

February 6, 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 J.S.B.*, DHP-B 4-98, I determine that you are not qualified for employment as a school bus driver.

The record indicates that you were charged on September 3, 1996 with Felony Threaten to Kill, for which you were found guilty on December 16, 1996 and sentenced to three years probation, a \$125 fine, and one day county jail.

The Commissioner of Education, or his designee*, 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*)

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. Further, I note that your disqualifying offense is quite recent, very

* 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.

serious and occurred when you were 39 years of age, which renders it unlikely that it was attributable to immaturity.

I have duly considered your personal statement, wherein you assert that your conviction was the result of a domestic violence incident with your ex-wife which culminated in your being charged with threatening to kill her. You report that, although you “had no intentions of killing her or hurting her,” your attorney advised you to plead guilty because, with all the emphasis being placed on domestic violence cases by the courts today, your chances of winning were very slim. You further assert that “[n]one of this would have happened if it wasn’t for a bitter divorce and being wrongly accused of threatening to kill [your] ex-wife.” In this regard, I must remind you that it is not the role of the Commissioner to re-adjudicate criminal charges, but rather to determine rehabilitation.

I have considered the letters included in your appeal including one from R.E.B., Bob Baldwin’s Transportation, your employer, stating that you have worked for his firm since May 1979 and are considered to be an asset; ones from your co-workers, D.T., R.H., and R.K., who assert that this charge was a malicious attempt by your ex-wife to impugn your character; one from D.S., Probation Officer, State of New Jersey - Judiciary, Probation - Sussex, who reports that you have been under her supervision since May 1997, and states you have complied with the conditions of your probation, including psychological counseling “which has been ongoing and continues to date;” one from R.B., Ph.D., a licensed psychologist, who explains specifics of the treatment he is providing you; and, finally, ones from L.A.P. and K.N.P., your sisters-in-law; N.P., your mother-in-law, B.B.; your mother; and P.Y. and J.W.E., friends, all attesting to your helpfulness and current good standing.

In balancing the above-cited factors, although it appears that you are progressing toward rehabilitation, I find that too little time has passed for me to be persuaded, as I must by law, that you have demonstrated rehabilitation by clear and convincing evidence at this time. This determination does not preclude you from applying for reconsideration upon the passage of additional time without further incident.

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

c: Carl Carabelli