

**NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-0731-21**

**HOWARD WALKER,**

Petitioner-Appellant,

v.

**BOARD OF EDUCATION  
OF THE CITY OF EAST  
ORANGE, ESSEX COUNTY,**

Respondents-Respondents.

---

Submitted March 6, 2023 – Decided April 27, 2023

Before Judges Whipple, Smith and Marczyk.

On appeal from the New Jersey Commissioner of Education, Docket No. 202-8/18.

Schwartz Law Group, LLC, attorneys for appellant (John T. Farinella, on the briefs).

Keenan & Doris, LLC, attorneys for respondent Board of Education of the City of East Orange (Erdal Turnacioglu, of counsel and on the brief).

Matthew J. Platkin, Attorney General, attorney for respondent Commissioner of Education (Sadia

Ahsanuddin, Deputy Attorney General, on the statement in lieu of brief).

PER CURIAM

Petitioner Howard Walker appeals from the October 7, 2021 final agency decision of the Commissioner of Education (Commissioner) rejecting the Administrative Law Judge's (ALJ) initial decision. The Commissioner determined the East Orange Board of Education (Board) did not act arbitrarily in imposing a salary increment withholding on Walker for the 2018-19 school year based on his 2017-18 evaluation. Following our review of the record and applicable legal principles, we affirm.

I.

Walker has been employed by the Board since 1989. He became a principal during the 2004-05 school term. He served as principal of Garvin Elementary school from 2005 through 2016. He was then transferred to Healy Middle School (Healy) for the 2016-17 academic year. Dr. Deborah Harvest was tasked with conducting principal evaluations as the Assistant Superintendent of Operations and Student Support Services. Dr. Harvest was Walker's evaluator from 2010 through 2018. Dr. Harvest placed Walker on a corrective action plan (CAP) based on his "partially effective" performance

evaluation for the 2016-17 school year.<sup>1</sup> Dr. Harvest testified she provided Walker with written guidance regarding his work performance related to areas that were in need of improvement. Dr. Harvest further testified she collaborated with Walker regarding his CAP.<sup>2</sup> However, she noted she had to develop Walker's CAP even though he had sufficient time to formulate it.

On April 5, 2018, Dr. Harvest provided Walker with a memorandum addressing his performance and the CAP. This memo also explained to Walker there was a possibility his increment could be withheld "due to poor performance." An April 9, 2018 evaluation indicated Walker's salary

---

<sup>1</sup> Dr. Harvest also recommended Walker's increment be withheld for the 2017-18 school year, but only the denial of the 2018-19 increment is being challenged before us.

<sup>2</sup> Dr. Harvest and Walker developed a strained relationship. Dr. Harvest testified she felt harassed by the number of emails Walker sent and decided to include her Superintendent, Dr. Kevin West, on the threads. In addition, Dr. Harvest emailed Walker on January 17, 2018 to schedule a meeting to discuss the CAP and explained another superintendent would be present to assist with any clarifications. Dr. Harvest testified Walker responded by questioning whether this meeting would be to explain the expectations required from him, although Dr. Harvest believed he knew what was expected because he had the CAP.

increment for 2018-19 should be withheld due to "gaps in leadership."<sup>3</sup> Walker's third evaluation was conducted by another assistant superintendent, Dr. Dana Walker,<sup>4</sup> on May 9, 2018. Dr. Walker's evaluation stated Walker did not link his mission and vision to the District's mission and vision, his feedback was "generic," and he needed to be an "instructional leader" for the school's teachers.

Walker was ultimately deemed "partially effective" for the 2017-18 school year because his final rating fell below 2.65.<sup>5</sup> As a result, he was placed on another CAP for the 2018-19 school year, and Dr. Harvest recommended the Board withhold his salary increment for the 2018-19 school

---

<sup>3</sup> Dr. Harvest further noted in the April 9, 2018 Probation/Withholding of Increment Review form that, despite her efforts, Walker "resists everything and does not feel there is a need for improvement."

<sup>4</sup> To avoid confusion because of the shared last name, we will refer to Dr. Dana Walker as "Dr. Walker" and to petitioner as "Walker." We mean no disrespect to petitioner in doing so.

<sup>5</sup> Dr. Harvest performed multiple site visits at Healy Middle School. During her first site visit on October 3, 2017, Dr. Harvest noted several of the bulletin boards did not have student work from the last thirty days, as was required by the Superintendent. She also discussed data related to Partnership for Assessment of Readiness for College and Careers and Renaissance, which to her was an area that "absolutely" needed improvement. During another site visit, she observed students out of their seats, throwing things or yelling, and the teacher was not keeping the students engaged.

year. In addition, Walker was served with a Rice<sup>6</sup> notice, indicating that issues related to his employment would be discussed by the Board of Education.

