

EDU #6476-96  
C # 595-97  
SB # 99-97

HELEN O'NEAL, :  
PETITIONER-APPELLANT, :  
V. : STATE BOARD OF EDUCATION  
BOARD OF EDUCATION OF THE : DECISION  
CITY OF SALEM, SALEM COUNTY, :  
RESPONDENT-RESPONDENT. :  
\_\_\_\_\_ :

Decided by the Commissioner of Education, November 17, 1997

For the Petitioner-Appellant, Klausner & Hunter (Stephen B. Hunter, Esq.,  
of Counsel)

For the Respondent-Respondent, John T. Barbour, Esq.

This is an appeal from a summary decision in favor of the Board of Education of the City of Salem (hereinafter "Board"). The Board had applied to the Commissioner of Education for a waiver of two rules which we had adopted with respect to special education. The first regulation required that members of the basic child study team be employed, either independently or through joint agreement, by district boards of education in sufficient numbers to ensure the provision of required programs and services. N.J.A.C. 6:28-1.1(f). The second established a level of diagnostic assessment that had to be provided by restricting contracted services to independent child study team evaluations and/or diagnostic services to supplement existing local district services. N.J.A.C. 6:28-5.1(c)1i. In combination, these two waivers removed

the regulatory barriers to subcontracting for social worker services. As a result, the Board terminated its regular social worker and planned to contract out for social work services. The social worker, Helen O'Neal (hereinafter "petitioner"), who had achieved tenure in the district as a result of such service, filed a petition of appeal with the Commissioner, alleging that the Board had violated her tenure and seniority rights in abolishing her position.

The Administrative Law Judge ("ALJ") concluded that the matter was ripe for summary decision. He found that the Board's action to contract with the Salem County Special Services School District for school social worker services was proper given the Commissioner's grant of a waiver from regulatory requirements which would otherwise have precluded such contracting. Accordingly, the ALJ concluded that the Board had acted properly for reasons of economy in abolishing petitioner's position and that it had not contravened petitioner's tenure or seniority rights.

The Commissioner adopted the ALJ's determination with modification. Initially noting that case law and regulation require a social worker to be a member of the core child study team employed by the district or of another district through joint agreement, the Commissioner stressed that the requirements of the regulations had been waived. The Commissioner corrected the waiver to include N.J.A.C. 6:28-3.4(d) (requiring that initial evaluation must include assessment by a school social worker employed by the school) and concluded that petitioner could not prevail on her argument that regulation and case law prevented contracting in this instance.

The Commissioner also rejected the petitioner's contention that the waiver was invalidated by a failure of the Board to meet the conditions of the waiver, emphasizing

that such failure might invalidate the waiver but would not provide a claim to petitioner. However, the Commissioner directed the Salem County Superintendent to inquire into the Board's provision of required social work services and to take appropriate action in the event that he found any deficiency in the Board's compliance with the terms of the waiver.

Petitioner appealed to the State Board of Education, renewing her argument that the regulations and case law precluded contracting in this case. Petitioner maintains that the subcontracting was unlawful because the Board lacked the authority to provide basic child study team services by contract with a private vendor. She further argues that the Salem Board failed to comply with the conditions of the waiver and that it could not meet the needs of the school district for mandated social work services.

We have carefully reviewed the record in this matter and conclude that the ALJ and the Commissioner acted properly in granting summary decision to the Board.

Initially, we concur with petitioner that the statutory framework applicable herein precludes the contracting of the services at issue to a private vendor. However, that is not what occurred in this instance. Rather, the record establishes that the Board in this case contracted with the Salem County Special Services School District to provide the required services. In this respect, we stress that a special services school district is a public entity authorized by statute to provide such services. Nor has the petitioner offered proof or a concrete example of any failure by the Board to provide mandated services to the pupils of the school district. Under these circumstances, the Board was entitled to summary decision.

We therefore affirm the Commissioner's decision. However, in doing so, we emphasize that N.J.A.C. 6A:14-1 et seq. became effective on July 6, 1998, and that, pursuant to N.J.A.C. 6A:14-4.10(f), the waiver at issue here expired on that date.

June 7, 2000

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