

New Jersey Commissioner of Education

Final Decision

Howard Walker,

Petitioner,

v.

Board of Education of the City of East Orange,
Essex County,

Respondent.

Synopsis

Petitioner has been employed as a principal in the respondent Board's school district since the 2004-2005 school year, initially at the Garvin Elementary School from July 2005 through the end of the 2015-2016 school year. Petitioner was subsequently transferred to the position of principal at the Healy Middle School (Healy). Due to a "partially effective" evaluation of his performance for the 2016-2017 school year at Healy, petitioner was placed on a Corrective Action Plan (CAP) and his increment was withheld for the 2017-2018 school year. Subsequently, his increment for the 2018-2019 school year was also withheld, based again on a "partially effective" performance evaluation. Petitioner filed an appeal challenging the withholding of his increment for the 2018-19 school year, contending that the evaluation process was not proper and that the decision to withhold his increment was arbitrary and capricious.

The ALJ found, *inter alia*, that: The Board was arbitrary, capricious and unreasonable in withholding petitioner's increment; further, the Board acted in an unfair and prejudicial manner when it placed the petitioner on a CAP almost immediately after transferring him to Healy – a lower performing school that had been identified as in need of comprehensive support; and petitioner was not given clear and transparent direction regarding what was expected of him in his new assignment as principal at Healy. The ALJ concluded that the District's Assistant Superintendent, who served as petitioner's evaluator, was subjective rather than objective in her evaluations of petitioner, and that the petitioner is a "good educator," despite "personal traits that make him appear that he is better or smarter than those around him." As such, the ALJ reversed the Board's withholding of petitioner's increment for the 2018-19 school year.

Upon review, the Commissioner found, *inter alia*, that: the Board was not arbitrary, capricious, or unreasonable in withholding petitioner's increment for the 2018-19 school year; pursuant to *N.J.S.A. 18A:29-14*, a board may withhold "for inefficiency or other good cause, the employment increment, or the adjustment increment, or both, of any member in any year."; in this case, there is sufficient evidence in the record to support the Board's decision to withhold petitioner's increment for the 2018-19 school year based on performance. The Commissioner disagreed with the ALJ's finding that petitioner was not given clear direction regarding job expectations in his position at Healy, as Dr. Walker had more than 10 years of experience as a principal and should have been well aware of the expectations of that position, regardless of his school assignment. Accordingly, the Initial Decision of the OAL was rejected and the petition was 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>

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OAL Dkt. No. EDU 15251-18

Agency Dkt. No. 202-8/18

New Jersey Commissioner of Education

Decision

Howard Walker,

Petitioner,

v.

Board of Education of the City of East Orange,
Essex County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed by the respondent Board in accordance with *N.J.A.C.* 1:1-18.4, and petitioner's reply thereto.

Petitioner is a principal employed by the Board of Education of the City of East Orange (Board). He has worked for the school district since 1989, rising to the rank of principal in the 2004-05 school year. Petitioner served as principal of Garvin Elementary School from July 2005 through the end of the 2015-16 school year, at which time he was transferred to the position of principal of the Healy Middle School (Healy). Due to a "partially effective" performance evaluation for 2016-17, petitioner was placed on a Corrective Action Plan (CAP) and his increment was withheld for the 2017-18 school year. At the end of the 2017-18 school year, Assistant Superintendent Deborah Harvest recommended that his increment be withheld again for the 2018-19 school year. Petitioner filed an appeal challenging the withholding of his increment for the 2018-19 school year.

Following a hearing, the Administrative Law Judge (ALJ) found that the Board was arbitrary, capricious and unreasonable in withholding petitioner's increment. The ALJ concluded that Dr. Harvest was subjective, rather than objective, in her evaluations of petitioner, and that petitioner is a "good educator," despite "personal traits that make him appear that he is better or smarter than those around him." (Initial Decision at 12). The ALJ further found that it was unfair and prejudicial of the Board to place petitioner on a CAP almost immediately after transferring him to Healy, without a "clear and transparent directive... about what was expected of him." *Ibid.* As such, the ALJ reversed the Board's withholding of petitioner's increment for the 2018-19 school year.¹

