

OAL DKT. NO. EDU 11457-2003

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AGENCY DKT. NO. 399-11/03

IN THE MATTER OF THE TENURE HEARING :  
OF GRACE GIGLIO, STATE-OPERATED :  
SCHOOL DISTRICT OF THE CITY OF : COMMISSIONER OF EDUCATION  
PATERSON, PASSAIC COUNTY. :  
\_\_\_\_\_ :  
: DECISION

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Although the District initially filed exceptions and respondent filed a reply thereto, by letter dated September 10, 2004, the District withdrew its exceptions. Consequently, neither submission was considered by the Commissioner when rendering this decision.

Upon careful and independent review of the record, the Commissioner agrees with the Administrative Law Judge (ALJ) that the within credibility determinations are critical to the ultimate findings in this matter. (Initial Decision at 81) The Commissioner also recognizes that the ALJ's credibility determinations are entitled to deference. "The reason for this rule is that the administrative law judge, as a finder of fact, has the greatest opportunity to observe the demeanor of the involved witnesses, and, consequently, is better qualified to judge their credibility. *In the Matter of Tenure Hearing of Tyler*, 236 N.J. Super. 478, 485 (App. Div.) *certif. denied*, 121 N.J. 615 (1989)." *In the Matter of the Tenure Hearing of Frank Roberts*, 96 N.J.A.R. 2d (EDU) 549, 550. The Appellate Division has affirmed this principle, underscoring that "[u]nder existing law, the [reviewing agency] must recognize and give due weight to the ALJ's unique position and ability to make demeanor based judgments." *Whasun Lee v. Board of Education of the Township of Holmdel*, Docket No. A-5978-98T2, decided by the New Jersey Superior Court, Appellate Division, August 7, 2000, slip op. at 14. Indeed, the Commissioner

*may not* reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent and credible evidence in the record. (emphasis added) *N.J.S.A.* 52:14B-10(c).

Here, upon review of the record, which included transcripts of the 27 hearing days at the OAL, all exhibits, and post-hearing briefs, the Commissioner acknowledges the ALJ's meticulous examination of the evidence; he is satisfied that his recitation of testimony is both accurate and thorough, and that he carefully measured conflicts, inconsistencies and potential biases in deciding which testimony to credit. *See In the Matter of the Tenure Hearing of Frank Roberts, School District of the City of Trenton, Mercer County*, 94 *N.J.A.R.2d* (EDU) 284, 294, *aff'd* 95 *N.J.A.R.2d* (EDU) 349, *aff'd* App. Div. 96 *N.J.A.R.2d* (EDU) 549. Each of the ALJ's factual findings and legal conclusions is consistent with those credibility determinations, and is supported by sufficient, competent and credible evidence in the record. Therefore, such findings and conclusions must not be disturbed.

Accordingly, the Initial Decision is adopted for the reasons expressed therein.<sup>1</sup> The District is ordered to immediately reinstate respondent to her former position as principal and compensate her for lost salary, emoluments and increments. To the extent that the record in this matter suggests a need for further investigation and remedial action, the Commissioner directs that the State Superintendent undertake such steps as may be warranted.

IT IS SO ORDERED.<sup>2</sup>

COMMISSIONER OF EDUCATION

Date of Decision: September 17, 2004

Date of Mailing: September 17, 2004

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<sup>1</sup> In so doing, the Commissioner finds it unnecessary to reach to the ALJ's dicta at page 143 of the Initial Decision concerning the technical violations of test security procedures, and implications for same, that were *not* a part of the within tenure charges.

<sup>2</sup> 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.*