

PAM WILSON, :  
PETITIONER, :  
V. : COMMISSIONER OF EDUCATION  
BOARD OF EDUCATION OF THE : DECISION  
TOWNSHIP OF MOUNT OLIVE,  
MORRIS COUNTY, :  
RESPONDENT. :

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SYNOPSIS

Petitioner, a tenured special education teacher, challenged a performance evaluation which gave her a rating of “marginal” under the category of “Professional Characteristics.” Petitioner sought a finding that the respondent Board’s action was arbitrary, capricious or unreasonable, and modification of the evaluation to reflect a rating of “effective” rather than “marginal.” The Board contended that it is within its authority and responsibility to evaluate teachers and indicate areas of teaching performance that may need improvement, and petitioner’s excessive absences during the 2008-2009 school year needed to be addressed in order to appropriately serve the needs of special education students.

The ALJ found, *inter alia*, that: a teacher’s performance evaluation by a principal or supervisor must be distinguished from a disciplinary proceeding based on conduct or attendance problems; petitioner’s contention that an attendance policy that allows for discipline of a teacher – without regard to the basis for the absences – is not permissible is ill-founded, as it was not contended in this case that discipline is warranted; intermittent absences which cumulatively exceed sick-leave and personal-day allotments are not of benefit to special education students, and cannot be disregarded in teacher evaluations; and receiving a rating of “marginal” as opposed to “effective” when a teacher exceeds the number of sick and personal days allotted is a subjective judgment that cannot be characterized as arbitrary, capricious, or unreasonable. Accordingly, the ALJ determined that attendance is a factor to be considered in a performance evaluation and dismissed the petition.

Upon careful and independent review, the Deputy Commissioner – to whom this matter has been delegated to the pursuant to *N.J.S.A. 18A:4-33* – adopted the Initial Decision of the OAL as the final decision in this matter for the reasons stated therein.

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.

May 27, 2011

OAL DKT. NO. EDU 11569-09  
AGENCY DKT. NO. 181-8/09

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by the petitioner, and the Board's reply thereto.<sup>1</sup>

The petitioner's exceptions substantially reiterate the substance of her post-hearing submission at the OAL, recasting the arguments therein to support the contention that the Administrative Law Judge (ALJ) erroneously found that the Board's decision to give the petitioner a marginal rating was not arbitrary, capricious and unreasonable. The petitioner contends that the Board's application of its attendance policy was arbitrary and capricious because the Board failed to take into account the reasons for the petitioner's absences and the impact of the absences on the continuity of education.

In reply, the Board urges the adoption of the Initial Decision asserting that the petitioner's exceptions do not raise any new arguments but instead merely restated the arguments made by the petitioner below that were fully considered by the ALJ. The Board again stresses in

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<sup>1</sup> The record contains no transcript from the hearing conducted at the OAL on September 24, 2010.

reply that the issuance of a marginal rating on the petitioner's evaluation was not arbitrary, capricious or unreasonable.

Upon a comprehensive review of the record in this matter, the Commissioner concurs with the ALJ that the Board's decision to give the petitioner a marginal rating in the professional characteristics section of her evaluation was not arbitrary, capricious or unreasonable. Accordingly, for the reasons expressed therein, the Initial Decision is adopted as the final decision in this matter.

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

DEPUTY COMMISSIONER OF EDUCATION<sup>3</sup>

Date of Decision: May 27, 2011

Date of Mailing: May 27, 2011

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<sup>2</sup> Pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*, Commissioner decisions are appealable to the Superior Court, Appellate Division.

<sup>3</sup> This matter has been delegated to the Deputy Commissioner pursuant to *N.J.S.A. 18A:4-33*.