

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

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SYNOPSIS

Petitioning teaching staff member alleged the District improperly withheld her salary increment for the 1998-99 school year based on evaluations of her teaching performance wherein she received unsatisfactory ratings.

The ALJ determined that the District had demonstrated that petitioner, among other things, utilized improper instructional techniques, did not properly assess her students' needs or evaluate their progress and failed to implement any of the suggestions given to her by her supervisors. The ALJ determined that the withholding of petitioner's increment was appropriate and so concluded in her recommended decision.

The Commissioner adopted findings and determination in Initial Decision as his own. Petition was dismissed.

OAL DKT. NO. EDU 3810-99-98  
AGENCY DKT. NO. 399-9/98

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner's exceptions and the District's reply thereto are duly noted as submitted in accordance with *N.J.A.C.* 1:1-18.4, and were considered by the Commissioner in reaching his decision.

Upon careful and independent review of the record, which included a transcript of the hearing conducted at the OAL on January 24, 2000, the Commissioner determines to affirm the Initial Decision. As noted, it is petitioner's burden to prove, by a preponderance of credible evidence, that the District's decision to withhold her increment was arbitrary, capricious or unreasonable, based on the facts. *Kopera, supra*. Finding no cause to disturb the findings, credibility determinations and conclusions of the ALJ, the Commissioner concurs that petitioner has failed to meet her burden.

Accordingly, the within Petition of Appeal is dismissed.

IT IS SO ORDERED.\*

COMMISSIONER OF EDUCATION

Date of Decision: August 18, 2000

Date of Mailing: August 25, 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.