

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

SYNOPSIS

Petitioning teacher sought reinstatement of his salary increment for the 1998-1999 school year. The increment was withheld based on the “less than satisfactory performance” of petitioner.

After conducting a hearing, the ALJ determined that petitioner failed to properly assess the needs and evaluate the progress of his pupils, failed to exhibit effective instructional techniques expected of an experienced special education teacher and failed to employ effective organization and planning. Based on this determination, the ALJ concluded that the District properly acted within its discretionary authority in withholding petitioner’s salary increment and recommended dismissal of the petition.

The Commissioner found no cause to disturb the findings of fact, credibility determinations and conclusions of the ALJ, and concurred with the ALJ’s determination that petitioner failed to meet his burden. Petition was dismissed.

September 1, 2000

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

Upon careful and independent review of the record, which included a transcript of the hearing conducted at the OAL on March 21, 2000, the Commissioner determines to affirm the Initial Decision. As noted therein, it is petitioner's burden to prove, by a preponderance of credible evidence, that the District's decision to withhold his increment was arbitrary, capricious or unreasonable. *See, Kopera, supra.* Finding no cause to disturb the findings of fact, credibility determinations and conclusions of the ALJ, the Commissioner concurs that petitioner has failed to meet his burden.

Accordingly, the within Petition of Appeal is dismissed.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: September 1, 2000

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* This decision, as the Commissioner's final determination, 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.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.