

March 21, 1997

Dear :

Having reviewed the appeal of school disqualification from school employment which resulted from a Department of Education criminal history record check conducted pursuant to *N.J.S.A. 18A:6-7.1 et seq.*, *In the Matter of the Disqualification from School Employment of J.C.*, DHP 25-97, I determine that you are not qualified for employment as a teacher aide.

The record indicates that you were charged on May 24, 1992, with Felony Dangerous Drugs (Coke), for which you were found guilty on December 10, 1993 and sentenced to one year probation, six months suspended driver's license and a \$1,100 fine.

The Commissioner of Education, or his designee¹, is obligated to review appeals of disqualification from school employment to determine whether an appellant has affirmatively demonstrated rehabilitation by clear and convincing evidence. The burden of proving rehabilitation is, therefore, on you as the appellant. In this review, the following factors must be considered:

- (1) The nature and responsibility of the position which the convicted individual would hold;
- (2) The nature and seriousness of the offense;
- (3) The circumstances under which the offense occurred;
- (4) The date of the offense;
- (5) The age of the individual when the offense was committed;
- (6) Whether the offense was an isolated or repeated incident;
- (7) Any social conditions which may have contributed to the offense; and
- (8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational

¹ It is noted that *N.J.S.A. 18A:4-33* authorizes the Commissioner of Education 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 "[t]he hearing and determination of controversies and disputes which may arise under the school laws***." (*N.J.S.A. 18A:4-34*)

schooling, successful participation in correctional work-release programs, or the recommendation of persons who have had the individual under their supervision. (*N.J.S.A.* 18A:6-7.1)

The evidence you have submitted on appeal has been reviewed against the above-named factors. In so reviewing, I initially find that the nature and responsibility of the position for which you are applying demands great trust in the honesty and integrity of the individual filling such a position, in that a teacher aide has direct, ongoing contact with children. Further, I note that your offense, albeit a single incident, committed when you were 21 years of age, is very recent and extremely serious in light of the Commissioner's obligation to ensure that students are provided with environments which are free of the influence of drugs. I have also duly considered your personal statement wherein you report that at the time of the incident you were "struggling to find direction and purpose in [your] life," and that subsequent to your crime you have returned to school and received a bachelor's degree.

However, I further note that the letters you submitted in support of your appeal were relatively few in number and very general in nature, from individuals who have known you for a number of years and, yet, do not, for the most part, specifically address your rehabilitation. Finally, although you have submitted a letter from Mountainside Hospital indicating that you received some counseling services from that institution, this letter is one which is addressed to you informing you that, as your counseling has been completed, you are no longer entitled to use their medical services. As such, this submission cannot serve to assure me that you actively participated in any type of structured chemical dependency program intended to address your drug problem.

Consequently, in balancing the above-cited factors, although it appears that you are progressing toward rehabilitation, I find that too little time has passed for me to be persuaded, as I must be by law, that you have demonstrated rehabilitation by clear and convincing evidence at this time. This determination does not preclude you from applying for reconsideration upon the passage of additional time without further incident.

Accordingly, pursuant to applicable law, your disqualification from school employment is affirmed. An appeal of this decision may be made to the State Board of Education pursuant to *N.J.A.C.* 6:2-1.1.

Sincerely,

Richard A. DiPatri, Deputy Commissioner

c: Carl Carabelli