

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

SYNOPSIS

Petitioner – a tenured elementary school bilingual teacher employed by respondent since 1985 – appealed the district’s withholding of her salary increment for the 2007-2008 school year. Petitioner contended that the Board’s withholding of her increment was arbitrary, capricious and unreasonable. The Board contends that the increment withholding was justified, and predicated upon petitioner’s unsatisfactory performance and her absenteeism for the 2006-2007 school year.

The ALJ found, *inter alia*, that: each of petitioner’s 45 absences during the 2006-2007 school year was approved by respondent when she provided Disability Certificates from her physician; petitioner’s alleged failure to implement appropriate instructional practices was predicated upon one observation conducted by an individual who was not her supervisor; and petitioner was not afforded an additional evaluation prior to the annual evaluation conducted on May 30, 2007, despite two evaluations having been the practice since 1985. Accordingly, the ALJ concluded that the petitioner had met her burden of proving that the Board’s action was arbitrary, capricious and unreasonable.

The Commissioner adopted the Initial Decision as the final decision in this matter, and directed the Board to restore petitioner’s salary increment for the 2006-2007 school year.

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.

February 23, 2009

OAL DKT. NO. EDU 12304-07
AGENCY DKT. NO. 364-11/07

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The record of this matter – which contains transcripts of proceedings conducted on April 16 and October 3, 2008 – and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The District and petitioner sought and were granted extensions of time within which to submit, respectively, exceptions and replies. These filings were made in accordance with the extended timelines.

The District’s exceptions essentially replicate its post-hearing brief advanced before the Administrative Law Judge (ALJ) below. As it is clear that the District’s arguments therein were fully considered and addressed by the Administrative Law Judge (ALJ) in her decision, these will not be revisited here.

Upon a full review of the record, the Commissioner agrees with the ALJ, for the reasons clearly presented in her decision, that petitioner has proven – by a preponderance of the credible evidence – that the District’s withholding of her salary increment for the 2006-07 school year was arbitrary, capricious and unreasonable.

Accordingly, the recommended decision of the OAL is adopted as the final decision in this matter. The District is hereby directed to restore petitioner's salary increment for the 2006-07 school year.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: February 23, 2009

Date of Mailing: February 23, 2009

* This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36*.