

DHPL #411-97  
SB # 75-97

IN THE MATTER OF THE DISQUALIFI- :  
CATION FROM SCHOOL EMPLOYMENT : STATE BOARD OF EDUCATION  
OF L.A.W. : DECISION

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Decided by the Assistant Commissioner of Education, August 8, 1997

For the Petitioner-Appellant, Reed & Scholl (Robert B. Reed, Esq., of  
Counsel)

L.A.W. (hereinafter "petitioner"), who was employed as a school health office aide by the Hunterdon County Educational Services Commission, was disqualified by the Office of Criminal History Review of the Department of Education from continued employment in the State's schools after a criminal history record review conducted pursuant to N.J.S.A. 18A:6-7.1 revealed that she had been found guilty of Endangering the Welfare of Children, a disqualifying offense under the statute, following an arrest in Pennsylvania in April 1993. Petitioner sought to overturn her disqualification on the basis of rehabilitation. She also argued that N.J.S.A. 2A:168A-3 of the Rehabilitated Convicted Offenders Act prohibited the Department from disqualifying her from school employment since she had been issued a Certificate of Good Conduct in 1996 by the Probation Department of Hunterdon County.

In a letter decision dated August 8, 1997, the Assistant Commissioner of Education, Executive Services, upheld the disqualification,<sup>1</sup> concluding that, while petitioner was progressing towards rehabilitation, she had failed to demonstrate clear and convincing evidence of her rehabilitation as required by N.J.S.A. 18A:6-7.1. The Assistant Commissioner also rejected petitioner's contention regarding her Certificate of Good Conduct, noting that "the within matter is solely within the purview of the Commissioner of Education and education law and, therefore, any finding with respect to L.A.W. arising under the criminal law statutes, is irrelevant to the instant determination." Assistant Commissioner's Decision, slip op. at 2, n.2.

Petitioner filed the instant appeal to the State Board.

After a careful review of the record, we remand this matter to the Commissioner for further proceedings in accordance with our determination herein.

Initially, we reject petitioner's contention that N.J.S.A. 2A:168A-3 of the Rehabilitated Convicted Offenders Act prohibits the Department from disqualifying her from school employment on the basis of her conviction. That statute provides that:

The presentation to a licensing authority of evidence of a pardon or of the expungement of a criminal conviction, pursuant to N.J.S. 2A:164-28, or of a certificate of the Federal or State Parole Board, or of the Chief Probation Officer of a United States District Court or a county who has supervised the applicant's probation, that the applicant has achieved a degree of rehabilitation indicating that his engaging in the proposed employment would not be incompatible with the welfare of society shall preclude a

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<sup>1</sup> We note that N.J.S.A. 18A:4-33 authorizes the Commissioner to "designate an assistant commissioner as deputy commissioner with full power to act in his place and stead during any absence or inability of the commissioner and at such other times as the commissioner may designate." Such authority expressly includes assignment by the Commissioner of the "hearing and determination of controversies and disputes which may arise under the school laws...." N.J.S.A. 18A:4-34.

licensing authority from disqualifying or discriminating against the applicant.

This is not a case in which action was being taken by a licensing authority. Rather, the Office of Criminal History Review, as affirmed by the Commissioner, disqualified petitioner from employment in the State's schools as a health office aide on the basis of a conviction listed in N.J.S.A. 18A:6-7.1 as grounds for disqualification from school employment. We note, in addition, that the Certificate of Good Conduct refers only generally to petitioner's proposed employment as a licensed practical nurse, and not specifically to her service as a school health office aide. Consequently, we conclude that N.J.S.A. 2A:168A-3 does not bar petitioner's disqualification from school employment under N.J.S.A. 18A:6-7.1.

Turning to the issue of rehabilitation, we find that petitioner has shown significant evidence of her rehabilitation under the standard set forth in N.J.S.A. 18A:6-7.1(e). The Superintendent of the Hunterdon County Educational Services Commission, in which petitioner had been employed prior to her disqualification, indicates that the assistant superintendent to whom petitioner reported "was very complimentary of [petitioner's] work and enthusiasm for the organization." Several other letters attest to petitioner's fine work and reliability in her position as a home health care companion. The record also reveals that petitioner was granted sole legal custody of her children in March 1995 by the Chancery Division of Superior Court, and that she received a degree in practical nursing from the Somerset County Technical Institute in January 1996. In July 1996, the Probation Department of Hunterdon County issued the Certificate of Good Conduct asserting that petitioner "has achieved a degree

of rehabilitation, indicating that her engaging in the proposed employment as a licensed practical nurse would not be incompatible with the welfare of society....” Petitioner was granted a practical nurse license by the New Jersey Board of Nursing in November 1996, and, in April 1997, she was accepted into the Practical Nurse Associate Degree Option in the nursing program at Raritan Valley Community College. There have been no further arrests.

In determining whether petitioner has established her rehabilitation, we are required to consider the factors set forth in N.J.S.A. 18A:6-7.1(e), including “the nature and seriousness of the offense,” N.J.S.A. 18A:6-7.1(e)(2). In this case, the criminal history review revealed that petitioner had been found guilty of Endangering the Welfare of Children. Although petitioner states without contradiction<sup>2</sup> that her conviction arose from an incident in which she had left her two young children at home in the care of a friend who had then left them alone, the record before us raises questions concerning the facts underlying that conviction. In a letter denying petitioner’s request to expunge her conviction, the District Attorney of Mifflin County, Pennsylvania stated that while he was “impressed with [petitioner’s] apparent change in lifestyle,” his review of “the file and the photos” led him to believe that this was “too serious of a case to be expunged from her record.” On the record before us, we are unable to reconcile to our satisfaction the District Attorney’s statement with the explanation offered by the petitioner. In that context, we also question whether petitioner’s explanation that she had innocently left her children in the care of a friend would lead to petitioner’s conviction for Endangering the Welfare of Children after the

friend left them alone. Given such concerns, we are unable to conclude at this time that petitioner has affirmatively demonstrated her rehabilitation by clear and convincing evidence.

However, under these circumstances, and in view of the fact that petitioner has shown significant evidence of rehabilitation, we do not dismiss her petition. Rather, we remand this matter to the Commissioner for further proceedings for the limited purpose of clarifying the specific nature and seriousness of petitioner's offense, and for a resultant determination under the standard set forth in N.J.S.A. 18A:6-7.1(e) as to whether petitioner has affirmatively demonstrated her rehabilitation by clear and convincing evidence.

Given our determination herein, we find it unnecessary to address whether the answer brief filed on behalf of the Commissioner, the decision-maker below, who is not a party to this matter, see In the Matter of the Disqualification from School Employment of Earl Davis, decided by the State Board of Education, June 7, 1995, slip op. at 2, n.2, should be considered in this instance. See Hasbrouck Heights v. Division of Tax Appeals, 48 N.J. Super. 328 (App. Div. 1958); Public Service Interstate Transportation Co. v. Board of Public Utility Com'rs., 129 N.J.L. 94 (E. & A. 1942). See also Director, Office of Workers' Compensation Programs, Department of Labor v. Newport News Shipbuilding and Dry Dock Co. et al., 514 U.S. 122, 115 S.Ct. 1278, 131 L.Ed.2d 160 (1995). We have therefore not considered the Commissioner's submission in determining this matter.

We do not retain jurisdiction.

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<sup>2</sup> We note that the Office of Criminal History Review did not participate in the proceedings before the

Maud Dahme abstained.

January 7, 1998

Date of mailing \_\_\_\_\_

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Commissioner.