In its exceptions, the Board argues that it acted in accordance with *N.J.S.A. 18A:29-14* when it withheld petitioner's 2018-19 increment due to performance issues. The Board argues that the ALJ improperly found that the Board did not give petitioner adequate time to adjust when he was transferred to Healy before placing him on a CAP. The Board cites to *Nortiza Andino, et al. v State Operated School District of the City of Jersey City, Hudson County*, Commissioner's Decision No. 388-98 (September 4, 1998) for the proposition that being transferred to a new position does not make an increment withholding arbitrary, capricious or unreasonable. In that case, one teacher was transferred from third to first grade only a few days before being evaluated. While the ALJ found that her increment should not be withheld because the teacher had not received training in the position, the Commissioner upheld the increment withholding, finding that her performance had been found to be below the acceptable level for an elementary teacher on two occasions and that evaluations "go to the very core of her job as a teacher, irrespective of the grade she is responsible for teaching." *Id.* at 31. As such, the Board

¹ The Initial Decision ordered that petitioner's increment withholding for the 2017-18 school year be reversed. This appears to be a typographical error as the increment being challenged in this matter is for the 2018-19 school year.

argues that petitioner's evaluations go to the core of his job as a principal, regardless of what school he is overseeing. Additionally, the Board points out that petitioner was evaluated three times during the 2017-18 school year as a result of his CAP – twice by Dr. Harvest and once by another administrator – and he received the “partially ineffective” rating due to his scores, justifying his increment withholding. Accordingly, the Board urges the Commissioner to reject the Initial Decision.

In reply, petitioner argues that the ALJ correctly reversed the 2018-19 increment withholding because Dr. Harvest based her evaluations of his performance on unclear criteria and overlooked his efforts to improve Healy. Petitioner points out that such efforts resulted in the removal of Healy from “comprehensive” status (*i.e.*, lower performing schools that the Department of Education has identified as needing comprehensive support) in January 2019. Petitioner argues that Dr. Harvest conducted her evaluations of petitioner in bad faith as she failed to give him any credit for improvements he had made at Healy. Petitioner agrees with the ALJ that Dr. Harvest failed to provide clear direction about what was expected of petitioner, so the increment holding was unjust, unfair, and arbitrary. As such, petitioner asks the Commissioner to adopt the Initial Decision.

Upon a comprehensive review of the record, the Commissioner finds that the Board did not act in an arbitrary, capricious, or unreasonable manner when it withheld petitioner's increment for the 2018-19 school year. Pursuant to *N.J.S.A. 18A:29-14*, a board may withhold “for inefficiency or other good cause, the employment increment, or the adjustment increment, or both, of any member in any year.” Teachers are not entitled to salary increments; rather, increments are a reward for meritorious service. *North Plainfield Education Association v. Board of Education of the Borough of North Plainfield*, 96 N.J. 587, 593 (1984). The decision

to withhold an increment for teachers who have not performed well is a management prerogative. *Ibid.* As such, when challenging an increment withholding, a teacher has the burden to demonstrate that the board acted arbitrarily, without rational basis or induced by improper motives. *Kopera v. Board of Education of the Town of West Orange*, 60 N.J. Super. 288, 294 (App. Div. 1960).

Here, there is sufficient evidence in the record to support the Board's decision to withhold petitioner's increment for the 2018-19 school year based on performance. Petitioner had three evaluations during the 2017-18 school year – two by Dr. Harvest and one by another administrator – which resulted in a summative rating of 2.65, or a performance ranking of “partially effective.” The evaluations use a rubric with scores of “ineffective,” “developing,” “effective,” or “highly effective” for a variety of domains. In examining all three of his evaluations, petitioner received a combination of “developing” and “effective” ratings, with one “ineffective” rating and no “highly effective” ratings. The rubric scores were supported with notes from the evaluators justifying the rating and providing guidance on how to improve. The evaluators conducted site visits of the school prior to completing the evaluations. Dr. Harvest testified that the purpose of the site visit is to go through the building and visit classrooms to gain a visual perspective on what is occurring in the school and how that relates to the domains in the principal's evaluation. For example, during her site visit on February 20, 2018, Dr. Harvest conducted a walk-through of the building and classrooms, and testified that:

[T]his was the worst that it has ever, ever been. Just room to every single room that I went in I was not able – it was just totally mind boggling. I did not observe any instruction at all in about 6 or 7 rooms. The kids were absolutely out of control. And not only were they out of control, the teachers weren't doing anything. It was like they were just sitting there and just letting it happen. So halfway through it, his assistant principal joined me. And so, she was there, after room after room after room that we visited. I

wasn't able to observe instruction because there were extreme discipline concerns. And we spent about 15 minutes in one teacher's classroom, who had two teacher assistants in there with her. And that classroom was tote – I had to take over the classroom. It was totally out of control. Totally.

