

August 8, 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 L.A.W.*, DHP 37-97, I determine that your client is not qualified for employment as a school health office aide.

The record indicates that your client was charged on April 2, 1993 with Endangering Welfare of Children for which she was found guilty and sentenced on September 22, 1993 to 2 years probation and payment of prosecution costs.

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 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*)

¹ 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, or of the Commissioner of Education.

The evidence of rehabilitation submitted on behalf of your client on appeal has been reviewed against the above-named factors. In so reviewing, I initially find that the nature and responsibility of the position your client seeks to occupy, that of a health office aide, is one which demands great trust in the honesty and integrity of the individual filling such a position, in that she has direct, ongoing contact with children. Further, I note that your client's disqualifying offense, albeit a single incident, committed when she was 29 years of age, is very recent and serious in light of the Commissioner's obligation to ensure that students are provided with a safe educational environment.

I have duly considered your letter on behalf of your client, detailing the personal difficulties she was experiencing at the time of the offense and asserting "[s]ince that time [L.W.] has literally turned her life around" (letter of Robert B. Reed to Carl H. Carabelli dated June 18, 1997, at p. 6), having completed her supervisory probation, graduated with honors from the Somerset County Technical Institute practical nurse program, sought and regained custody of all four of her children, and received the recommendation of counselors and employers who have supervised her.² I have also considered L.A.W.'s personal statement explaining the circumstances of her offense which, she contends, was a result of her entrusting the care of her children to someone who, ultimately, proved unreliable. I have also reviewed the character and employment reference letters included with the appeal, all dated between November 1993 and October 1994, which you advise were obtained in support of L.A.W.'s application to regain custody of her two youngest children. Finally, I have considered the letter, addressed to you, dated May 21, 1996, from Stephen S. Snook, Esq., District Attorney, Mifflin County, Lewistown, Pennsylvania which states

I have taken some time now and reviewed [L.W.'s] file and I certainly am impressed with her apparent change in lifestyle. I certainly wish her continued success as a mother and as an LPN but in reviewing the file I am simply constrained to deny a request for expungement. I went back through the file and the photos and I simply believe that this is too serious of a case to be expunged from her record. I certainly would hope that it would not adversely affect her ability to gain her employment and I would be glad to write a letter explaining that to any agency involved in her licensing. I simply cannot, though, in good conscience agree to an expungement of a conviction on endangering the welfare of children. We have done several for DUI's and I consider each on it's on (sic) merit. I do not doubt that Mrs. [W] has made some significant advances toward being a good mom and that she is

² Counsel's letter additionally argues that L.A.W.'s receipt of a Certificate of Good Conduct from the County of Hunterdon, Probation Department in June 1996, (the issuance of which is intended to assist the rehabilitation of convicted offenders by removing impediments and restrictions upon their ability to obtain proposed employment), under the Rehabilitated Convicted Offenders Act, *N.J.S.A. 2A:168A-1*, denotes that L.A.W. "has achieved a degree of rehabilitation indicating that her engaging in the proposed employment ***would not be incompatible with the welfare of society." (Robert B. Reed letter to Carl H. Carabelli dated June 18, 1997 at p. 8) Counsel contends that this finding should be accepted and relied upon by the Department of Education in this matter. It is observed that the within matter is solely within the purview of the Commissioner of Education and education law and, therefore, any finding with respect to L.A.W. arising under criminal law statutes, is irrelevant to the instant determination.

capable of being a good mother and LPN. It is not uncommon that people reach a low point in life and turn their lives around. I certainly hope that that has been the case for Ms. [W]. I, unfortunately though, cannot agree to the expungement of this criminal conviction for endangering the welfare of children. I certainly would be of help in whatever other way I can and I hope she is successful in life.

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

Accordingly, pursuant to applicable law, L.A.W.'s 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

c: Carl Carabelli