

March 23, 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 B.L.S.*, Agency Docket No. DHP 44-98, I find you are not qualified for school employment as a bus aide.

You have the following disqualifying offenses on your criminal record: Assault/Aggravated Assault on April 27, 1976, for which you were found guilty on January 18, 1977, and sentenced to 364 days suspended jail time, one year probation, and ordered to pay a \$114 fine; Felony Possession of Heroin on April 26, 1991, for which you were found guilty on November 8, 1991, and sentenced to three years probation and four days jail time credit; and Felony Possession of Heroin on September 10, 1992, for which you were found guilty on November 6, 1992, sentenced to five years probation, 58 days jail time credit, an eighteen month suspension of your driver's license and ordered to pay a \$ 1,500 fine.

Your record reveals three counts of the nondisqualifying offense Felony Resisting Officer on September 10, 1992, for which you were found guilty and sentenced to five years probation. This sentence was to run concurrently with above charge of Felony Possession of Heroin on the same date.

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. 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

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.

(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)

In your personal statement you assert,

***I have an extensive 20 year drug/alcohol background, all of my charges are a direct result of my history.

*** With the programs offered at Linkages [Monmouth County Transitional Program for Homeless Women and Children] and with the help of Narcotics Anonymous, I started learning how to become a productive member of society, I have acquired some living skills, being responsible, working to survive, being a parent, paying bills on time, talking out anger as opposed to lashing out at other people, talking about feelings and sorting through them as opposed to medicating them, caring and being concerned about other people and their feelings as opposed to my own***. (Personal Statement of B.J.S. at p.1)

You further report that you are trying to set a good example for your daughter. I have taken into account these statements, the supportive letters provided and note that you are participating, and demonstrating progress, in your rehabilitation programs. Notwithstanding that you are making progress, however, I find that the sum and substance of your appeal, as well as the recency of your last offense, are insufficient to convince me of your rehabilitation.

In so ruling, I considered the statutory factors and note you were 34, and 35 years old, respectively, at the time of your drug offenses, which renders it unlikely that your criminal actions were due to immaturity. Further, your disqualifying offenses were not isolated but reflective of a pattern of criminal behavior spanning a sixteen year period through 1992.

Additionally, I have considered that your most recent disqualifying convictions are drug-related and, as such, very serious. See *In the Matter of the Disqualification from School Employment of D.E.S.*, 276-97 DHPL, decided by the Commissioner on May 23, 1997, *aff'd* State Board of Education, November 5, 1997. See also *In the Matter of the Disqualification of J.E.D.*, 511-97 DHPL, decided by the Commissioner of Education on September 26, 1997. 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.***"

I am also mindful that you seek to work as a bus aide, a position which entrusts the holder with the direct care and supervision of students, often under less than ideal circumstances. See *In the Matter of the Disqualification of Londela Y. Bryant*, 99-96 DHPL, decided March 15, 1996, *aff'd* State Board of Education, July 10, 1996. Your drug offenses, and crime of violence, should any of these recur, would be incompatible with the responsibility of the State to ensure a safe environment for its students. Additionally, too little time has passed since your drug conviction for me to conclude that you have demonstrated rehabilitation by clear and convincing evidence.

Accordingly, in balancing the above-factors, 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. Hesse
Assistant Commissioner

c: Carl Carabelli