[Testimony of Deborah Harvest, T2 at 195-96, December 16, 2020.]

What Dr. Harvest witnessed on the site visit was reflected on petitioner's subsequent evaluation, as petitioner was rated "ineffective" with respect to the school's learning environment and a note describing what Dr. Harvest observed during her school walk-through of the classrooms appeared beneath the rating. Accordingly, upon consideration of the comprehensive evaluations, which included justifications for the ratings that resulted in a "partially effective" final summative assessment, the Commissioner cannot find that the Board was arbitrary, capricious, or unreasonable in its decision to withhold petitioner's increment for the 2018-19 school year.

The Commissioner disagrees with the ALJ's conclusions. The ALJ focused on the limited amount of time available to petitioner to become acclimated to his new assignment at Healy before he was evaluated. The Commissioner agrees with the Board that, as in *Nortiza Andino, et al. v State Operated School District of the City of Jersey City, Hudson County*, petitioner's duties and responsibilities as a principal remained the same, regardless of which school he was assigned to lead. With petitioner's more than ten years of experience as a principal, this position was not new to him and he was aware of his job expectations. The Commissioner also notes that the increment at issue in this matter was based on petitioner's performance in the 2017-18 school year, which was his second year assigned as principal at Healy.

The ALJ also found that petitioner "never received a true explanation of what criteria were being utilized to evaluate his work at Healy." The Commissioner finds that, with

respect to his evaluations, petitioner had been a principal since the 2004-05 school year and had been evaluated in that role for many years. As such, he should have been well aware of the criteria used in evaluations of principals. Additionally, the ALJ insinuates that a personality conflict between Dr. Harvest and petitioner contributed to Dr. Walker's poor evaluations; however, the Commissioner notes that one of petitioner's evaluations was conducted by another administrator, whose ranking of petitioner was similar to that of Dr. Harvest. With respect to his CAP, there is ample evidence in the record that petitioner had many meetings to develop and discuss his CAP, and that he only completed 63% of his demonstrable goals. However, regardless of whether Dr. Walker understood the CAP or completed the CAP, the Commissioner notes that Dr. Harvest testified that the CAP was not the reason petitioner's increment was withheld; rather, that determination was made based on Dr. Walker's evaluations. (T2 at 118, 206-207).

The ALJ also discusses that petitioner made efforts to improve the school, which resulted in Healy being removed from the "comprehensive" list in January 2019. Additionally, the ALJ notes that following the 2017-18 school year, superintendent Dr. Kevin West was assigned as petitioner's evaluator, and his evaluations improved. The Commissioner notes that while it is positive news that the school was removed from the "comprehensive" list, improvements in petitioner's evaluations conducted by Dr. West in 2018-2019 and the fact that school operations had improved by January 2019 could not have impacted the Board's increment decision at the end of the 2017-18 school year because these improvements had not yet occurred. As such, those factors have no bearing on whether the Board was arbitrary, capricious, or unreasonable in deciding in June of 2018 to withhold petitioner's increment for the 2018-19 school year. Finally, the ALJ found that petitioner is a good educator who is dedicated to

improving the performance of students and the community. While that may be true, the Commissioner notes that petitioner's good intentions fail to demonstrate that his actual performance during the 2017-18 school year did not warrant the withholding of his increment for the 2018-19 school year.

Accordingly, the Initial Decision of the OAL is rejected for the reasons expressed herein. The petition is hereby dismissed.

IT IS SO ORDERED.²


ANGELINA ALLEN McMILLAN, J.D.S.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 7, 2021
Date of Mailing: October 7, 2021

² This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A.* 18A:6-9.1. Under *N.J.Ct.R.* 2:4-1(b), a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 15251-18

AGENCY DKT. NO. 202-8/18

HOWARD WALKER,

Petitioner,

v.

CITY OF EAST ORANGE, BOARD OF

EDUCATION, ESSEX COUNTY,

Respondent.

Robert M. Schwartz, Esq., petitioner, (Schwartz Law Group, attorneys)

Erdal Turnacioglu, Esq., for respondent (Keenan and Doris, attorneys)

Record Closed: March 10, 2021

Decided: July 16, 2021

BEFORE **ANDREW M. BARON**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner Dr. Howard Walker contests the 2018 withholding/denial of his annual salary increment in connection with his employment as a principal by the East Orange School District at the conclusion of the 2018 school year. Among other things, he also contests the manner in which the evaluation process was handled, and the decision to withhold the increment which he contends was arbitrary and capricious.

