

EDU #3304-96
C # 30-97
SB # 19-97

LORETTA COLANTONI, :
PETITIONER-APPELLANT, :
V. : STATE BOARD OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
TOWNSHIP OF LONG HILL, MORRIS :
COUNTY, :
RESPONDENT-RESPONDENT. :

Decided by the Commissioner of Education, January 23, 1997

Decision on motion by the State Board of Education, June 4, 1997

Decision on motion by the State Board of Education, January 6, 1999

For the Petitioner-Appellant, Bucceri & Pincus (Louis P. Bucceri, Esq., of Counsel)

For the Respondent-Respondent, Riker, Danzig, Scherer, Hyland & Perretti (Lance Kalik, Esq., of Counsel)

This matter was initiated in February 1996 on behalf of Loretta Colantoni (hereinafter "petitioner"), a tenured teaching staff member employed by the Long Hill Township Board of Education (hereinafter "Board"). Petitioner alleged that the Board had violated her tenure and seniority rights when, after it had eliminated her position as a guidance counselor, it had subcontracted with the Morris-Union Jointure Commission ("Jointure Commission") to provide guidance services to its students, including non-handicapped students. Although petitioner had been employed by the Board under

her instructional certificate without loss of pay following the elimination of her position as a guidance counselor, she sought reassignment to a guidance counselor position.

On October 18, 1996, an Administrative Law Judge (“ALJ”) issued an initial decision in this matter. Although finding that petitioner was not entitled to any relief at that point,¹ the ALJ concluded that the Board could not properly subcontract with a jointure commission to provide guidance services to non-handicapped students.

On January 23, 1997, the Commissioner adopted that part of the ALJ’s decision which found that petitioner was not entitled to relief. However, the Commissioner rejected the ALJ’s determination that N.J.S.A. 18A:46-24 et seq. precluded the Board from subcontracting with the Jointure Commission to provide guidance services to non-handicapped students. Rather, the Commissioner concluded that:

While the primary purpose of a jointure commission is to assist boards of education in carrying out their common duties with respect to the education and training of handicapped pupils, nothing in this statute would act to preclude such commission from expanding the scope of its services to include nonhandicapped pupils where the contracting districts find such expansion to be in the best interest of efficient delivery of services.

Commissioner’s decision, slip op. at 12.

Petitioner filed an appeal to the State Board from the Commissioner’s decision.

On October 29, 1998, the Board moved for dismissal of the appeal, contending that the matter was moot since petitioner had retired from her employment with the district effective January 1, 1998.

¹ The ALJ observed that there were several alternatives available to the Board if it chose to provide guidance services and that the Board was under no obligation to maintain a guidance counselor position. Hence, the ALJ concluded that petitioner would be entitled to relief only if the Board chose to recreate a guidance counselor position.

In our decision of January 6, 1999, we denied the Board's motion. In doing so, we found that resolution of the issue raised by this appeal would have far-reaching implications for New Jersey's system of public education. Consequently, we concluded that the public interest dictated that we decide the statutory question that had been raised in this case notwithstanding the fact that the individual petitioner involved would not be afforded any relief as a result of our decision.²

In order to decide the issue as expeditiously as possible, we directed the Board to supplement the record on appeal with the agreements and resolutions which had been submitted to the Commissioner for approval pursuant to N.J.S.A. 18A:46-24 et seq. to establish the Morris-Union Jointure Commission.

After reviewing the Board's submission, as well as the briefs filed by the parties, we find, as the ALJ correctly concluded, that the Board could not contract with a jointure commission established pursuant to N.J.S.A. 18A:46-24 for the provision of guidance services to non-handicapped students.

The establishment of jointure commissions is authorized by N.J.S.A. 18A:46-24 et seq., which also prescribes their powers. Those statutory provisions are included in Chapter 46 of the education statutes, which specifically provides for "Classes and Facilities for Handicapped Children." N.J.S.A. 18A:46-14 enumerates the various ways in which special education facilities and programs required under Chapter 46 must be provided. N.J.S.A. 18A:46-14(d) specifically authorizes the provision of such facilities

² In April 1996, the Long Hill Township Education Association had filed an unfair practice charge against the Board with the Public Employment Relations Commission ("PERC") based on the same allegations as are involved herein. In urging the State Board not to dismiss her appeal as moot, petitioner contended that the State Board should resolve the issue because PERC had effectively deferred action on the unfair practice charge pending the outcome of this appeal and that it is our agency's interpretation of N.J.S.A. 18A:46-24 et seq. that will be controlling in the PERC matter.

and programs through a jointure commission program. The establishment of jointure commissions is authorized by N.J.S.A. 18A:46-25, which provides that:

When two or more boards of education determine to carry out jointly by agreement the duties imposed upon them in regard to the education and training of handicapped pupils the said boards may, in accordance with rules and regulations of the state board, and with the approval of the commissioner by adoption of similar resolutions establish a jointure commission for the purpose of providing such services....

N.J.S.A. 18A:46-26 delineates the powers of a jointure commission. These include the authority to: a) provide and maintain necessary facilities, b) take necessary action for the proper conduct of the educational program for “such children” referred to it by its member boards, c) employ staff, d) accept pupils from other school districts, and e) apportion costs of the program. In addition, N.J.S.A. 18A:46-26 provides that:

Within the limited responsibilities of this chapter and except as otherwise provided, the commission shall have and may exercise all powers of a board of education in carrying out the purpose of this chapter.

The language of the applicable statutes is clear and unambiguous. As the Commissioner has previously recognized, jointure commissions were created only for the purpose of educating and training handicapped students. Stuermer v. Board of Education of the Special Services School District of Bergen County, 1978 SLD 628, 631. In conferring the power on jointure commissions to take such action as may be necessary for the proper conduct of the educational program for “such children” as are referred to them, N.J.S.A. 18A:46-26, the Legislature provided jointure commissions with the authority to provide education and training only to handicapped students. This limitation is reinforced by the Legislature’s grant to jointure commissions of all powers of boards of education “[w]ithin the limited responsibilities of this chapter” and “in carrying

out the purpose of this chapter.” N.J.S.A. 18A:46-26. As previously indicated, the only purpose of Chapter 46 is to provide for special educational services for handicapped children. See, e.g., N.J.S.A. 18A:46-2.

Quite simply, there is nothing in the statutory language to provide the authority for the provision of services to non-handicapped students by a jointure commission. See Fair Lawn Ed. Assn. v. Fair Lawn Bd. of Education, 79 N.J. 574 (1979). That being the case, the Board could not properly provide guidance services to its non-handicapped students by contracting with the Morris-Union Jointure Commission for those services.

This conclusion is reinforced by review of the application for the establishment of the Morris-Union Jointure Commission, which the State Board of Education approved on June 3, 1987 on the recommendation of the Commissioner of Education. The application shows clearly that the Morris-Union Jointure Commission was established under the statutory framework in order for the member boards to provide special education services and programs through a cooperative arrangement. In this respect, we reject the Board’s suggestion that Article II of the Jointure Commission’s constitution expanded this purpose to include the provision of services to all students of the member and subcontracting districts.

In that petitioner did not suffer any economic loss as a result of the Board’s action and has retired from her employment in the district, the relief afforded by our decision is limited to this declaration.

March 3, 1999

Date of mailing _____