

230-98 L

May 29, 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:39-19.1, In the Matter of the Disqualification from School Employment of S.A.-S.*, Agency Docket Number DHP-B 62-98, I determine that you are not qualified for employment as a school bus driver.

Your criminal record indicates the following:

- On September 13, 1971, you were charged with Robbery/Armed Robbery with Firearm, for which you were found guilty and sentenced on February 23, 1973 to serve, on Counts One and Two, three to five years in New Jersey State Prison, to run concurrently with a sentence imposed in Cumberland County;
- On October 27, 1971, you were charged with Robbery/While Armed, for which you were found guilty on January 15, 1973 and sentenced to seven years confinement, parole ineligible for five years;
- On October 10, 1978, you were charged with Robbery/While Armed, for which you were found guilty on June 20, 1979 and sentenced to 20 years confinement, parole ineligible for 15 years, jail time credit of 28 days; and
- On February 22, 1979, you were charged with Robbery/While Armed, for which you were found guilty on October 16, 1979 and sentenced to serve 15 years in New Jersey State Prison.

Additionally, your record indicates convictions for the following nondisqualifying crimes:

- Larceny/Disorderly Conduct (1969)
- Disorderly Conduct (1969)
- Possession of Stolen Property (1970)
- Felony Larceny/Burglary (1973)
- Carrying Prohibited Weapon (1979)

The Commissioner of Education, or his designee,<sup>1</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 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;

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<sup>1</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.

- (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)

I have reviewed the evidence of rehabilitation which you have presented against the above-named factors. In so reviewing, I find that the nature and responsibility of the position for which you are applying, school bus driver, is particularly sensitive, since it charges the individual with the physical care and well-being of potentially large groups of children. While you admit there are no excuses for your past criminal conduct, you state that you resorted to a life of crime when, after having been diagnosed with a rare lung disease, you were denied social security benefits. (Personal Statement of S.A.-S., April 27, 1998 at p. 2) You were 31 years old at the time of your most recent disqualifying offense. I further acknowledge your personal statement attesting to your current good standing in the community and your steady employment since your release from prison in 1985.

I have duly considered the evidence submitted on your behalf from past employers, friends, family members, city councilmen and your parole officer. Although you have submitted some strong evidence of rehabilitation with respect to the eighth and final factor, as noted above, a balancing of *all* factors required will simply not permit me to be clearly and convincingly persuaded, as I must be by law, that you are qualified for school employment. In this regard, I underscore the great responsibility the Commissioner holds in judging whether persons who have been convicted of extremely violent offenses should be able to work in the school environment. Here, the nature and seriousness of the offenses for which you were convicted are so serious, and the job for which you are applying is so sensitive, that I cannot overlook the risk, however attenuated it may now appear, that harm may be visited upon a student in the school setting.

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,

Douglas Groff, Assistant Commissioner  
Executive Services

c: Carl Carabelli