

MARGARET SIDBERRY, :  
 :  
 PETITIONER, :  
 :  
 V. : COMMISSIONER OF EDUCATION  
 :  
 BOARD OF EDUCATION OF THE : DECISION  
 CITY OF TRENTON, MERCER COUNTY, :  
 :  
 RESPONDENT. :  
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SYNOPSIS

Petitioner – a school psychologist employed by respondent Board for 10 years – appealed the district’s withholding of her salary increment for the 2009-2010 school year, contending that the Board failed to notify her in writing of the decision to withhold her increment as required by *N.J.S.A.* 18A:29-14. Petitioner argues that for this reason, the withholding should be nullified. The Board asserted that petitioner did receive a letter, dated April 28, 2009, advising her of the Board’s intent to withhold petitioner’s entire increment for the 2009-2010 school year.

The ALJ found, *inter alia*, that: petitioner’s critical responsibility as case manager and psychologist was to ensure timely completion of IEPs, and the ultimate responsibility for timely completion lay with the petitioner; the concerns of respondent Board regarding petitioner’s failure to produce fully completed IEPs in a timely manner justified the withholding of her salary increment; and petitioner’s salary withholding should not be nullified on the basis of a procedural failure to satisfy the statutory requirements of *N.J.S.A.* 18A:29-14, as the de novo hearing held in the OAL cured any procedural deficiencies that may have been brought about by the Board’s alleged failure to provide the required ten day notice. The ALJ concluded that petitioner had not met her burden to prove that the withholding of her salary increment was arbitrary or capricious, and accordingly dismissed the petition.

The Commissioner fully concurred with the findings and conclusions of the ALJ in this matter, and adopted the Initial Decision as the final decision. The petition was dismissed.

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.

November 8, 2010

OAL DKT. NO. EDU 06610-09  
AGENCY DKT. NO. 166-7/09

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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. The Trenton City Board of Education (Board) did not file exceptions.

The petitioner takes exception to the Administrative law Judge's (ALJ) finding that the Board's decision to withhold her increment for the 2009-2010 school year was reasonable despite the Board's failure to comply with the notice requirements contained in *N.J.S.A. 18A:29-14*. The petitioner argues that the Board did not provide her with notice of the increment withholding and the reasons therefore within ten days of the Board's decision, as required by *N.J.S.A. 18A:29-14*. Petitioner argues that because of the procedural violations, the Commissioner should vacate the withholding and restore her increment.

Upon a comprehensive review of the record in this matter, the Commissioner concurs with the Administrative Law Judge that the Board's decision to withhold the petitioner's increment was reasonable based upon her failure to timely produce fully completed individual education plans. The Commissioner is also in accord with the ALJ – for the reasons fully detailed on pages 13-14 of his decision – that that the salary withholding should not be nullified on the basis that the Board did not satisfy the procedural requirements outlined in *N.J.S.A. 18A:29-14*. It was abundantly clear from the

record that the petitioner was fully aware of the reason why her increment was withheld. Accordingly, the Initial Decision is adopted as the final decision in this matter.

IT IS SO ORDERED.\*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 8, 2010

Date of Mailing: November 8, 2010

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\* 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.