

EILEEN AUERBACH, :  
 :  
 PETITIONER, :  
 :  
 V. : COMMISSIONER OF EDUCATION  
 :  
 BOARD OF EDUCATION OF THE : DECISION  
 BOROUGH OF MORRIS PLAINS, :  
 MORRIS COUNTY, :  
 :  
 RESPONDENT. :

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SYNOPSIS

Petitioner, tenured social worker, appealed Board's determination to terminate her employment by a reduction in force and the contracting of her child study team services to Morris County Educational Services Commission, alleging such action was violative of *N.J.A.C. 6:28-3.1(b)*.

ALJ found that pursuant to regulation, the Board is prohibited from contracting with an Educational Services Commission for the services of a core member of the child study team. The ALJ concluded that petitioner was entitled to full reinstatement for the 1996-97 year with no loss of rights and benefits and to restoration of retroactive compensation for the 1996-97 school year, less mitigation.

Commissioner adopted findings and determination in initial decision as his own and directed reinstatement of petitioner with back pay and emoluments, as appropriate, for the 1996-97 school year and thereafter. Commissioner additionally emphasized that the contracts and joint agreements through which a local board of education may provide child study team services if it elects not to employ its own team must be with *public* entities such as ESC's, jointure commissions or other school districts.

AUGUST 20, 1977

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The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. The Board's exceptions and respondent's reply thereto were timely filed in accordance with *N.J.A.C.* 1:1-18.4.

Respondent's exceptions recast and reiterate those arguments advanced before the Administrative Law Judge (ALJ) in post-hearing submissions, again, essentially, contending that *Impey, supra*, is controlling in this matter and that the interpretation of *N.J.A.C.* 6:28-3.1(b) espoused by petitioner and the ALJ is beyond the authority of the State Board of Education, absent clarification of the regulations by further rulemaking. The Commissioner concludes that respondent's exception issues were fully considered and addressed in the ALJ's initial decision and will not, therefore, be readdressed herein.

Upon careful and independent review, the Commissioner determines to adopt the recommended decision of the OAL, as he fully concurs with the ALJ's applied analysis and

conclusion. The Board's termination of the within petitioner, a tenured member of the "core" child study team, and its contracting of her duties to the Morris County Educational Services Commission, is violative of *N.J.A.C. 6:28-3.1(b)* and, as such, petitioner must be reinstated to her school social worker position.

Accordingly, the initial decision of the OAL is adopted as the final decision in this matter for the reasons expressed therein.\* The Board is directed to reinstate petitioner to her former position as school social worker with back pay and emoluments, as appropriate, for the 1996-97 school year and thereafter.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

AUGUST 20, 1977

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\*In so affirming, the Commissioner stresses that the contracts and joint agreements through which a local board of education may provide child study team services if it elects not to employ its own team must be with *public* entities such as ESCs, jointure commissions or other school districts.