

April 25, 1997

Dear :

Having reviewed the appeal of disqualification from school employment which resulted from a Department of Education criminal history record check conducted pursuant to *N.J.S.A. 18A:39-19.1, In the Matter of the Disqualification from School Employment of D.C.*, DHP-B 34-97, I determine that you are not qualified for employment as a school bus driver.

The record indicates that you were charged on September 7, 1990 with Endangering Welfare of Child, for which you were found guilty on April 12, 1991 and sentenced to three years probation, 28 days jail time and a \$500 fine. Your record further indicates convictions for the nondisqualifying crimes of Harassment (New York) on January 6, 1989, and Burglary on August 5, 1986.

The Commissioner of Education, or his designee*, 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

* 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)

I have reviewed the evidence of rehabilitation which you have presented against the above-named factors. In so reviewing, I find that the nature and responsibility of the position for which you are applying, 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 your offense, committed when you were almost 25 years of age, is very recent and very serious.

I have duly considered your personal statement, and a copy of your resume, which you attached, indicating you received your CDA Certification from Jersey City State College in December 1996 and that you intend to continue your education towards a Bachelor's Degree. I have also considered a letter of support supplied by the President of New Destiny, Inc., a letter from a Program Supervisor at Turning Point, Inc., a letter from the Chief Probation Officer, Superior Court of New Jersey, indicating that your probation, which commenced on April 12, 1991 was terminated on April 12, 1994, and, finally, a letter from a Counselor, Addictions Services, at Jersey City Medical Center, attesting to your attendance at a substance abuse program from May 1992 through August 1992, and your successful completion of such program.

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 by law, that you have demonstrated rehabilitation by clear and convincing evidence at this time. This determination does not preclude you from apply 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