

New Jersey Commissioner of Education

Final Decision

Jared Fowler,

Petitioner,

v.

Board of Education of the Passaic Valley
Regional High School District, Passaic County,

Respondent.

Synopsis

Petitioner – employed by the school district as the Assistant Principal of Humanities – appealed the determination of the respondent Board to withhold his salary increment for the 2019-20 school year as consequence for his failure to provide administrative oversight of the 2019 yearbook. Petitioner contended that the Board’s action in withholding his increment was arbitrary, capricious and unreasonable, arguing, *inter alia*, that it was not his job responsibility as Assistant Principal to edit and/or supervise the yearbook. The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue in this case, and the matter is ripe for summary decision; pursuant to *N.J.S.A.* 18A:29-14, a board of education may withhold a teacher’s increment for inefficiency or other good cause; in the spring of the 2018–19 school year, the Board became aware of inappropriate written content in the 2019 yearbook which sparked controversy and became a “public relations nightmare” for the school district; in his role as Assistant Principal of Humanities, the petitioner oversees the English department, which includes an elective Editing and Publishing course that creates and reviews yearbook content; it is undisputed that the 2019 yearbook contained inappropriate writing that caused controversy among parents and other members of the public; the inappropriate content was either missed or ignored by district staff who directly oversaw the yearbook; in responding to the resulting controversy, the Board held the two teachers in the Editing and Publishing course accountable, as well as those administrators whom the Board deemed to have failed to provide administrative oversight, leadership and supervision of the yearbook project, including the petitioner. The ALJ concluded that the Board’s decision to withhold petitioner’s salary increment was not arbitrary, capricious or unreasonable. Accordingly, summary decision was granted in favor of the Board, and the petition was dismissed.

Upon review, the Commissioner concurred with the ALJ’s findings and conclusions in this matter and adopted the Initial Decision as the final decision for the reasons thoroughly expressed therein. 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.

December 24, 2020

New Jersey Commissioner of Education
Decision

Jared Fowler,

Petitioner,

v.

Board of Education of the Passaic Valley
Regional High School District, Passaic County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties did not file exceptions.

Petitioner challenges the Board's decision to withhold his increment for the 2019-20 school year after an incident involving inappropriate written content which appeared in the school yearbook. Petitioner, the Assistant Principal of Humanities, oversees the English department, which includes an elective Editing and Publishing course that creates and reviews yearbook content. The yearbook club handles extracurricular activities outside of school hours but does not edit the content of the yearbook. The yearbook advisors report to the Student Activities Coordinator, who oversees club operations.

The Administrative Law Judge (ALJ) found that the Board decision to withhold petitioner's increment was not arbitrary, capricious or unreasonable. Petitioner had oversight over the class responsible for creating and reviewing the yearbook content, and it is undisputed that the 2019 yearbook contained inappropriate content that caused controversy and a "public

relations nightmare.” As such, the ALJ found the Board had good cause to withhold petitioner’s salary increase.

Upon review, the Commissioner agrees with the ALJ – for the reasons thoroughly expressed in the Initial Decision – that the Board was not arbitrary, capricious or unreasonable its decision to withhold petitioner’s salary increment for the 2019-20 school year. Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter, and the petition is hereby dismissed.

IT IS SO ORDERED. ¹

ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 24, 2020
Date of Mailing: December 28, 2020

¹ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 14706-19

AGENCY DKT. 259-9/19

JARED FOWLER,

Petitioner,

v.

**PASSAIC VALLEY REGIONAL HIGH
SCHOOL DISTRICT BOARD OF
EDUCATION, PASSAIC COUNTY,**

Respondent.

Robert M. Schwartz, Esq., and John Farinella, Esq., for petitioner (Schwartz
Law Group, attorneys)

Raymond B. Reddin, Esq., for respondent (Reddin Masri, attorneys)

Record Closed: October 20, 2020

Decided: November 9, 2020

BEFORE **SUSANA E. GUERRERO, ALJ:**

STATEMENT OF THE CASE

Petitioner, Assistant Principal Jared Fowler (Fowler or petitioner), appeals the determination of respondent, Board of Education of the Passaic Valley Regional High

School District, Passaic County (Board or respondent), to withhold his salary increase, alleging that the Board's action was arbitrary, capricious and unreasonable.

