

JOSEPH LOPEZ,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE	:	
CITY OF BRIDGETON, CUMBERLAND	:	DECISION
COUNTY,	:	
	:	
RESPONDENT.	:	
	:	
_____	:	

SYNOPSIS

Petitioner, nontenured campus police officer, alleged the Board improperly denied him back pay pursuant to *N.J.S.A.* 18A:6-8.3, when he was suspended without pay on November 14, 2000, prior to and during his period of indictment which occurred in January 2001. The charge of child endangerment was later dismissed. The Board questioned the timeliness of the petition.

The ALJ concluded that petitioner’s request for relief was timely filed and that he should be awarded back pay with compensation from the first day of his suspension. The ALJ found that petitioner was involved in an unfortunate family matter, for which he was totally exonerated in October 2001. Moreover, the ALJ found that there was no evidence offered by the Board that petitioner should have remained suspended in the absence of criminal charges. The ALJ concluded that withholding back pay and benefits, under the circumstances herein, was not justified.

The Commissioner adopted the findings and determination in the Initial Decision with modification. Citing *Busler*, the Commissioner noted that there is no basis under education law to award back pay regardless of the disposition of the criminal indictment. The Commissioner, however, directed the Board to compensate petitioner for all back pay and emoluments due from November 14, 2000 until the date of his indictment in January 2001.

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.

November 6, 2003

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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. The parties did not file exceptions.

Upon careful review of the record in this matter, and assuming, *arguendo*, that this matter was timely filed, *N.J.A.C.* 6A:3-1.3(d), the Commissioner is compelled to modify the legal conclusion of the Administrative Law Judge.

Initially, the Commissioner notes that the pertinent statute provides that:

Any employee or officer of a board of education in this State who is suspended from his employment, office or position, other than by reason of indictment, pending any investigation, hearing or trial or any appeal therefrom, shall receive his full pay or salary during such period of suspension, except that in the event of charges against such employee or officer brought before the board of education or the Commissioner of Education pursuant to law, such suspension may be with or without pay or salary as provided in chapter 6 [18A:6] of which this section is a supplement.¹ *N.J.S.A.* 18A:6-8.3.

¹ It is undisputed that petitioner is a campus police officer and, as such, is not a tenured employee. The exception noted herein, then, is not applicable.

It is clear from the undisputed facts in this matter, that, contrary to the plain language in statute, the Board suspended petitioner *without pay* on November 14, 2000, although he was *not indicted* until January 2001.²

Notably, however, the statute is silent on the issue of back pay subsequent to the disposition of a criminal indictment. In this connection, the Commissioner has recently declared, and the State Board has affirmed, that there is no basis under education law to award back pay *regardless of the disposition of the criminal indictment*. *Robert Busler v. Board of Education of the City of East Orange, Essex County*, decided August 30, 2001, *aff'd* State Board of Education February 6, 2002. *See, also, Pawlak v. Board of Education of the Borough of Hopatcong, Sussex County*, 1988 *S.L.D.* 154. Thus, although petitioner attempts to distinguish *Busler* as “not relevant to this case because the defendant in that action availed himself of the PTI program as a way of avoiding the prosecution for which he was indicted” (Petitioner’s Memorandum of Law at 8-9), the Commissioner does not find the holding in *Busler* to be so limited.

Accordingly, the Initial Decision is modified as set forth herein. The Board is hereby directed to compensate petitioner for all back pay and emoluments due from November 14, 2000 until the date of his indictment in January 2001.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: November 6, 2003
Date of Mailing: November 6, 2003

² The Superior Court Judge’s decision states that “On or about January 10, 2001 the matter was presented to the Cumberland County Grand Jury on a single count of 2nd degree child endangerment.” (Exhibit C-6)

³ 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.*