

March 13, 1998

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 M.D.S.*, Agency Dkt. No. DHP 30-98, I find you are not qualified for employment as a substitute teacher.

You have the following disqualifying offense on your criminal record: Possession of Marijuana-Hash on November 24, 1995, for which you were found guilty on November 27, 1995, and ordered to pay a \$280 fine, \$500 DEDR and \$75 in additional drug conviction fines. Your record also reveals the nondisqualifying offense of Loitering on the same date as above and Damage to Property and Disorderly Conduct on June 25, 1989.

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. 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*)

¹It 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.

I have considered the evidence of rehabilitation you submitted, *i.e.*, your personal statement and supportive letters, college transcripts, and resume as well as the above factors in making this determination. In your personal statement, you describe the circumstances of your disqualifying offense and note that you have attended counseling and an intense program of education at the Livengrin Foundation in Bensalem, PA. Further, you note that you are still attending A.A. meetings and are enrolled in the Mercer County Program, T.A.S.C. You assert that because of the rehabilitation and counseling programs, your performance of community service, and your continued studies at LaSalle in the social and psychology areas, you now “***fully understand and appreciate the grave and negative impact [your] past offenses had, not only on [your]self, but on [your] family.”

However, I am also aware that at the time of your disqualifying arrest you were 25 years old, presumably old enough to understand the consequences of your actions. Further, your disqualifying offense is not isolated in that you have several recent nondisqualifying offenses on record. Moreover, I considered that your disqualifying conviction is recent and serious in that it is drug-related. Therefore, notwithstanding that you may be making progress toward rehabilitation, too little time has passed for me to be certain that you are rehabilitated at this time. 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, “***New Jersey has an expressed public policy of ridding the schools of the scourge of illegal drug use.***”

This is particularly so in that you seek to work as a substitute teacher, a vocation which involves direct interaction with students, in that the State cannot subject children to even the possibility of danger associated with drugs or drug use. Like a public school teacher, the position of substitute teacher carries a particularly heavy burden in that one is entrusted with the direct care, supervision and instruction of children in the classroom setting. See, *In the Matter of the Disqualification from School Employment of William R. Palumbo*, decided by the State Board of Education, February 7, 1996, *aff'd* New Jersey Appellate Division, December 26, 1996.

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

Accordingly, your disqualification from school employment is affirmed. An appeal of this decision may be taken to the State Board of Education pursuant to *N.J.A.C. 6:2-1.1 et seq.*

Sincerely,

David C. Hespe
Assistant Commissioner

DH/DA/PS/mds
c: Carl Carabelli