On or about August 21, 2018, petitioner filed an appeal with the Department of Education regarding the decision by the East Orange School District to withhold his annual salary increment.

On October 5, 2018, East Orange filed an Answer to the petition.

The petition alleges that respondent acted in an arbitrary and capricious manner by withholding Dr. Walker's annual increment at the end of the 2017-18 school year.

The Department of Education transmitted the matter to the Office of Administrative Law for a determination as a contested case. Hearings were conducted on December 3, 2019, and December 16 and 17, 2019. Final submissions were filed on March 5, 2020 and March 10, 2020, then Covid ensued. Oral argument was held on March 10, 2021.

TESTIMONY AND DISCUSSION

Based upon a review of the documentary and testimonial evidence presented and having had the opportunity to observe the demeanor and assess the credibility of the witnesses who testified, I **FIND** the following pertinent **FACTS** and accept as **FACT** the testimony set forth below.

Petitioner has been employed by the East Orange School District, starting out as In 2004, as a math supervisor since 1989. In 1996, petitioner was promoted to serve as Director of Secondary Education.

While serving in this position, petitioner was then appointed to serve as principal of the Truth Middle School. Shortly after, he became the permanent principal, serving in that position for a year, until he was reassigned to serve as principal of the Garvin Elementary School, where he remained until 2017.

While at Garvin, virtually all of his annual reviews were favorable, and he received normal salary increments each year, until the 2015-16 school year. His review that year was conducted by Assistant Superintendent Deborah Harvest, who had risen through the ranks of administrative positions within the district with Dr. Walker, and now served as Assistant Superintendent. These personnel recommendation accepted by the East Orange Board of Education at its June 17, 2017 meeting. However, the day after the Board acted on Dr. Walker's recommendations, he testified he was called into a meeting with Dr. Harvest and another assistant superintendent. At this meeting, he was told that a recommendation was being made to withhold his increment for the 2017-18 school year due to what Dr. Harvest characterized as "less than effective performance."

Dr. Harvest also determined that for the first time in his long career in East Orange, Dr. Walker should be placed on a Corrective Action Plan, otherwise known as CAP for the coming school year. It should be noted here that during her testimony, Dr. Harvest gave a somewhat evasive answer on why this decision was made, for which Dr. Walker had no means of appeal, and even after he completed the Corrective Active Plan, which included several seminars, her view of his performance did not change. According to Dr. Walker, when he would frequently ask Dr. harvest for feedback or some indication of how he could meet her expectations, he either got silence or little if anything in return to indicate if she viewed his performance as having improved.

One thing which is undisputed, is Dr. Harvest left Dr. Walker little time to adjust to his new surroundings, including all new staff and parents, in one of the lowest performing schools in the district prior to the time Dr. Walker was re-assigned there.

Despite his frustration with how he was being treated by the Administration, and particularly Dr. Harvest, Dr. Walker testified he set out to do what he was asked to do, which is make Healy a better school. After his personnel changes were accepted, he created a school newspaper, the Hart Herald, which was designed to let students, parents and faculty know what was going on at Healy and make the school more a part of the community. (This was also done to overcome one of the criticisms by Dr. Harvest that Dr. Walker needed to do a better job of promoting the mission of the school.).

Also important here and something which stood out during the proceeding which was not noted anywhere by Dr. Harvest is the fact that Dr. Walker testified that when he noticed a student out of the school for an extended period, not knowing if it was truancy or illness, he would actually get in his car and visit the child's home and the parents after school hours to see if he could improve the overall attendance at the school.

Thus, it seems clear that while both Dr. Walker and Dr. Harvest are both dedicated educators who had worked their way up the ranks in the East Orange School District. When Dr. Harvest became Dr. Walker's evaluator, it changed the dynamic of their professional relationship in a dramatically negative way.

Other actions Dr. Walker said he took during the 2017-2018 school year while serving as principal of Healy was to develop a school improvement plan because Healy was what the State refers to being in Comprehensive status, provide more in service and professional development programs for Healy's teachers, conduct walkthroughs of all classrooms to obtain a better understanding of how teachers and students were performing, and train teachers in how to develop new lesson plans.

None of these changes were noted by Dr. Harvest as part of Dr. Walker's yearend review in which she gave him a low score of "2" in 24 out of 31 areas and an increment withholding.

