.cc/4SEK-WYFD>]. In another survey, “[t]wo-thirds of survey respondents report teacher shortages, a record high since . . . 2015.” Annie Buttner, *The Teacher Shortage, 2021 Edition*, FRONTLINE EDUCATION (Apr. 19, 2021) <https://www.frontlineeducation.com/blog/teacher-shortage-2021/> [<https://perma.cc/V8P3-VNST>].

112. See, e.g., Holly Yan, Tiara Chiaramonte & Anne Lagamayo, *Desperate to Fill Teacher Shortages, US Schools Are Hiring Teachers from Overseas*, CNN (Oct. 6, 2019, 1:21 AM) <https://www.cnn.com/2019/10/06/us/international-teachers-us-shortage/index.html> [<https://perma.cc/XM7F-RFAC>] (“In 2018, the US had an estimated shortage of 112,000 teachers . . . . Some of those vacancies are filled by people who don’t have a standard teaching certificate . . . . Others are being plugged by long-term substitutes, contracted agencies or teachers who must add an additional course to their day.” (citing LEIB SUTCHER, LINDA DARLING-HAMMOND & DESIREE CARVER-THOMAS, *LEARNING POL’Y INST., A COMING CRISIS IN TEACHING? TEACHER SUPPLY, DEMAND, AND SHORTAGES IN THE U.S.* (2016))).

113. For example, coming into the 2022–23 school year, “[s]chool districts across the country, including New Jersey, [were] grappling with a shortage of educators.” P. Kenneth Burns, *New Jersey School Staff Shortage Is Making Teacher Vacancies Worse*, WHYY (Aug. 29, 2022), <https://whyy.org/articles/new-jersey-school-staff-shortage-making-teacher-vacancies-worse> [<https://perma.cc/8LM7-RXXT>]. In November 2022, New Jersey Governor Phil Murphy launched a task force to combat the teacher shortage issue. See Mary Ann Koruth, *Gov. Murphy Issues Order to Create Task Force to Address Teacher Shortage*, NORTHJERSEY.COM (Nov. 15, 2022, 5:08 PM), <https://www.northjersey.com/story/news/education/2022/11/15/nj-gov-murphy-task-force-teacher-shortage-new-jersey/69647664007/> [<https://perma.cc/B38Q-AMNS>].

114. See, e.g., *In re Certificates of Karen F. Ball*, No. 1819-215 (N.J. Dep’t of Educ. State Bd. of Exam’rs May 14, 2020), <https://www.nj.gov/education/legal/examiners/2020/1819-215.pdf> [<https://perma.cc/9J9V-FTBU>] (“In enacting the Criminal History Review statute, *N.J.S.A. 18A:6-7.1 et seq.* in 1986, the Legislature sought to protect public school pupils from contact with individuals whom it deemed were not proper examples for them. Individuals convicted of crimes such as Eluding fall squarely within this category.”). This statement is not supported by the actual legislative materials that accompanied the passage of the statute. See *supra* Section I.A.

*B. New Jersey Should Separate Safety Crimes from Morality Crimes in Their Statutes*

New Jersey should follow New York's less stringent approach to teacher disqualification. The intent of the New York statute is reflected by the statute only automatically disqualifying teachers for sexual offenses and violent offenses with a child victim,<sup>115</sup> both of which have a clear nexus to the safety of students.<sup>116</sup> By separating safety crimes from morality crimes, New Jersey will have more flexibility to remain strict when dealing with crimes relating to students' safety while simultaneously offering more discretion for crimes that instead reflect a teacher's morality and ability to serve as a role model to students. The change will be far from radical—the list of crimes on their statute need not increase or decrease. Rather, the already existing list will be separated into crimes of safety and crimes of morality. While the New Jersey legislature can determine these categories themselves, a suggested breakdown follows.