Dr. Kevin West was the Superintendent of Schools who replaced Dr. Harvest as Walker's evaluator. He testified Dr. Harvest was "a highly effective assistant superintendent" in addition to being dedicated, competent, efficient, and professional. Dr. West also testified Walker would email Dr. Harvest requesting clarification on issues Dr. Harvest previously explained in writing. However, Dr. West testified Walker was not combative with him and listened to his suggestions even though Walker would eventually "go back to the old way" and need improvement again. Dr. West also explained a person's positive evaluation is usually correlated with the school's improvement. However, there were instances where the principal scored low on their evaluation, but the school's status had improved, as was the case here.

---

<sup>6</sup> Rice notice refers to the right of a public employee to receive notice of the intention of a board of education to consider personnel matters related to them. Rice v. Union Cnty. Reg'l High Sch. Bd. of Educ., 155 N.J. Super. 64, 74 (App. Div. 1977).

Walker contends he had several challenges when he was assigned to Healy.<sup>7</sup> Healy Middle School was a low-ranking school in "comprehensive status" when Walker began working there. Moreover, his prior experience was primarily at the elementary school level as opposed to a middle school, and he was unfamiliar with the staff. Nevertheless, Walker testified he made significant improvements at Healy. He noted he recommended the non-renewal and increment withholding of several teachers and staff members because of their "less than satisfactory performance." Walker also created a school newspaper to publicize the accomplishments of the school and connect with the community.<sup>8</sup>

---

<sup>7</sup> Walker testified he was transferred to Healy over his "vehement protestations."

<sup>8</sup> In addition, Walker testified he made the following improvements during the 2017-18 year: developing a school improvement plan because Healy was in comprehensive status; providing professional development for teachers consistent with the school's mission and vision; conducting walk-throughs in classrooms to assist in improving instruction; training teachers for the use and understanding of new lesson plans; identifying teachers who have leadership qualities; monitoring every child that appears in intervention status; maintaining a comprehensive data-wall accessible to staff; guiding teachers to incorporate more "rigor" in science and math classes; creating a school-wide system of progressive discipline for teachers; working with teachers to improve their performance, and, if they did not improve, he recommended that they leave the school; documenting the improvement in the performance of

Walker also testified he sought to better understand the CAP he was placed on and what was expected of him, however he felt Dr. Harvest "essentially rebuffed" his efforts. Walker testified he filed a rebuttal once he was placed on the CAP but never received a response from Dr. Harvest. He testified despite making no changes regarding his performance as principal at Healy, his new evaluator, Dr. West, gave dramatically different scores on the assessment for the 2018-19 school year. As a result, Walker was removed from the CAP. In addition, Healy's status improved from "comprehensive watch" to "focus" in January 2019. Walker testified Dr. Harvest failed to give him any credit for the improvements.<sup>9</sup>

Walker filed a petition challenging the Board's decision to withhold his salary increment. The Commissioner transferred the matter to the Office of Administrative Law where an ALJ conducted a hearing. The ALJ issued an initial decision granting Walker's petition on July 16, 2021. The ALJ noted, in part, Dr. Harvest minimized Walker's role in the improvement of Healy's status

---

English Language Learner students; and reading a book on body language as required by Dr. Harvest.

<sup>9</sup> Dr. Harvest testified the slight improvement made at Healy was not a result of Walker's actions but was attributable to prior principals.

during his tenure, and he "never received a true explanation of what criteria were being utilized to evaluate his work . . . ." On July 27, 2021, the Board submitted exceptions. On October 7, 2021, the Commissioner issued a decision, discussed more fully below, rejecting the ALJ's initial decision and dismissing Walker's appeal.

## II.

Walker raises the following points on appeal:

### POINT I

THE [COMMISSIONER'S] DECISION MUST BE REVERSED BECAUSE THE COMMISSIONER IGNORED SUBSTANTIAL CREDIBLE EVIDENCE THAT PETITIONER'S EVALUATOR ACTED UNREASONABLY AND/OR IN A CURSORY MANNER.

### POINT II

PETITIONER'S INCREMENT MUST BE RESTORED SINCE THE BOARD['S] ACTION AGAINST HIM WAS INDUCED BY THE IMPROPER MOTIVES OF HIS SUPERVISOR.