Dr. Harvest is a veteran educator, who like Dr. Walker, spent a majority of her years in education working her way up the ranks of administration with the East Orange School District. Having achieved the position of Assistant Superintendent, among her duties was to evaluate principals throughout the district, monitor their progress and make recommendations on how it improve performance.

Dr. Harvest said she had been Dr. Walker's evaluator since 2010, most of the time being when he was the principal at Garvin. Dr. Harvest earned a Doctorate in Educational Leadership and had been employed by the district for thirty-seven (37) years.

According to Dr. Harvest, State law requires a principal to be placed on a Corrective Action Plan, when part or all of their performance is deemed “partially effective.” At the end of the 2016-17 school year, because of this evaluation that she prepared, Dr. Walker was required to complete a CAP. Dr. Walker said following her evaluation for that year, she forwarded a document to Dr. Walker entitled; “Areas of Concern Dr. Howard Walker.” She said the purpose of the document was to provide Dr. Walker with a roadmap as to the areas that were in need of improvement for the next school 2017-18 school year.

In describing the document further, Dr. Harvest testified that she asked him to focus on at least three areas to improve, including but not limited to: Mission, Vision and Core Values, Ethics and Professional Norms, and Curriculum, Instruction and Assessment of the teachers at Healy.

It is undisputed that with Healy being one of the lowest performing schools in the district, Dr. Harvest’s decision to place Dr. Walker in a CAP, did not account for the fact that he was new to the school, nor was he given additional time before she arrived at the conclusion that he was now performing at lower than acceptable standards in these areas.

Not taking well to the criticisms which he felt were unjust and unfair, Dr. Walker said he started to document everything, at times sending multiple emails the same day to Dr. Walker. Dr. Walker, who felt she was being harassed, asked the board attorney to get involved because she felt Dr. Walker was interfering with her responsibility of assessing his performance which was within her duties and responsibilities.

She said this pattern of what she deemed “over documenting” every exchange between them by Dr. Walker continued through the Summer of 2017, into the start of the new school year, when two weeks after school started, Dr. Harvest said Dr. Walker resisted efforts to comply with the CAP on the basis of his belief that her evaluation was “too vague” to comply with the CAP.

In early October 2017, Dr. Harvest commenced site visits to Healy so in her words, “she could get a feel for what was going on in the classrooms” where Dr. Walker was serving as principal. One area she noted was lacking was posting recent student work on bulletin boards, as well as student data on State standardized tests know as PARCC.

Instead of complying with the areas of improvement as outlined in the CAP, Dr. Harvest was of the view that Dr. Walker increased the adversarial nature of her supervisory relationship over him by including a union representative in their meetings who was being copied on all correspondence. Among other things, she assigned him a book on “body language” but did not explain in detail why it was being assigned. In her testimony, Dr. Harvest candidly stated that she believed although she and Dr. Walker worked their way up the administrative ranks in East Orange, together, he resented her supervisory role, and felt Dr. Walker felt his knowledge and experience should not be challenged. **(This was evident throughout the proceeding by Dr. Walker’s demeanor, method of speaking, and by virtue of his refusal to meet with Dr. Harvest as requested towards the end of October 2017, when the CAP was due to expire.)** Though he came across at times as having a superior attitude, it also came across they he is very dedicated to his job, and has the best interests of his students, parents and teachers in mind as he implemented certain changes at Healy once he reluctantly accepted the decision to reassign him there.

There is no dispute that the conflict in the relationship between Dr. Harvest and Dr. Walker continued through the end of the 2018 school year. The record indicates that Dr. Harvest prepared another memorandum in February 2018 regarding her site visit to Healy, and another memorandum on April 5, 2018 summarizing her meeting with Dr. Walker the previous day, as to what areas of the CAP he had successfully completed, and which areas still needed improvement. Despite fulfilling certain CAP criteria, she warned him “it did not necessarily mean his increment for 2017-18 would be awarded.

In fact, on April 9, 2018, Dr. Harvest informed Dr. Walker that the recommendation was for another increment withholding due to “gaps in leadership and

inability to take responsibility for his own learning.” In early May 2018, as the school year was nearing completion, Dr. Walker was served with a third evaluation, essentially giving him a 2.65 rating, resulting in a finding of being partially effective, placing him on CAP status for the next 2018-19 school year, and generating a “Rice” notice which meant the Board of Education would be discussing his employment status with the East Orange School District at an upcoming meeting.

