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***Appellate Court Rules Department of Education Acted
Unfairly in Denying Employment to Aide with Past Criminal Record***

***Ruling Rejects DOE's Practice of Routinely Refusing to Hire
Non-Pedagogical Workers with Criminal Records Despite Clear Proof of Rehabilitation***

May 18, 2009, New York, NY—The Appellate Division of State Supreme Court reversed a lower court decision and ruled that the New York City Department of Education (DOE) acted in an arbitrary and capricious manner in denying employment to a 31-year-old administrative assistant who worked for a DOE contract agency because of a 15-year-old criminal conviction record. The ruling rejects the DOE's practice of denying employment to ex-offenders without a specific basis for finding them to be a danger to the program or school involved.

Madeline Acosta, now 33, married and the mother of a four-year-old son, was employed by the Cooke Center for Learning and Development, a non-profit organization that contracted with the DOE to provide special education services, as a part-time administrative assistant in 2006. After three months on the job, she disclosed her past record as part of the DOE's security clearance procedure. As a 17-year-old high school senior, Ms. Acosta was coerced by an abusive boyfriend to accompany him in several armed robberies. She was arrested and spent four years in prison.

Ms. Acosta complied with every request for information from the DOE, and presented abundant documentation of her rehabilitation. In prison, Ms. Acosta completed high school, took business classes, and taught other inmates. After her release at age 21, she attended college at night while working and earned a B.S. in Legal Studies. She worked successfully at two environmental law firms before taking the part-time position at the Cooke Center so she could have more time with her young son. For years, she volunteered with advocacy organizations, speaking to young people about her experiences and encouraging them to stay out of trouble. "I don't even remember who I was at 17," Ms. Acosta said, "I have given more than what I have taken."

Despite her exemplary work history and service to the community, the DOE denied Ms. Acosta's employment application, charging that she "will pose an unreasonable risk to the safety and welfare of the school community" and that she had failed to provide references from previous employers, even though no references were requested. The Appellate court found that the DOE's denial of

employment was unreasonable and made without regard to the facts and remanded the matter to the Supreme Court to fashion an appropriate remedy. Ms. Acosta is seeking reinstatement and back pay. Ms. Acosta was represented by Jadhira Rivera and Bernadette Jentsch, attorneys at MFY Legal Services. “We’ve had many people come to us with complaints about denials of employment by the DOE, and there appears to be a clear pattern of automatically denying employment to applicants with criminal conviction records seeking clerical and other non-teaching jobs,” said Ms. Jentsch.

Two years ago, MFY filed a Freedom of Information Law (FOIL) request, asking the DOE to document its procedures for reviewing the cases of applicants with criminal records. “They waited months and then gave us very little,” said Jadhira Rivera. “We had to file a lawsuit to get them to comply. In court, the DOE was forced to acknowledge that it has no written policies that instruct staff on how to investigate cases and make determinations.”

MFY has filed other lawsuits against the DOE challenging its denials of employment to people with past criminal records. “Most of our clients are women like Ms. Acosta,” said Andrew Goldberg, supervising attorney for MFY’s employment unit. “They got in trouble when they were young and now they’re responsible adults trying to make a living and support their kids. If the DOE won’t hire someone like Madeline Acosta, who will they hire?”