

495-98 DHP BL

October 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:39-19.1*,¹ *In the Matter of the Disqualification from School Employment of J.A.R.*, Agency Docket Number DHP-B 79-98, I determine that you are not qualified for employment as a school bus driver.

Your criminal record identifies the following disqualifying offenses:

- On October 21, 1987, you were charged with Possession of Cocaine, for which you were found guilty on May 8, 1989, sentenced five years probation, six months suspension of your driver's license and ordered to pay a \$1,060 fine;
- On January 18, 1989, you were charged with Felony Dangerous Drugs, for which you were found guilty on April 24, 1989, sentenced to three years confinement in New Jersey State Prison and ordered to pay a \$30 fine; and
- On October 18, 1989, you were charged with Felony Cocaine/Employing a Juvenile in a Drug Distribution Scheme, for which you were found guilty on October 26, 1990, sentenced to five years in New Jersey State Prison, six months suspension of your driver's license and ordered to pay a \$2,080 fine.

Additionally, the following nondisqualifying convictions appear on your record:

- Fraud (1984)²;
- Fraud (1987);
- Fraud (1987);
- Forgery (1989);
- Shoplifting (1989); and
- Shoplifting (1990).

The Commissioner of Education, or his designee,³ 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;

¹ The appeal was reviewed under the referenced statute, as it existed prior to July 1, 1998.

² The record indicates that on June 23, 1989, probation was revoked for this conviction and you were sentenced to three years in State Prison.

³ 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.

- (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 initially 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.

In your personal statement, you forthrightly attest that your criminal record was the result of your addiction to cocaine. You state,

***In 1987 I was observed by the authorities purchasing illegal substances. The incident in 1989 I was again in possession of C.D.S. At the time I may have been trying to pass a forged check in order to make the purchase, I was already on probation at the time for theft by deception, which I have made full restitution. However, since I had now violated a non custodial sentence I would be resentenced to serve time. The third offense I [received] while serving time at the Union County Jail in Elizabeth for trying [to] get drugs while incarcerated. This offense eventually landed me in Prison. (Personal Statement of J.A.R., June 7, 1998 at p. 1)

The record indicates that you were 35 years old at the time of your most recent offense.

You further aver that, while in prison, you took advantage of educational and training opportunities, and that statement is supported by the documents provided by the Department of Corrections. The record shows that you were a resident of the Sanford Bates House from January 21, 1992 until December 13, 1993, where you successfully met your obligations and were released from the custody of the Department of Corrections in December of 1993.

I have carefully considered the evidence submitted on your behalf, including the record of your enrollment in Union County College, as well as letters of support from your children, your friends and a former city council woman. However, I cannot be persuaded on the basis of the record before me, as I must be by law, that you have demonstrated rehabilitation by clear and convincing evidence, particularly in light of the extremely serious offenses on your record and the very sensitive position you seek to hold.

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