Crimes that are already listed in the statute that fit into the safety category include: sexual, abusive, or neglectful crimes directed at children;<sup>117</sup> abuse of a child;<sup>118</sup> escape;<sup>119</sup> "crime[s] involving the use of force or the threat of force to or upon a person";<sup>120</sup> recklessly endangering another person;<sup>121</sup> terroristic threats;<sup>122</sup> criminal restraint;<sup>123</sup> luring or enticing a child into a motor vehicle, structure or isolated area;<sup>124</sup> causing or risking widespread injury or damage;<sup>125</sup> criminal mischief;<sup>126</sup> threats and other improper influence;<sup>127</sup> and "[a]ny crime of the fourth degree involving a victim who is a minor."<sup>128</sup> All of these crimes are either violent toward other people or alternatively specifically target children. Even if an individual claims to be rehabilitated, there is an unacceptable risk of allowing them direct access to children on a daily basis. Note that this is no stricter than the law already is.

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115. *See supra* Part II.

116. There exists a fundamental distinction between violent crimes and sexual offenses from the other crimes listed in New Jersey's teacher disqualification statute such as perjury: the former can directly target students. Conversely, offenses such as perjury do not directly victimize children.

117. N.J. STAT. ANN. § 2C:24-4 (West 2017).

118. *Id.* § 9:6-1 (West 1987).

119. *Id.* § 2C:29-5 (West 1991).

120. *See id.* § 18A:6-7.1(c)(1) (West 2011).

121. *Id.* § 2C:12-2 (West) (repealed 2016).

122. *Id.* § 2C:12-3 (West 2002).

123. *Id.* § 2C:13-2 (West 1979).

124. *Id.* § 2C:13-6 (West 2007).

125. *Id.* § 2C:17-2 (West 2002).

126. *Id.* § 2C:17-3 (West 2014).

127. *Id.* § 2C:27-3 (West 1979).

128. *Id.* § 18A:6-7.1(c)(3) (West 2011).

The rest of the crimes listed in the disqualification statute would be classified as morality crimes. These would include: drug crimes;<sup>129</sup> burglary;<sup>130</sup> usury;<sup>131</sup> perjury and false swearing;<sup>132</sup> and resisting arrest.<sup>133</sup> Though these crimes do not violently harm anyone, someone with a conviction of one of these crimes may not be an adequate influence or role model on children. Taking this into consideration, the Commissioner of Education should make a fact-specific determination using the “conduct unbecoming a teacher” standard that is already used in the State.<sup>134</sup>

*C. While Safety Crimes Should Be Automatically Disqualifying, Morality Crimes Should Be Discretionary*

In line with the original intent of the New Jersey statute, crimes in the safety category should remain automatically and permanently disqualifying simply because of the unacceptable risk that exists. This disqualification is not a moral judgement on the individual applicant. Rather, it is an acknowledgement that they committed a crime that indicates a potential danger to students in school. Certain crimes, such as the those included in the 1986 bill, bear a direct relationship to the safety of children.<sup>135</sup> While it is important to recognize that those convicted under these statutes can rehabilitate themselves, the safety of students remains of primary importance. Thus, the benefit of allowing these individuals back into the school environment is outweighed by the potential harm that could occur should they be allowed back.

But the process should be adjusted for morality crimes. Instead of these crimes automatically disqualifying individuals from working in New Jersey schools, morality crimes should instead be flagged for a discretionary review by the Commissioner of Education in a manner similar to that already used in New Jersey by the Board of Examiners in the suspension and revocation of teaching certificate cases.<sup>136</sup> Morality crimes will fit into the same framework as conduct unbecoming a teacher: “conduct ‘which adversely affects the morale or efficiency of the [department]’ or ‘has a tendency to destroy the public respect for [government] employees and confidence in the operation of [public] services.’”<sup>137</sup>

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129. See *id.* § 18A:6-7.1(b) (West 2011) for definitions used to define drug crimes.

130. *Id.* § 2C:18-2 (West 2009).

131. *Id.* § 2C:21-19 (West 2010).

132. *Id.* § 2C:28-3 (West 1981).

133. *Id.* § 2C:29-2 (West 2000).