PROCEDURAL HISTORY

Petitioner filed a Petition of Appeal with the Commissioner of Education on or around September 24, 2019, and the Commissioner transmitted the matter to the Office of Administrative Law, where it was filed as a contested case on October 17, 2019. **N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.** On or around September 4, 2020, the parties filed cross-motions for summary decision. Respondent filed an opposition to petitioner's motion on September 16, 2020, and petitioner filed an opposition to respondent's motion on September 18, 2020. The record closed following oral argument on October 20, 2020.

FACTUAL DISCUSSION

The parties jointly filed a Stipulation of Facts containing the following, that I **FIND** as **FACT**:

1. Petitioner currently serves in the position of Assistant Principal of Humanities. Petitioner holds an administrative certificate with both the principal and supervisor endorsements.
2. Petitioner has been employed by the respondent since the commencement of the 2008–2009 school term. He began his employment with the respondent as a teacher of English in 2008–2009 school term. Upon the commencement of the 2015–2016 school term, petitioner was promoted to the position of Supervisor of Curriculum.
3. Petitioner served as the Supervisor of Curriculum for the 2015–2016 school term.
4. Since July 1, 2016, petitioner has served in the capacity of Assistant Principal of Humanities.

5. Petitioner is not part of any collective bargaining unit nor salary guide.
6. The Board establishes the salaries of the administrators. Petitioner's salary increases have occurred annually subject to the approval of the Board.
7. As Assistant Principal, petitioner has worked under the job description entitled "Assistant Principal of Humanities" which was adopted by the respondent on or about April 26, 2016.
8. The Assistant Principal of Humanities' job description sets forth the performance responsibilities for which petitioner was held accountable.²
9. The respondent has historically assigned teacher advisors to the Yearbook Club, a stipend position which assists with the Yearbook activities and which falls under Student Activities unit.
10. The Yearbook content is created and reviewed in the class entitled Editing and Publishing, which is in the English Department and falls under Humanities. The Editing and Publishing class is an official elective course which issues a grade and edits the content of the Yearbook, falling under the auspices of approved student activities at Passaic Valley Regional High School. The two teachers assigned to the Yearbook Club are paid a stipend.
11. The Yearbook Club handles extra-curricular activity outside of classroom hours, such as fundraising, and does not establish or review the content of the Yearbook.
12. There is no individual assigned as the Supervisor of Humanities. The position is vacant. The petitioner in his role as Assistant Principal supervises the

² The job description was attached as an exhibit to the Stipulation of Facts, and is incorporated herein.

Humanities and English departments, wherein the Editing and Publishing course falls.

13. During the 2018–2019 school term, the teachers of the Editing and Publishing course were Lori Demsey and Leanne Weiss. Ms. Weiss reported to the petitioner. Ms. Demsey reported to the Supervisor of STEM.
14. During the 2018–2019 school term, the yearbook advisor stipend positions were also given to Lori Demsey and Leanne Weiss. This was their first year as advisors to the yearbook.
15. Both Ms. Demsey and Ms. Weiss, as teachers of the Editing and Publishing class, were also assigned to be yearbook advisors by the Superintendent, Dr. JoAnn Cardillo. Their appointment as yearbook advisors had been approved by the Board of Education.
16. Both Ms. Demsey and Ms. Weiss received the payment of a stipend to be the yearbook advisors.³
17. In their capacity as yearbook advisors during the 2018–2019 school term, Ms. Demsey and Ms. Weiss reported to Joseph Benvenuti, the Student Activities Coordinator.⁴
18. The job description for the Student Activities Coordinator title provides under “performance responsibilities” that he is to “oversee club operations” and that he is to “develop standard operating procedures” for clubs “when necessary.”

³ Their job description for the yearbook advisors was attached as an exhibit to the Stipulation of Facts and is incorporated herein.

⁴ The job description for the Student Activities Coordinator was attached as an exhibit to the Stipulation of Facts, and is incorporated herein.

