

May 23, 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:6-7.1 et seq., In the Matter of the Disqualification from School Employment of D.E.S.*, DHP 51-97, I determine that you are not qualified for school employment as a substitute custodian.

You have the following disqualifying offense on your criminal record: Distribution of Heroin & Cocaine on March 22, 1995, for which you were found guilty on September 22, 1995, and sentenced to 180 days confinement at Sussex County Jail, three years probation and ordered to pay a \$2,275 fine.

The Commissioner of Education, or his designee<sup>\*</sup>, 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 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*)

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<sup>\*</sup> It is noted that *N. J.S.A. 18A:4-34(c)* authorizes each assistant commissioner *to* hear and determine controversies and disputes which may arise under school laws, or the rules of the State Board of Education, or of the Commissioner of Education.

*The evidence provided by you includes several positive letters from friends, your probation officer, the pastor of St. Joseph's Church where you have performed custodial services, and your former supervisor at that church. Such evidence has been reviewed against the above-named factors. Consequently, notwithstanding that you may be making progress toward rehabilitation, the total record is insufficient to convince me of your rehabilitation. This is particularly so in that an individual has the burden to affirmatively demonstrate rehabilitation by clear and convincing evidence pursuant to statute.*

I am aware that you were 27 years old when the disqualifying incident occurred and, thus, presumably mature enough to understand the consequences of your actions. I am also mindful that your offense was very recent and serious. In fact, I consider your burden to be particularly heavy in that your conviction was drug-related and involved *distribution*. As stated in another disqualification decision entitled, *Larry Hall v. New Jersey State Department of Education*, 91 N.J.A.R. 2d (EDU) 46, 47,

\*\*\*Protection of the public is particularly vital in the school environment, where a custodian has ready access to impressionable young children who are not under the watchful eye of their parents. New Jersey has an expressed public policy of ridding the schools of the scourge of illegal drug use.\*\*\*

Such position, which provides significant and unsupervised access to children, must not be minimized when examining rehabilitation. See *In the Matter of the Disqualification from School Employment of Gregory Campbell*, decided by the Commissioner January 30, 1996, affirmed by the State Board of Education July 10, 1996. Additionally, I find that too little time has passed to be persuaded that you are rehabilitated sufficiently to work in such capacity.

Consequently, in balancing the above-cited factors, I am unable to conclude that you have demonstrated rehabilitation by clear and convincing evidence, as you must by law, so as to be qualified within the meaning of the school employee background check statutes.

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

David C. Hesper, Assistant Commissioner  
Division of Executive Services

c: Carl Carabelli