Concerned for his reputation, and his status within the district as well as another salary increment withholding, Dr. Walker asked for and was granted a new evaluator, Dr. Kevin West, who was the Superintendent of Schools. Dr. West, who had already served as superintendent in another district, as well as assistant superintendent in Newark, and as a principal in Irvington, came across as a veteran educator who better understood and appreciated the challenges Dr. Walker faced when he was moved from his position as principal at Garvin, to becoming principal at Healy. And it appears from Dr. West’s testimony that during the two years that Dr. Walker was in charge of Healy while simultaneously being placed on CAP status by Dr. Walker, Healy, the school where Dr. Walker had been reassigned over his objection was starting to improve. Among other things, during the 2018-19 school year, with Dr. Walker at the helm, Healy was removed by the State from “comprehensive status” to “Focus status” still in need of improvement, but showing better results for the teachers, and, of course, the students.

During this period, teacher and student attendance improved, student misconduct decreased, and better communication between parents and the school was noted by virtue of Dr. Walker’s home visits and efforts to make Healy more of a “community.”

These achievements were noted in a letter written to Dr. West dated January 31, 2019, from the Commissioner of Education taking Healy, which had been in the bottom 5 percent performing school in the State for almost eighteen (18) years and removing it from comprehensive status only two and a half years into Dr. Walker’s tenure at the school. (Interesting, it is also undisputed that in the same letter, Garvin, the school which Dr. Walker was transferred from to take over Healy, was now lowered to comprehensive status, which was not the case while Dr. Walker was there).

When asked about the January 2019 letter from the Commissioner of Education, upgrading Healy's status out of comprehensive, Dr. Harvest minimized Dr. Walker's role in the improvement, attributing most of it to the former principal Ms. Coleman, who was replaced by Dr. Walker over two years earlier. While Dr. Harvest came across as a dedicated educator, one of the things that seemed inconsistent and did not make sense in her testimony was her statement that "student achievement is not the primary goal of the evaluation process." If that were the case, **I FIND** Dr. Walker never received a true explanation of what criteria were being utilized to evaluate his work at Healy, which in and of itself is arbitrary and capricious.

As a result of the noted improvements at Healy by the State and Dr. West, the new evaluator, the CAP which Dr. Harvest had put into effect for two school years shortly after Dr. Walker was reassigned to Healy was removed.

Viewed and evaluated from the eyes of an equally experienced educator, whose testimony came across as more objective than Dr. Harvest, also a dedicated educator but perhaps stricter in her assessments, without more guidance and direction from Dr. Harvest or other district officials about what was expected of him upon being transferred to Healy, and without giving Dr. Walker an extended period of time to demonstrate a turn around at a low performing school, the increment withholding was unjust and unfair to Dr. Walker.

FINDINGS OF FACT

1. Petitioner Howard Walker is a veteran educator with over thirteen years of experience serving as a school principal in the East Orange School District.
2. Prior to the 2016-17 school year, he served as principal of the Garvin School.
3. At the beginning of the 2016-17 school year, Dr. Walker was transferred to serve as principal of the Healy School, one of the lowest performing schools in the East Orange School District, which was on comprehensive watch by the State Education Department.
4. At the time of the transfer, which Dr. Walker objected to, he did not know any of the staff, parents or students who were part of the Healy community.

5. Part of Dr. Deborah Harvest's duties and responsibilities was to evaluate the performance of principals with the school district.
6. Both she and Dr. Walker knew each other and had worked their way up the ranks of administration within the East Orange School District.
7. As Assistant Superintendent, Dr. Harvest was responsible for evaluating Dr. Walker after he was transferred to become principal at Healy.
8. No adjustments were made to the evaluation process for Dr. Walker, who was now the principal at one of the lowest performing schools in the district.
9. After a brief period at Healy, Dr. Harvest placed Dr. Walker on a Corrective Action Plan CAP, which required him to make several adjustments and meet certain criteria before he could be removed from this status.
10. Almost immediately after being placed on the CAP, Dr. Walker and Dr. Harvest clashed, thereby causing a breakdown in communication and lack of trust between them.
11. To her annoyance, Dr. Walker started documenting everything he did, which only made the situation between them worse.
12. At the end of the 2017-2018 school year, Dr. Harvest recommended that Dr. Walker's salary increment be withheld, as in her opinion, he had not met the criteria of the CAP, which he continued on during the next school year.
13. The Board of Education adopted Dr. Harvest's recommendation and withheld the increment, from which this appeal was filed.
14. Frustrated with the way he was being treated. Dr. Walker asked for, and was granted a new evaluator, Dr. Kevin West, who served as the Superintendent of Schools.
15. In January 2019, Dr. West received a letter from the Commissioner of Education removing Healy from comprehensive status and noting the improvement at the school. Without naming Dr. Walker, it is clear from this letter from the State, that Dr. Walker had started to achieve improvement at Healy, which though not expressed directly was the reason why he was reassigned there.
16. Dr. West determined that the Corrective Action Plan which Dr. Harvest created for Dr. Walker should be terminated.
17. No increment withholding was recommended by Dr. West.