### POINT III

THE [COMMISSIONER'S] DECISION SHOULD BE REVERSED BECAUSE THE COMMISSIONER FAILED TO LINK STUDENT ACHIEVEMENT AND EDUCATOR EVALUATION WHEN REVIEWING [THE ALJ'S] INITIAL FINDINGS.



More particularly, Walker asserts that, although the Board was procedurally compliant with its evaluations, Dr. Harvest's assessments were "far from credible or objective." He emphasizes he inherited a failing middle school and an unfamiliar staff, but nevertheless implemented various improvements, and ultimately the school was removed from comprehensive status. He argues Dr. Harvest's improper motive was evidenced by her "unreasonably [rushing] to judgment without weighing all of the relevant evidence . . . ." Walker further asserts Dr. Harvest and the Board failed to credit him for improving student achievement while at Healy.

### III.

"Our review of administrative agency action is limited." Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011) (citing In re Herrmann, 192 N.J. 19, 27 (2007)). "A reviewing court 'may not substitute its own judgment for the agency's, even though the court might have reached a different result.'" In re Stallworth, 208 N.J. 182, 194 (2011) (quoting In re Carter, 191 N.J. 474, 483 (2007)). We may reverse a decision "if it is arbitrary, capricious, or unreasonable, or if it is not supported by substantial credible evidence in the record as a whole." P.F. ex rel. B.F. v. N.J. Div. of Developmental Disabilities, 139 N.J. 522, 529–30 (1995) (citing Dennery v.

Bd. of Educ. of Passaic Cnty. Reg'l High Sch. Dist. No. 1, 131 N.J. 626, 641 (1993)). "In reviewing a final agency decision, such as that of the Board . . . , we defer to factfindings that are supported by sufficient credible evidence in the record." McClain v. Bd. of Rev., Dep't of Lab., 237 N.J. 445, 456 (2019) (citing Brady v. Bd. of Rev., 152 N.J. 197, 210 (1997)). We generally "defer to an agency's expertise and superior knowledge of a particular field." Brady, 152 N.J. at 210 (quoting Greenwood v. State Police Training Ctr., 127 N.J. 500, 513 (1992)).

"The burden of demonstrating that the agency's action was arbitrary, capricious or unreasonable rests upon the [party] challenging the administrative action." In re Arenas, 385 N.J. Super. 440, 443-44 (App. Div. 2006) (citing McGowan v. N.J. State Parole Bd., 347 N.J. Super. 544, 563 (App. Div. 2002)). "[T]he test is not whether an appellate court would come to the same conclusion if the original determination was its to make, but rather whether the factfinder could reasonably so conclude upon the proofs." Brady, 152 N.J. at 210 (quoting Charatan v. Bd. of Rev., 200 N.J. Super. 74, 79 (App. Div. 1985)).

Guided by these principles, we are satisfied the Commissioner did not act arbitrarily in determining the Board properly withheld Walker's increment

for the 2018-19 school year based on his "partially effective" performance evaluation. N.J.S.A. 18A:29-14 authorizes the Board to withhold petitioner's increment for "inefficiency or other good cause[,]" and "[t]he decision to withhold an increment is . . . a matter of essential managerial prerogative which has been delegated by the Legislature to the Board." Bd. of Educ. of Bernards Twp. v. Bernards Twp. Educ. Ass'n, 79 N.J. 311, 321 (1979). Generally, salary increments are "in the nature of a reward for meritorious service to the school district[,]" rather than being "statutory entitlement[s]." N. Plainfield Educ. Ass'n ex rel. Koumjian v. Bd. of Educ. of N. Plainfield, 96 N.J. 587, 593 (1984). Indeed, N.J.S.A. 18A:29-14 was "clearly . . . meant to vest local boards with the ability to withhold increments from teachers who had not performed well during the previous year." Probst v. Bd. of Educ. of Haddonfield, 127 N.J. 518, 526 (1992). A board's exercise of this discretionary power "may not be upset unless patently arbitrary, without rational basis or induced by improper motives." Parsippany-Troy Hills Educ. Ass'n v. Bd. of Educ. of Parsippany-Troy Hills Twp, 188 N.J. Super. 161, 167 (App. Div. 1983) (quoting Kopera v. Bd. of Educ. of W. Orange, 60 N.J. Super. 288, 294 (App. Div. 1960)).

Here, the Commissioner noted there was "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." Specifically, the Commissioner observed,

[p]etitioner 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.

