

VIOLA CLARK, :  
 :  
 PETITIONER, :  
 :  
 V. : COMMISSIONER OF EDUCATION  
 :  
 STATE-OPERATED SCHOOL DISTRICT : DECISION  
 OF THE CITY OF NEWARK, :  
 ESSEX COUNTY, :  
 :  
 RESPONDENT. :

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SYNOPSIS

Petitioning elementary teacher alleged the District's action in withholding her 2000-2001 increment was arbitrary, capricious or unreasonable.

The ALJ determined that even though petitioner had over 30 years of service, during the year in question she performed unsatisfactorily with respect to pupil supervision and classroom management. The ALJ concluded that the District properly withheld her increment and petitioner did not prove otherwise. Petition was dismissed.

The Commissioner determined that, based on the record before him, the District's decision to withhold petitioner's increment did not exceed the valid exercise of its discretionary authority. The Commissioner adopted the findings and determination in the Initial Decision as his own.

<p>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.</p>
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OAL DKT. NO. EDU 10218-00  
AGENCY DKT. NO. 412-11/00

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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 filed no exceptions to the Initial Decision.

Upon a careful and independent review of the record, the Commissioner concurs with the findings and conclusion of the Administrative Law Judge that the Board's denial of petitioner's 2000-2001 increment was not improper.

It is well-settled that actions concerning increment withholding may not be upset unless they can be demonstrated to be patently arbitrary, capricious, unlawful or induced by improper motive. *Kopera v. West Orange Bd. of Educ.*, 60 N.J. Super. 288, 294 (App. Div. 1960) Further, the burden of proof that an action was so deficient rests with the person challenging the decision. *Kopera* at 297. The Commissioner determines that, based on the record before him, the District's decision to withhold petitioner's increment did not exceed the valid exercise of its discretionary authority and, moreover, that petitioner has not met her burden of establishing otherwise.

Accordingly, for the reasons articulated therein and further explicated above, the Commissioner adopts the Initial Decision of the OAL and dismisses the instant Petition of Appeal.

IT IS SO ORDERED.\*

COMMISSIONER OF EDUCATION

Date of Decision: December 23, 2002

Date of Mailing: December 26, 2002

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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.* Commissioner decisions are deemed filed three days after the date of mailing to the parties.