

LINDA MARTELL-DIMAIO, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
TOWNSHIP OF DENNIS,
CAPE MAY COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner was employed as a teaching staff member in respondent's district during the 2006-07 school year. She contended that although she received a notice of intent to terminate her employment from the Superintendent of Schools in June 2007, she was never officially terminated by the Board as required by statute and should receive back pay. The parties filed cross motions for summary decision, and the facts of the matter are not in dispute.

The ALJ found that: *N.J.S.A. 18A:27-4* specifies that only the Board of Education may remove an employee, by a majority vote of the full board; such Board action did not occur in this matter until January 5, 2008; petitioner's termination was therefore not effective until that date; petitioner is entitled to back pay from the date of her last pay, October 17, 2007, until the date the Board officially terminated her; and petitioner's termination afforded her neither entitlement to a statement of reasons nor an informal appearance before the Board. Accordingly, the ALJ ordered that petitioner be awarded back pay from October 17, 2007 to January 5, 2008, and that she not be afforded a statement of reasons for her termination or an informal appearance before the Board.

The Commissioner concurred with the ALJ that petitioner is due back pay for the period specified above. While noting that the ALJ had determined that petitioner could not rely on *N.J.S.A. 18A:27-4.1(b)* as support for a request for a statement of reasons for her termination and an informal meeting with the respondent board of education, the Commissioner determined that such requests for relief were not raised in the petition or addressed in the prehearing order. Consequently they were not addressed by the Commissioner. Respondent was ordered to award back pay to petitioner for the period commencing October 17, 2007 through January 5, 2008.

This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

OAL DKT. NO. EDU 10500-07
AGENCY DKT. NO. 339-11/07

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. No exceptions were filed with the Commissioner of Education (Commissioner). For the reasons set forth in the Initial Decision, the Commissioner concurs with the Administrative Law Judge's (ALJ) conclusion that petitioner is due back pay for the period commencing October 17, 2007 and continuing through January 5, 2008 – the day upon which respondent passed a resolution ratifying petitioner's termination.

The Commissioner acknowledges that the ALJ determined that petitioner cannot rely on N.J.S.A. 18A:27-4.1(b) as support for a request for 1) a statement of reasons for her termination and 2) an informal meeting with the respondent board of education. However, since these two requests for relief were not raised in the petition or addressed in the prehearing order, they need not be addressed by the Commissioner.

Accordingly, the Commissioner adopts the portion of the Initial Decision in which petitioner is awarded back pay for the period beginning October 17, 2007 and ending on January 5, 2008.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: May 9, 2008

Date of Mailing: May 9, 2008

* This decision may be appealed to the State Board of Education pursuant to *N.J.S.A. 18A:6-27 et seq.* and *N.J.A.C. 6A:4-1.1 et seq.*