

THOMAS MORRIS, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
STATE OPERATED SCHOOL : DECISION
DISTRICT OF THE CITY OF :
NEWARK, ESSEX COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner, a tenured Special Education teacher, appealed the district's withholding of his salary increment for the 2005-2006 school year because of an alleged act of corporal punishment. Respondent contends that petitioner engaged in conduct unbecoming a teacher when he struck a student on the wrist with a ruler, and that its action in withholding his salary increment was reasonable and within its statutory authority.

The ALJ found, *inter alia*, that: the petitioner has not met his burden in demonstrating that the district's action was arbitrary or capricious; the petitioner's version of the incident – in which he denies striking the student with a ruler – is not sustainable; and the evidence indicates that petitioner engaged in an act of corporal punishment. Accordingly, the ALJ affirmed the withholding of petitioner's salary increment.

Upon a full and independent review of the record, the Commissioner agrees with and adopts the ALJ's findings that respondent had a reasonable basis for its conclusion that petitioner engaged in an act of corporal punishment in violation of *N.J.S.A.* 18A:6-1. Accordingly, the Commissioner adopts the Initial Decision upholding respondent's action of withholding petitioner's increment, and the petition is dismissed.

<p>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.</p>

OAL DKT. NO. EDU 9472-05
AGENCY DKT. NO. 157-6/05

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The record, Initial Decision, petitioner’s exceptions and respondent’s reply to the exceptions have been reviewed. Upon independent evaluation, the Commissioner adopts the Initial Decision as the Final Decision in this case.

Petitioner claims that the withholding of his increment for the 2005-2006 school year was improper, because it was based on false allegations that he hit a student with a ruler. The complaining student, one of his classmates, the school nurse, and the principal testified for respondent; petitioner testified on behalf of himself; statements and reports taken from the principal, the school nurse, the non-complaining student and a crisis teacher were entered into evidence.

At the outset, the Commissioner notes that unless the Administrative Law Judge’s (ALJ) findings of fact are arbitrary and capricious, she must accept them, where they involve credibility determinations, as they do in this case. *H.K. v. State of New Jersey, Department of Human Services, Division of Medical Assistance and Health Services, and Atlantic County Department of Human Services*, 184 N.J. 367, 384 (2005) (it is not for us or the agency head to

disturb that credibility determination, made after due consideration of the witnesses' testimony and demeanor during the hearing, citing *Clowes v. Terminix Int'l, Inc.*, 109 N.J. 575, 587 (1988)). See also, N.J.S.A. 52:14B-10(c) (indicating that the head of an agency "may not reject or modify any findings of fact as to issues of credibility . . . 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.").

In the present case, the ALJ found credible the testimony of both the student that petitioner had allegedly hit (E.A.), and another student who had been sitting close by and had corroborated the allegation that petitioner had hit his classmate with a ruler. The ALJ further found that the students' accounts were both reasonably consistent with each other and consistent with certain undisputed facts, such as E.A.'s misbehavior prior to the incident, and the welt on E.A.'s arm – consistent with a blow by a ruler – which was observed shortly after the incident by the school nurse, the principal and the crisis teacher, Mr. Rochester.

In contrast, petitioner did not offer adequate support for his theory that E.A. inflicted the welt on himself, and blamed it on petitioner, in order to extract revenge for disciplinary actions petitioner took on the prior school day when E.A. allegedly bit another student. Neither the nurse nor the principal recalled a biting incident, and there is no indication in the record that petitioner had satisfied his burden to request – before or during the hearing – any records from respondent that pertained to an alleged biting.

Similarly, petitioner offered nothing more than speculation to support his hypothesis that the welt on E.A.'s arm, which was observed by respondent's witnesses, was self-inflicted. Petitioner's argument in his second exception – that the Commissioner should conclude that E.A. hit himself on the arm based solely on the amount of time between the

incident and E.A.'s meeting with crisis teacher Rochester – is without merit. Moreover, there are conflicting accounts in the record as to the amount of time that had passed between the incident, reported as having occurred at about 9:25 a.m., and E.A.'s meeting with Rochester.

In light of the foregoing, the Commissioner agrees with and adopts the ALJ's findings that respondent had a reasonable basis for its conclusion that petitioner engaged in an act of corporal punishment in violation of *N.J.S.A. 18A:6-1*. For the reasons set forth in the Initial Decision, the Commissioner further agrees that petitioner failed to meet his burden to show that respondent acted arbitrarily or capriciously in withholding petitioner's increment as a sanction for such unbecoming conduct.

Accordingly, the Commissioner adopts the Initial Decision upholding respondent's action of withholding petitioner's increment. The petition is dismissed.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: December 1, 2006

Date of Mailing: December 1, 2006

* 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.*