The Commissioner further commented, "[i]n 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." Significantly, the Commissioner noted the evaluators conducted site visits of the school prior to completing the evaluations in order to obtain a perspective on what was occurring in the school and how that related to the domains in the principals' evaluations. The Commissioner noted that during a February 20, 2018 site inspection, Dr. Harvest made the following observations:

[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 [six] or [seven] 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, [Walker's] assistant principal joined me. . . . 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. . . . I had to take over the classroom. It was totally out of control. Totally.

The Commissioner commented, "[w]hat Dr. Harvest witnessed on the site visit was reflected on [Walker's] subsequent evaluation, as [he] 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." The Commissioner noted the "comprehensive evaluations" included justifications for the ratings that resulted in a "partially effective" final summative assessment, and the Board's decision to withhold petitioner's increment for the 2018-19 school year was not arbitrary or capricious.

Moreover, concerning Walker's contention his prior experience was at the elementary school level as opposed to a middle school and that he was unfamiliar with the staff, the Commissioner stated,

[w]ith [Walker'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 . . . [and] 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.

Moreover, the Commissioner rejected the ALJ's finding petitioner "never received a true explanation of what criteria were being utilized to evaluate his work at Healy." The Commissioner noted:

[Walker] 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 [Walker] contributed to [his] poor evaluations; however, the Commissioner notes that one of [Walker'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 [sixty-three percent] of his demonstrable goals. However, regardless of whether . . . 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 [her] evaluations.

Lastly, the Commissioner commented,

[although] it is positive news that the school was removed from the "comprehensive" list, improvements in [Walker'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.

Accordingly, the Commissioner noted Healy's status in 2019 had no bearing on whether the Board acted appropriately in deciding in June 2018 to withhold petitioner's increment for the 2018-19 school year.<sup>10</sup>

#### IV.

We are satisfied the Commissioner's decision was amply supported by the evidence in the record. The record does not reflect the Commissioner ignored substantial evidence that Dr. Harvest acted in an unreasonable or cursory manner or that the Board's actions were induced by some type of

---

<sup>10</sup> The Commissioner further observed:

Finally, the ALJ found that [Walker] 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.

improper motive by Dr. Harvest. To the contrary, Dr. Harvest, along with Dr. Walker, set forth sufficient reasons supporting the Commissioner's decision to uphold the Board's determination withholding Walker's increment. The Commissioner found Walker's "partially effective" evaluation buttressed by the credible evidence and "comprehensive" assessments performed by Dr. Harvest and Dr. Walker resulting in his placement on the CAP. The Commissioner further determined the evaluations included detailed notes justifying Walker's score, but also provided guidance for improvement. In addition, the evaluations were substantiated by the site visits where various issues were identified such as unruly classrooms and inadequate instruction provided by certain teachers.

The Commissioner also determined Walker should have known his job expectations because he had ten years' experience as a principal. Moreover, Walker's allegations concerning Dr. Harvest's "improper motives" and an "unreasonable [rush] to judgment" based on their strained relationship is belied by the fact there was another observer—Dr. Walker—who conducted an evaluation and came to a similar conclusion. Walker further asserts Dr. Harvest and the Board failed to credit him for improving student achievement while at Healy. However, the Commissioner acknowledged Healy's



improvements, but noted Walker's reliance on Healy's advances in 2018-19 following the withholding of his increment cannot be a basis to support his petition related to Walker's actions during the 2017-18 school year. We conclude there is no basis to disturb these findings.

That the Commissioner gave greater consideration to certain evidence supporting the Board's decision as opposed to the arguments advanced by Walker is not a basis for us to determine the Commissioner's decision was arbitrary and capricious. Rather, we must decide if the Commissioner's opinion was supported by sufficient credible evidence in the record. As noted, "the test is not whether [we] would come to the same conclusion if the original determination was [ours] to make, but rather whether the factfinder could reasonably so conclude upon the proofs." Brady, 152 N.J. at 210 (quoting Charatan, 200 N.J. Super. at 79). Walker's claims are essentially based on his version of the facts and, likewise, his interpretation of the evidence. The record amply supports the Commissioner's factual findings and legal conclusion petitioner failed to satisfy his burden of establishing the Board's decision was arbitrary, capricious, or unreasonable. We therefore discern no basis to reverse the Commissioner's decision.

To the extent we have not specifically addressed any of Walker's remaining arguments, we conclude they are of insufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.



CLERK OF THE APPELLATE DIVISION