LEGAL ANALYSIS AND CONCLUSION

In this matter, petitioner was employed as a principal by the East Orange school district for thirteen years. The pivotal issue concerns the propriety of a series of evaluations by his supervisor, an assistant superintendent who had been a colleague, to withhold a salary increment for the 2017-18 school year, place petitioner on a Corrective Action Plan, CAP, and compel petitioner to take classes, read books and do other remedial things, shortly after the district reassigned petitioner to one of the lowest performing schools in the district.

Pursuant to N.J.S.A. 18A:6-9, the Commissioner of the Department of Education has jurisdiction to hear and determine, without cost to the parties, all controversies and disputes arising under the school laws. N.J.A.C. 6A:3-1.1 to 1.17. sets forth the rules of procedure for the filing of petitions with the Commissioner of Education to hear and decide controversies and disputes arising under school laws in accordance with N.J.S.A. 18A:6-9. N.J.A.C. 6A:3-1.1(a).

The procedure for withholding salary increments in an educational setting are set forth in N.J.S.A. 18A:29-14, which applies to situations where an employee is considered inefficient or for other good cause shown.

A school employee challenging such a decision has the burden of showing by a preponderance of the evidence that the action was arbitrary and capricious or lacks a rational basis. Mullennaphy v. Bd. of Ed. of Twp.of Marlboro, A-0052-18T3, 2019 WL 5788326 (App. Div. November 6, 2019).

Increment withholding "is a matter of essential managerial prerogative which has been delegated by the legislature to the board" See Bernards Twp. Bd. of Ed. v. Bernards Twp. Educ. Ass'n, 79 N.J. 311 (1979). Notwithstanding that policy, a board of education cannot withhold a salary increment from a tenured employee without providing that employee with minimum procedural due process. See: Basile v. Bd. of Ed. of Elmwood Park, 1 N.J.A.R. 199 (Dept. of Ed. 1980).

In determining whether a decision to withhold a salary increment in an educational setting was arbitrary and capricious and without rational basis, it a court should examine whether the underlying facts made by the evaluator were correct and whether it was unreasonable for the evaluator to reach the conclusion that the increment should be withheld, bearing in mind their expertise. Without something more, a board's action in this regard is entitled to a presumption of validity, absent a showing of bad faith, illegal motive or lack of rational basis. See: Quinlan v. Bd. of Ed. 73 N.J. Super, 40 (App. Div. 1962), And see: Raimondi v. Westwood Reg'l Bd. of Ed. EDU 5904-04 Initial Decision Sept. 25, 2005, aff'd State Bd. of Ed. (June 7, 2006).

The Petition requests that the undersigned set aside the Board's adoption of a salary increment withholding for the 2017-18 school year, and to determine that the assistant superintendent Dr. Deborah Harvest acted in an arbitrary capricious and discriminatory manner in placing him on a CAP for two consecutive years and for withholding his salary increment.

"School Law vests the management of the public schools in each district in the local boards of education, and unless they violate the law or act in bad faith, the exercise of their discretion in the performance of the duties imposed upon them is not subject to interference or reversal."

Boards have broad discretionary authority to decide whether a teacher, or in this case a principal should or should not be re-engaged. Donaldson v. N. Wildwood Bd. of Educ., 65 N.J. 236 (1974). No obligation exists on the part of board to renew non-tenured teachers. Wyckoff Twp. Bd. of Educ. v. Wyckoff Educ. Ass'n, 168 N.J. Super. 497 (App. Div. 1979).

There are some limits and procedural safeguards afforded to school employees when their employment status is due to be considered. A board of education is required to send a "Rice notice" any time it has placed on its agenda any matters involving the employment, evaluation appointment, evaluation of performance or discipline. N.J.S.A. 10:4-12(b)(8). This provides the affected employee with an opportunity to decide whether they desire a public discussion and prepare and present an appropriate request

in writing. See Rice v. Union Cty. Reg' High Sch. Bd. of Educ., 155 N.J. Super. 64 (App. Div. 1977).

