

DHPL #94-97
SB #27-97

IN THE MATTER OF THE DISQUALIFI- :
CATION FROM SCHOOL EMPLOYMENT : STATE BOARD OF EDUCATION
OF T.R.B. : DECISION

Decided by the Deputy Commissioner of Education, February 28, 1997

For the Petitioner-Appellant, T.R.B., pro se

T.R.B. (hereinafter "petitioner"), who was employed as a bus aide for the Franklin Township Board of Education, 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 record review conducted pursuant to N.J.S.A. 18A:6-7.1 revealed convictions following arrests in January 1990 for possession of cocaine and in June 1991 for possession of cocaine with intent to distribute. Petitioner sought to overturn her disqualification on the basis of rehabilitation.

In a letter decision dated February 28, 1997, the Deputy Commissioner of Education upheld the disqualification,¹ concluding that while petitioner had shown progress towards rehabilitation, she had failed to demonstrate clear and convincing evidence of her rehabilitation as required by N.J.S.A.18A:6-7.1.

Petitioner filed the instant appeal to the State Board of Education.

¹ We note that N.J.S.A. 18A:4-33 authorizes the Commissioner 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 the "hearing and determination of controversies and disputes which may arise under the school laws N.J.S.A. 18A:4-34."

After a careful review of the record, we reverse the decision of the Deputy Commissioner. We find that petitioner has demonstrated clear and convincing evidence of her rehabilitation.

N.J.S.A. 18A:6-7.1 provides, in pertinent part:

e. 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 if the individual has affirmatively demonstrated to the Commissioner of Education clear and convincing evidence of his or her rehabilitation. In determining whether an individual has affirmatively demonstrated rehabilitation, the following factors shall 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;
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.

Petitioner's submissions include a letter from her supervisor at the school in which she had been employed prior to her disqualification, who praises petitioner as a "most competent and pleasant employee." She indicates that petitioner "has proven to be a great asset to my department, and I would be more than willing to reinstate her when this matter is resolved. Now that I am aware of her past problems, I respect the way she has worked to turn her life around." A former co-worker lauds petitioner as a

"very reliable, responsible, and hard worker." The human resources director of a pharmaceutical company who entrusts her three children to petitioner's care commends her as "dependable, caring, articulate, thorough and passionate. She has struggled with physical and mental barriers and has come through with flying colors. You could not have a more qualified individual on your staff." The record also indicates that petitioner spent one month at a substance abuse facility following her June 1991 arrest. There have been no further arrests.

Petitioner explains that her drug dependency followed a medical diagnosis of kerateconis, a condition which she indicates would have left her blind in both eyes without a transplant. She indicates that she has now undergone thirteen operations and lost the vision in one eye.

While the gravity of petitioner's offenses is apparent, we find that further penalization of this individual is neither a just result nor warranted under the terms of the statute. Given the uncontradicted evidence in the record, including the recommendation of petitioner's supervisor and her completion of a substance abuse program, we conclude that petitioner has demonstrated clear and convincing evidence of her rehabilitation pursuant to N.J.S.A. 18A:6-7.1 (e).

Accordingly, we reverse the decision of the Deputy Commissioner disqualifying petitioner from service in the schools of New Jersey as a bus aide.

June 4, 1997

Date of mailing JUN 06 1997