

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

SYNOPSIS

Petitioning teacher alleged the District's decision to withhold his salary increment for the 1998-99 school year was arbitrary, capricious and unreasonable.

In light of the testimony of witnesses, evaluations submitted and the record of the matter, the ALJ concluded that the Board's discretionary exercise of its statutory authority to withhold petitioner's salary increment for unsatisfactory performance should not be overturned. The ALJ concluded that petitioner did not prove that the withholding was improper. Petition was dismissed.

The Commissioner adopted the findings and determination in the Initial Decision as his own.

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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 April 10 and April 11, 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: December 1, 2000

Date of Mailing: December 1, 2000

* 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.