There was little, if any information about the extent to which the recommendation to withhold Dr. Walker's increment was discussed prior to adoption, and who made the presentation. But assuming the board relied just on Dr. Harvest's evaluation, and her report that Dr. Walker had not completed his CAP, then there was nothing put before the board about the status of Healy itself, that over his objection Dr. Walker had been reassigned to Healy purportedly to improve performance in a low performing school, or how little time he had been given to change the culture at Healy.

Despite Dr. Harvest's long and dedicated career, **I CONCLUDE** that in this case, her evaluation and recommendation for increment withholding was **subjective, not objective, and, as such was done in an arbitrary and capricious manner.**

I FURTHER CONCLUDE that while Dr. Walker may present some personal traits that make him appear that he is better or smarter than those around him, (which at times he exhibited during the hearing), that does not mean he is not a good educator, dedicated to improving the performance of his students, and the community around him.

I ALSO CONCLUDE, that the decision to almost immediately place him on CAP status, shortly after he was reassigned to Healy, without a clear and transparent directive from the Administration about what was expected of him, was unfair and prejudicial to his ability to do the job the district had placed him in.

I THEREFORE CONCLUDE that there was no rational basis for the increment withholding and that Dr. Walker has met his burden that the decision to withhold his increment at the conclusion of the 2017-18 school year was arbitrary and capricious and should be **REVERSED.**

ORDER

It is **ORDERED** that the East Orange Board of Education’s determination as to the increment withholding filed against petitioner is deemed void, and it is further **ORDERED** that the decision by the East Orange Board of Education, the result of which was to withhold petitioner’s increment for the 2017-2018 school year, is **REVERSED**.

I hereby **FILE** this Initial Decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This order on application for emergency relief may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who/which by law is authorized to make a final decision in this matter. The final decision shall be issued without undue delay, but no later than forty-five days following the entry of this order. If (title of agency head) does not adopt, modify or reject this order within forty-five days, this recommended order shall become a final decision on the issue of emergent relief in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, P.O. Box 500, Trenton, New Jersey 08625-0500**, marked “Attention: Exceptions.” A copy of any exceptions must be sent to the judge and to the other parties.

July 16, 2021
DATE



ANDREW M. BARON, ALJ

Date Received at Agency: July 16, 2021

Date Mailed to Parties: July 16, 2021
mm

APPENDIX

Witnesses

For Petitioner:

Dr. Howard Walker

For Respondent:

Dr. Deborah Harvest

Dr. Kevin West

Exhibits

For Petitioner:

P-1- 9/6/11 Letter

P-2- 6/2015

P-3- 5/2016 Evaluation

P-4- 3/17 Memo

P-5- 9/17 Action Plan

P-6-Emails

P-7- 2/22/18 Action Plan

P-8-2017-18 Evaluation

P-9- 2018-19 Evaluation

P-10- Action Plan

P-11- DOE Letter

P-12- 5/11/18 Memo

P-13- 5/11/18 Memo

P-14- CAP

For Respondent:

- R-1- Evaluations
- R-2- 9/2/17 Email
- R-3- Post conference summary email
- R-4- Professional Standards
- R-5- 8/17 Memo
- R-6- 8/9/17 email chain
- R-7- 8/17 Email chain
- R-8-Dr. Harvest areas of concern
- R-9- 9/15/17 CAP Progress
- R-10- Dr. Walker 9/20/17 email
- R-11- Dr. Harvest response amil
- R-12- (Not used)
- R-13- 10/3/17 Site visit form
- R-14- 10/4/17 Meeting notes
- R-15- 10/7/17 email re; book
- R-16- 10/13/17 email
- R-17- 10/30/17 email
- R-18- 11/7/17 Email re: Bulletin boards
- R-19-11/10/17 Walker email
- R-20- 12/19/17 email
- R-22- 2/9/18 Memo
- R-23-2/14/18 Harvest email
- R-24-2/18 Revised CAP
- R-25-Workshops email
- R-26-3/22/18 Harvest email
- R-27- 4/5/18 Harvest memo
- R-28- 4/9/18 Increment review
- R-29-4/26/18 Harvest email
- R-30- 5/18 Final CAP
- R-31- 6/11/18 Rice Notice
- R-32- 6/20/18 Determination