

DHPL #507-96
SB # 91-96

IN THE MATTER OF THE DISQUALIFI- : STATE BOARD OF EDUCATION
CATION FROM SCHOOL EMPLOYMENT : DECISION ON MOTION
OF D.W. :

Decided by the Deputy Commissioner of Education, November 15, 1996

Decided by the State Board of Education, March 5, 1997

For the Petitioner-Appellant, Rusignola, Pugliese & Rusignola (Carmen
Rusignola, Esq., of Counsel)

D.W. (hereinafter "petitioner") was disqualified by the Office of Criminal History Review of the Department of Education from continued employment as a substitute teacher in the State's schools after a criminal history review conducted pursuant to N.J.S.A. 18A:6-7.1 revealed four convictions for drug offenses following arrests between June 1989 and January 1992. Petitioner sought to overturn her disqualification on the basis of rehabilitation.

In a letter decision dated November 15, 1996, the Deputy Commissioner of Education upheld the disqualification, finding that while petitioner was progressing toward rehabilitation, she had failed to demonstrate clear and convincing evidence of her rehabilitation as required by N.J.S.A. 18A:6-7.1. On March 5, 1997, we affirmed the decision of the Deputy Commissioner. We found that petitioner was making impressive progress towards rehabilitation, but stressed that her convictions had

included Distribution of Controlled Dangerous Substances and Possession with Intent to Distribute Controlled Dangerous Substances, and that the drugs at issue had included heroin and cocaine. In view of the recent and extremely serious nature of petitioner's disqualifying offenses, and the fact that she had been disqualified from employment as a substitute teacher, a position which included responsibility for the care, supervision and instruction of students, we were unable to conclude at that time that petitioner had affirmatively demonstrated her rehabilitation by clear and convincing evidence.

Petitioner has filed the instant motion seeking reconsideration of our decision. Petitioner contends that although her criminal record includes convictions for distribution and possession with intent to distribute, all controlled dangerous substances in her possession had been for her personal use. Petitioner alleges that she never had "more than 8 vials in [her] personal possession which was entirely consistent with an amount that [she] routinely consumed at that point and time." Petitioner has also submitted documents attesting to her academic achievements in recent years.

It is well settled that an administrative agency has the inherent power, in the absence of legislative restriction, to reopen or modify a previous determination. Duvin v. State, 76 N.J. 203, 207 (1978). Such power, however, must be exercised reasonably and invoked only for good cause shown. Id.

After a careful review of the record, we deny petitioner's motion. Although petitioner denies that she had been involved in the distribution of controlled dangerous substances, we cannot disregard the Judgment of Conviction entered following her

March 1991 arrest, in which the Court expressly indicated that petitioner "was a dealer of drugs." We note, moreover, that in a letter dated October 9, 1996 to the manager of the Office of Criminal History Review, petitioner acknowledged that she had decided to try to sell drugs to support her habit.

Consequently, while it is evident that petitioner is making great strides towards rehabilitation, we find that she has failed to provide good cause for reconsidering our decision of March 5, 1997.

S. David Brandt abstained.

June 4, 1997

Date of mailing _____