

HELEN O' NEAL,	:	
	:	
PETITIONER,	:	
V.	:	COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE	:	DECISION
CITY OF SALEM, SALEM COUNTY,	:	
	:	
RESPONDENT.	:	
_____	:	

SYNOPSIS

Petitioner, tenured school social worker, contended Board's refusal to reemploy her for the 1996-97 school year violated her tenure and seniority rights. Board abolished her position pursuant to a RIF and assigned her duties to a subcontractor. Board asserted it was in receipt of two waivers from the Commissioner concerning the provisions of certain Child Study Team (CST) functions, specifically social worker services.

ALJ found that the record clearly demonstrated that the Commissioner, with approval of the State Board, granted the Board a waiver from certain administrative regulations to allow the Board to contract for the services of a school social worker and to determine which assessments are appropriate for initial evaluations. Thus, the ALJ concluded that the Board's action to contract with the Salem County Special Services School District to perform the functions of its required school social worker services was proper and in accordance with the Commissioner's authority. ALJ concluded that the Board's action to abolish petitioner's position of school social worker was taken pursuant to *N.J.S.A. 18A:28-9* for reasons of economy and in no manner violated her tenure or seniority rights. Petitioner's motion for summary decision was dismissed.

Commissioner affirmed initial decision, but directed County Superintendent to inquire into Board's possible noncompliance with the conditions upon which the waiver was granted.

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The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner's exceptions were timely filed pursuant to *N.J.A.C.* 1:1-18.4. Reply exceptions were untimely filed by respondent and are, therefore, not considered herein.¹

Petitioner renews her contention that pursuant to *Impey, supra*, and its progeny, a local board of education may not contract for Child Study Team (CST) services performed by core team members, *i.e.*, by school psychologists, school social workers and learning disabilities teacher consultants, who must by law be employed by the district. (Exceptions at p. 3) Even granting, however, that services may be provided by such an outside entity, in the case of a waiver, petitioner next asserts that the condition set by the Commissioner in granting the waiver was not met and, therefore, the District's failure to comply with its own stated objectives and the waiver condition negates the waiver.

Upon review, the Commissioner notes initially that *N.J.A.C.* 6:28-1.1(f), 6:28-3.4(d) and 6:28-5.1(c), as well as *Impey, supra*, and its progeny, do, in fact, require a social worker to be a member of the core CST and do, in fact, require such members to be employees of the district or of another district through joint agreement. However, in this instance,

N.J.A.C. 6:28-1.1(f) and 6:28-5.1(c) were waived by the Commissioner and clearly the intent of that waiver was to also waive the requirement of *N.J.A.C.* 6:28-3.4(d) with respect to District employment, notwithstanding that this particular regulation was omitted from the citation list effectuating the District's request. Therefore, petitioner cannot prevail in her argument that, notwithstanding the waiver, regulation and case law prevented the District from contracting out for core CST services on this basis.

As to petitioner's argument that the waiver was invalidated by the Board's failure to meet the condition under which it was granted, i.e., implementation of the county superintendent's plan for the description of services required for the district, the Commissioner holds that, even if it could be found in retrospect that, as events subsequently transpired, the Board failed to meet the condition imposed, its action to reduce petitioner's employment at the time the waiver was granted would still have been proper and petitioner would have no claim to reinstatement and back pay. Rather, the appropriate remedy for a demonstrated failure to meet waiver conditions would be an action on the part of the Commissioner to rescind the waiver in the event the noncompliance remains uncorrected.²

Accordingly, the initial decision dismissing the petition of appeal is affirmed for the reasons expressed therein, as amplified above. However, in light of the unresolved issues raised in this matter relating to possible noncompliance with the waiver's stated condition, the Commissioner hereby directs the Salem County Superintendent to inquire into the Board's provision of required social services, and to take such action as he deems appropriate should he find any deficiency in the Board's compliance.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

Date: November 17, 1997

¹ Respondent's exceptions, due on September 9, 1997, were received in the Office of the Commissioner on September 15, 1997. In that there was no indication by respondent that they were faxed or proof that they were otherwise filed prior to September 15, 1997, they may not be considered pursuant to *N.J.A.C.* 1:1-18.4(a).

² Such rescission would presumably result in petitioner's recall from the preferred eligibility list, on which she would have been placed upon RIF in recognition of her tenure and seniority rights.