

LORINE SIMS, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
STATE-OPERATED SCHOOL DISTRICT : DECISION
OF THE CITY OF JERSEY CITY,
HUDSON COUNTY, :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioning teacher challenged the District's denial of her increment for the 1996-97 school year for unsatisfactory performance.

ALJ concluded that petitioner failed to prove by a preponderance of credible evidence that the District did not have a reasonable basis for the withholding or that the District's action was arbitrary or capricious. Petition was dismissed.

Commissioner concurred with the ALJ's determination, noting that the clerical error on petitioner's evaluation, which indicated she would receive her increment, was without legal significance.

February 5, 1998

OAL DKT. NO. EDU 11303-96
AGENCY DKT. NO. 439-9/96

LORINE SIMS, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 STATE-OPERATED SCHOOL DISTRICT : DECISION
 OF THE CITY OF JERSEY CITY, :
 HUDSON COUNTY, :
 :
 RESPONDENT. :
 :
 _____ :

The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. No exceptions were filed by the parties.

Upon careful and independent review, and accepting the factual findings and credibility determinations of the ALJ, the Commissioner determines to affirm the initial decision. As noted, it is petitioner's burden to prove, by a preponderance of credible evidence, that the District's decision to withhold her increment was unreasonable, based on the facts. *Kopera, supra*. The Commissioner finds that petitioner has failed to meet her burden.

Further, the Commissioner concurs with the ALJ that the clerical error on petitioner's June 17, 1996 evaluation which indicated that she would receive her increment is without legal significance. The District acted in accordance with the statute when it notified her by memorandum dated June 18, 1996 that her increments were to be withheld for the 1996-97

school year. *N.J.S.A.* 18A:29-14. (Exhibit R-4) There is no requirement in the statute for advance written notice of the intent to withhold an increment. See *Sturn v. South Plainfield Borough Board of Education*, 92 *N.J.A.R.* 2d (EDU) 661, 668, 669, citing to *Loewengart v. Randolph BOE*, OAL Dkt. No. EDU 5721-87 (June 20, 1988), adopted by the Commissioner July 29, 1988.

Accordingly, the initial decision of the ALJ is adopted for the reasons expressed therein. The Petition of Appeal in this matter is hereby dismissed.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

February 5, 1998