

February 27, 1998

Dear :

Having reviewed your 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 C.E.*, Agency Dkt. No. DHP-B26-98, I determine that you are not qualified for employment as a school bus driver.

You have the following disqualifying offense on your criminal record: Homicide (Manslaughter) on August 11, 1986, for which you were found guilty on May 1, 1987, and sentenced to five years in prison and ordered to pay a \$25 fine.

The Commissioner of Education, or his designee¹, 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)

Page 2

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.

The evidence provided by you has been reviewed against the above-named factors. Upon review, I note that the evidence of rehabilitation you have submitted on appeal consists of a personal statement, attesting that at the time of your offense, your intent was to break up a fight between your brother and his girlfriend but not to hurt anyone. You also state that the loss of your bus driver license “***would be another big disappointment in [your] life [and that you] can honestly say that [you are] not a criminal.” You also provide several supportive letters, including a letter from your parole officer and a letter from your supervisor at Laidlaw Transit.

I have carefully reviewed the documents that you have provided on appeal. In so doing, I have taken into consideration the circumstances surrounding the offense as you explained them in your personal statement. I have also considered the remaining statutory factors and am aware while eleven years have passed since this incident, a *very* serious conviction remains on your record. I am also aware that you were nearly 27 years old when the disqualifying incident occurred, presumably mature enough to understand the consequences of your actions.

Furthermore, this serious crime cannot be reconciled with your desire to work for the schools as a bus driver, a position laden with great responsibility wherein one is entrusted, often on a sole basis, with the care and safety of children as they are transported to and from school. This is so notwithstanding that you may be making progress toward rehabilitation, as the State cannot subject children to the possibility of another violent episode as there is little doubt that stressful conditions exist on school buses as a result of both traffic conditions and the presence of large numbers of children who may be generally unruly or more seriously disruptive. See *In the Matter of the Disqualification from School Employment of J.J.G.*, Agency Dkt. No. DHP-B 74-96, Commissioner’s decision 474-96 DHP-BL, aff’d State Board of Education January 8, 1997. The nature and seriousness of this crime are simply too great for me to be clearly and convincingly persuaded, as I must, that you are rehabilitated at this time.

Consequently, in balancing the above-cited factors, I am unable to conclude that you have demonstrated rehabilitation by clear and convincing evidence, as you must by law, so as to be qualified within the meaning of the school employee background check statutes.

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

DH/DNA/PS/ce
c: Carl Carabelli