134. See *infra* Section IV.C for discussion on the application of this proposed standard.

135. See *supra* text accompanying note 28.

136. See *supra* Section I.D.

137. Bound Brook Bd. of Educ. v. Ciripompa, 153 A.3d 931, 937 (N.J. 2017) (quoting *In re Young*, 995 A.2d 826, 835 (N.J. 2010)) (alteration in original).

The latter part of that definition, dealing with destroying public respect, is particularly relevant for the purpose of disqualification for morality crimes. By marking a crime as a morality crime under this Note's proposed framework, the legislature indicates that the crime is one that destroys public respect for government employees and confidence in the operation of public services. With this knowledge, the Board of Examiners can take the legislature's view on the specific crime and weigh it against the facts underlying the specific case to decide whether it would, in that specific situation, destroy public respect for and confidence in government employees.<sup>138</sup>

#### *D. Rehabilitation Should Be Considered for Any Morality Crime*

An opportunity to demonstrate rehabilitation should be allowed for any teacher convicted of a morality crime. This is consistent with the intent of the disqualification statute: to protect the safety of children.

New Jersey should amend its teacher disqualification statute to explicitly grant an applicant the potential to demonstrate rehabilitation under the RCOA. That Act already allows an exception if "the conviction relates adversely to the occupation, trade, vocation, profession or business for which the license or certificate is sought."<sup>139</sup> This process need not be different from the framework already in place for revocation and suspension of certification cases under the Board of Examiners. If the Board determines that the crime is demonstrative of conduct unbecoming a teacher, then that crime relates to "[t]he nature and duties of the occupation, trade, vocation, profession or business" of teaching, and, therefore, a presumption of rehabilitation can be overcome under the RCOA.<sup>140</sup>

Allowing the potential for rehabilitation will benefit schools, individuals with criminal histories, and society at large. Schools will benefit because, in a time where teachers are in short supply,<sup>141</sup> the statute as currently written can prevent them from hiring teachers even when they would like to do so. Individuals with criminal histories will benefit not only because it will allow them to obtain the employment they desire, but also because it will remove a restriction on gaining employment, which is one of the largest barriers to entry back into society faced by the formerly incarcerated.<sup>142</sup> And

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138. For further discussion about conduct unbecoming a teacher, see *supra* Section I.D.

139. N.J. STAT. ANN. § 2A:168A-1 (West 1982).

140. *Id.* § 2A:168A-1 (West 2010).

141. See *supra* Section IV.A.

142. See, e.g., LEADERSHIP CONF. EDUC. FUND, A SECOND CHANCE: CHARTING A NEW COURSE FOR RE-ENTRY AND CRIMINAL JUSTICE REFORM 4, 8 (2013), [http://civilrightsdocs.info/pdf/reports/A\\_Second\\_Chance\\_Re-Entry\\_Report.pdf](http://civilrightsdocs.info/pdf/reports/A_Second_Chance_Re-Entry_Report.pdf)

it is beneficial for society because individuals who are employed after incarceration are less likely to be convicted again.<sup>143</sup>

Furthermore, allowing demonstrations of rehabilitation in this framework still protects children from the dangers that the teacher disqualification statute aims to prevent.<sup>144</sup> One argument is that children are a vulnerable group and thus need greater protection from previously convicted individuals than other groups.<sup>145</sup> But under this proposed rehabilitation framework, individuals convicted of crimes relating to safety of children still will not be allowed to teach, and the Board of Education will have discretion to determine whether individuals convicted of morality crimes are fit to work with students. Therefore, safeguards are in place to ensure that children remain protected.

#### *E. Appeals Should be Allowed for Any Morality Crime*

While appeals are unnecessary for safety crimes, they should be allowed for morality crimes. A disqualification from a safety crime need not be appealable<sup>146</sup> because the legislature has identified the offense as *necessarily* implicating the safety of students.<sup>147</sup> But appeals should be allowed for morality crimes, given that this disqualification will have a discretionary element. After the Commissioner disqualifies an individual for a morality crime, that individual should be allowed to appeal to the Appellate Division of the New Jersey Superior Court, which is the normal avenue for appeals of decisions by the Commissioner.<sup>148</sup> New York already

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[<https://perma.cc/2ENL-2AHB>] (including “restrictions on employment” as one of “four barriers that make re-entry more difficult” and explaining that “[a]lthough the Department of Labor does not track the unemployment rate for formerly incarcerated people, various studies have found their unemployment rates to be 50 percent or higher nine months or a year after their release” ).

