

March 20, 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 D.L.*, Agency Docket Number DHP 41-98, I determine that you are not qualified for employment as a custodian .

The record indicates that you were charged on June 30, 1995 with Distributing, Dispensing or Possessing a Controlled Dangerous Substance Within 1,000 Feet of School Property, for which you were found guilty on September 13, 1996. You were sentenced to three years probation, two days jail time credit, suspension of your driver's license for a period of one year and six months, and ordered to pay a fine of \$3,525.

The Commissioner of Education, or his designee,¹ 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:4-34c* 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. In first considering the nature and responsibility of the position for which you are applying, I note that 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. Although you have not provided an explanation of the circumstances under which this offense occurred, you forthrightly admit that you made a mistake, for which you are sorry. (Personal Statement of D.L., March 1, 1998 at p. 1) I further note that you were 27 years old at the time of the offense.

I have duly considered your personal statement indicating that you have made changes in your life, and have completed an in-patient drug rehabilitation program in March of 1997.² I have also considered the positive progress report from your probation officer, the endorsement from the President of the West Keansburg Fire Company, where you serve as a volunteer fire fighter, and the letters of support from your family members and friends. It is clear from those letters that you are confronting your drug problem and making significant progress toward rehabilitation. However, I am unable to conclude that you have, at this time, demonstrated rehabilitation by clear and convincing evidence. In making this determination, I note that your disqualifying crime was extremely serious and recent, and 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.

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. Hespe, Assistant Commissioner
Executive Services

c: Carl Carabelli

² This assertion is corroborated by a certificate of completion issued on March 5, 1997 from the Salvation Army Adult Rehabilitation Center in Trenton.