19. During the 2018–2019 school term, petitioner was never explicitly asked or assigned to review and/or have oversight responsibilities as to the contents of the yearbook or any of its activities.
20. Petitioner, in his capacity as Assistant Principal, did not supervise the Student Activities Coordinator either during the 2018–2019 school term, or in any prior years.
21. In the spring of the 2018–2019 school term, the respondent became aware of a writing in the 2019 yearbook which was deemed inappropriate. The writing was as follows:

Nickname: DaBomb, Bombza
Ambition: To get past TSA without getting stopped
Secret Ambition: To Be a Pilot
I would thank Allah, but I know the FBI is watching

22. This sparked controversy among some parents and members of the public.
23. As a result of the controversy, by way of a letter dated June 25, 2019, respondent, through its then Superintendent, Dr. JoAnn Cardillo, informed the petitioner that, at its meeting of June 25, 2019, the respondent voted to “withhold” his “salary increase for the 2019–2020 school term.” The reason for the increment withholding was “failure to provide administrative oversight of the functions of the 2019 yearbook.”
24. The Student Activities Coordinator who had oversight responsibilities for the yearbook activities did not receive an increment withholding.
25. The Student Activities Coordinator received a letter of reprimand that was placed in his personnel file regarding his role in the incident. The two teachers, Ms. Weiss and Ms. Demsey, received an increment withholding and remained on their current step on the salary guide. The Principal and Assistant Principal both had their salary increases rescinded for lack of supervision and oversight. Lastly,

the Board passed a public reprimand against the Superintendent for lack of supervision and oversight. As the principal retired in or about October 2019, petitioner is the only remaining administrator to have had his increment withheld which he has appealed through this action.

26. Petitioner received an effective evaluation at the conclusion of the 2018–2019 school term. The evaluation was conducted by the Principal and was completed prior to the yearbook incident.⁵

I also **FIND** the following **FACTS**, as they are undisputed:

Petitioner’s salary as an administrator is set by the Board, and any salary increase is not subject to any collective bargaining agreement or salary guide, but subject to the Board’s consideration and approval. The petitioner has no right to an automatic salary increase every year, despite the fact that he received salary increases annually in the past, and this year.

LEGAL ANALYSIS AND CONCLUSION

The parties seek relief pursuant to N.J.A.C. 1:1-12.5, which provides that summary decision should be rendered “if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” Our regulation mirrors R. 4:46-2(c) which provides that “the judgment or order sought shall be rendered if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law.”

A determination whether a genuine issue of material fact exists that precludes summary decision requires the judge to consider whether the competent evidential

⁵ Petitioner’s evaluations as Assistant Principal were attached as exhibits to the Stipulation of Facts, and incorporated herein.

materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the allegedly disputed issue in favor of the non-moving party. Our courts have long held that “if the opposing party offers . . . only facts which are immaterial or of an insubstantial nature, a mere scintilla, ‘fanciful frivolous, gauzy or merely suspicious,’ he will not be heard to complain if the court grants summary judgment.” Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 529 (1995) (citing Judson v. Peoples Bank and Trust Co., 17 N.J. 67, 75 (1954)).

The “judge’s function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” Brill, at 540, (citing Anderson v. Liberty Lobby, 477 U.S. 242, 249, 106 S. Ct. 2505, 2511, 91 L. Ed. 2d 202, 213 (1986)). When the evidence “is so one-sided that one party must prevail as a matter of law,” the trial court should not hesitate to grant summary judgment. Liberty Lobby, 477 U.S. at 251-252, 106 S. Ct. at 2512, 91 L. Ed. 2d at 214.

Following the Brill standard, and after considering the Stipulation of Facts, attached joint exhibits, and briefs, I **CONCLUDE** that there are no genuine issues of material fact that require a plenary hearing and that this matter is ripe for summary decision.