143. Dallan F. Flake, *When Any Sentence is a Life Sentence: Employment Discrimination Against Ex-Offenders*, 93 WASH. U. L. REV. 45, 63 (2015) (“[S]tudies have consistently found that ex-offenders are less likely to recidivate if they are employed.”).

144. *See supra* Section I.B.

145. *See Order Denying Emergent Relief*, Tyson v. Dep’t of Educ., No. EDU 8469-08, 2008 N.J. AGEN LEXIS 879, at \*10–11 (N.J. Off. Admin. L. Sep. 2, 2008) (initial decision) (“[T]he Department’s construction of those laws is consistent with the well-known legislative intent to protect vulnerable school children.”).

146. Although these crimes would generally not be appealable, New Jersey should maintain their current provision allowing “an opportunity to challenge the accuracy of the disqualifying criminal history record.” N.J. STAT. ANN. § 18A:6-7.1(e) (West 2011).

147. An exception should exist, as it already does, for appeals contesting the accuracy of their criminal history report. *Id.* (“Notwithstanding the provisions of this section, an individual shall not be disqualified from employment or service under this act on the basis of any conviction disclosed by a criminal record check performed pursuant to this act without an opportunity to challenge the accuracy of the disqualifying criminal history record.”).

148. *See The Guide to Representing Yourself at an Administrative Hearing*, STATE OF N.J. OFF. OF ADMIN. L., <https://www.state.nj.us/oal/hearings/guide/> [<https://perma.cc/2QMR-U5KS>] (last visited Mar. 30, 2023) (“Any party may appeal a final decision to the Appellate Division of the Superior Court.”).

allows appeals of disqualification decisions,<sup>149</sup> demonstrating that another state has effectively implemented a similar policy. Perhaps more importantly, this proposal is also essentially the same system already in place in New Jersey in suspension and revocation of certificate cases.<sup>150</sup>

#### CONCLUSION

New Jersey's teacher disqualification statute automatically disqualifies otherwise qualified applicants from working in public schools if the applicants have been convicted of any one of a wide range of offenses contained in the statute.<sup>151</sup> There is no opportunity for these applicants to demonstrate rehabilitation.<sup>152</sup> This statute should be amended to be less strict because it is inconsistent with the statute's original intent of protecting the safety of students,<sup>153</sup> exacerbates the teacher shortage,<sup>154</sup> and leads to disparate outcomes for marginalized groups.<sup>155</sup>

Implementing these changes will not be a radical departure from norms or existing law. Some states, such as New York, already have much more lenient disqualification statutes, with the general rule being to protect the rights of applicants.<sup>156</sup> And even within the state of New Jersey, a framework is already in place giving discretion to judges and to the Board of Examiners to prevent bad role models from teaching.<sup>157</sup>

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149. *See supra* Section II.C.

150. *See supra* Section I.D.

151. N.J. STAT. ANN. § 18A:6-7.1 (West 2011).

152. *See supra* Section I.B.

153. *See supra* Section I.A.

154. *See supra* Section IV.A.

155. *See supra* Part III.

156. *See supra* Part II.

157. *See supra* Section I.D.

This Note proposes a new framework to handle teacher disqualification in New Jersey. Under this new framework, crimes listed in the teacher disqualification statute will be divided into two categories: those related to safety of students, and those related to teachers' morality. Crimes related to the safety of students can be treated the same as they currently are, due to the nexus between these crimes and student safety. Morality crimes, however, should require a level of discretion to warrant disqualification, and should be appealable. Applicants with convictions for morality crimes should also be allowed to demonstrate their rehabilitation to show that they are capable of being good role models for students.

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