

November 7, 1997

Dear :

Having reviewed the appeal of disqualification from school employment filed on behalf of your client, Mr. J.F.C., 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.F.C.*, Agency Docket Number DHP 91-97, I determine that Mr. C. is not qualified for employment as a custodian.

The record indicates that Mr. C. was charged on August 24, 1993 with Manufacturing and Distribution of Controlled Dangerous Substances, a charge to which he pled guilty on January 5, 1994. He was sentenced on March 18, 1994 to 60 days in jail,<sup>1</sup> three years probation, including successful completion of a drug/alcohol treatment program, 100 hours of community service and ordered to pay a \$2,800 fine.

The Commissioner of Education, or his designee<sup>2</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 Mr. C. 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>1</sup> It is noted that Mr. C. was released after serving 50 days, due to good behavior. (Petition of Appeal at p. 3)

<sup>2</sup> It is noted that *N.J.S.A. 18A:4-34c* 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.

The evidence submitted on appeal has been reviewed against the above-named factors. With respect to the nature and responsibility of the position Mr. C. wishes to occupy, although a custodial position is not generally one where the incumbent has direct involvement with students in that he is responsible for their care, supervision or instruction, the Commissioner has been consistently mindful that such a position nevertheless affords an individual significant and otherwise unsupervised access to children, a consideration which must not be minimized when examining rehabilitation pursuant to *N.J.S.A. 18A:6-7.1*. *In the Matter of the Disqualification from School Employment of Gregory Campbell*, 96 *N.J.A.R.* 2d (EDU) 431, affirmed by the State Board of Education 740. See also, *In the Matter of the Disqualification from School Employment of Vincent L. Lindsey*, 96 *N.J.A.R.* 2d (EDU) 1020.

As to the circumstances of the offense, Mr. C. asserts that he was arrested for selling marijuana to an undercover law enforcement officer. He had just turned 19 years old. He affirms that, prior to this arrest, he did not have any record with the criminal justice system. (Petition of Appeal at p. 2) I note, further, the Statement of Reasons provided by the sentencing judge:

These charges resulted from an undercover investigation by the Somerset County Prosecutor's Office during July and August of 1993 in North Plainfield. During that period of time an undercover officer made three separate buys of marijuana from [Mr. C.]. The total marijuana sold by [Mr. C.] \*\*\* was 21.28 grams. When questioned about the matter, [Mr. C.] admitted [his] guilt and claimed that [he] had gotten involved only to keep [himself] supplied with marijuana.

At the age of 19 this is [Mr. C.'s] first offense of an indictable nature. As a juvenile, [he was] once adjudicated guilty of the charge of Interference With Transportation and [was] placed on Probation for a period of one year for that offense. I have no report about [his] conduct during that period of Probation.

[Mr. C. is] the product of a comfortable home and [is] a high school graduate. [He states] that [he] commenced the use of marijuana at the age of 17 and [uses] it on an almost daily basis. (Superior Court Judge Robert E. Guterl, March 18, 1994, Statement of Reasons)

I have duly considered that Mr. C. has now successfully completed his probationary term, including the performance of community service and the completion of a drug treatment program, as required. I have further considered Mr. C.'s recent vocational training, as well as the letters of support on his behalf from, *inter alia*, the employers for whom he has worked as a landscaper, the Teamsters Local No. 102 President, and a local councilman. However, I cannot be persuaded, as I must by law, that Mr. C. has demonstrated rehabilitation by clear and convincing evidence. In making this determination, I find that, notwithstanding your contention that fourth degree offenses are the "least serious of all indictable matters," (Letter Brief, October 29, 1997 at p. 8), Mr. C.'s actions in selling a controlled dangerous substance are not to be minimized. Moreover, I note that the charge was relatively recent. I am particularly mindful of the Commissioner's responsibility to ensure that students are provided with environments which are free of the influence of alcohol and other drugs.

\*\*\* 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. \*\*\* *Larry Hall v. New Jersey State Department of Education*, 91 *N.J.A.R.* 2d (EDU) 46, 47.

Accordingly, pursuant to applicable law, Mr. C.'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. Hespe, Assistant Commissioner  
Executive Services

c: Carl Carabelli