Petitioner essentially makes two arguments in support of his motion for summary decision. First, petitioner argues that the Board’s action to withhold his salary increase was arbitrary and capricious because it was not his job responsibility as Assistant Principal to edit and/or supervise the yearbook. Petitioner asserts that it was the Yearbook Advisors and Student Activities Coordinator who made the editing error here, and the responsibility of advising and supervising the Yearbook, and of supervising the Coordinator of Student Activities was outside the scope of petitioner’s job responsibilities. Therefore, petitioner argues that no inefficiency or other good cause exists upon which the Board could impose such a disciplinary consequence against him. Petitioner also argues that the fact that he supervised the work in the classroom associated with the teaching assignments of the Yearbook Advisors does not demonstrate a lack of “administrative oversight.” Moreover, petitioner points out that he

received an effective evaluation from the building principal for the 2018–2019 school year, and asserts that he and the Principal were only “targeted” because of their administrative positions and not because of how they performed their job duties.

Second, petitioner argues that the Board “acted inconsistently” disciplining him with an increment withholding while only reprimanding the Student Activities Coordinator who “had the responsibility of supervising the editing and the publication of the yearbook.”

The Board argues that petitioner fails to acknowledge his responsibility to provide supervision and oversight to the Editing and Publishing course that is responsible for editing the yearbook. The Board disputes petitioner’s assertion that the Student Activities Coordinator should be held responsible because the Yearbook Club, which the Student Activities Coordinator supervises, is involved in editing and publishing the yearbook. In its reply, the Board points out that the petitioner’s statements concerning the Student Activities Coordinator and Yearbook Club contradict paragraphs 9 and 10 of the Stipulated Facts, and that the Yearbook Club only handles extra-curricular activity outside of classroom hours, such as fundraising and does not establish or review the content of the Yearbook. (Stipulation of Facts, ¶¶ 10.) The Board maintains that it is the Editing and Publishing Course that has complete control over the Yearbook content while the Yearbook club has none. Because petitioner supervises the English department that controls the Editing and Publishing Course, the Board determined that petitioner failed to properly perform his supervisory duties.

The Board argues that it has the authority and the discretion to impose a monetary sanction in the form of withholding a merit-based raise on an Administrator pursuant to N.J.S.A. 18A:29-14, and that its actions here were neither arbitrary, without good cause, nor an abuse of discretion with improper motives. N.J.S.A. 18A:29-14, which addresses a board’s withholding of a teaching staff member’s increment provides in part:

Any board of education may withhold, for inefficiency or other good cause, the employment increment, or the

adjustment increment, or both, of any member in any year by a recorded roll call majority vote of the full membership of the board of education”

Burden of Proof

Petitioner asserts that it is the Board who has the burden of proof in this matter because the action taken against petitioner was disciplinary and not based on performance, and had this matter gone through arbitration, the Board would have had to demonstrate just cause for denying the increment. Petitioner’s argument, which is unsupported by any caselaw, is misplaced. The Board withheld a salary increase for Fowler’s “failure to provide administrative oversight” of the Yearbook—i.e., failure to adequately perform his supervisory duties. Petitioner’s classification of this matter as “disciplinary,” is irrelevant to determining who has the burden of proof, and it is also immaterial that the burden of proof may have been different had Fowler been part of a collective bargaining unit or had this matter been handled in arbitration. Kopera v. W. Orange Bd. of Educ., 60 N.J. Super. 288 (App. Div. 1960), which was cited by the Board, holds that “[w]hen challenging an increment withholding, the teacher has the burden of proof to show that the board of education acted arbitrarily without rational basis or was induced by improper motives.” Kopera also holds that “[i]n the absence of clear and convincing proof that a board of education acted unreasonably or in a cursory manner in withholding an increment, the Commissioner will not substitute his judgment for the board of education’s judgment.” Id. at 296. I **CONCLUDE** that it is the petitioner who carries the burden to prove to establish that the Board lacked good cause to withhold Fowler’s salary increase, and that its decision was arbitrary and capricious or induced by improper motives.

The Board maintains that there was no improper motive and the action taken against Fowler was not unreasonable. Six staff members were sanctioned for this incident, including Fowler, and the Board’s managerial prerogative to take this action has a presumption of correctness. According to the Board, the incident with the Yearbook had a tremendous negative public relations impact on the Board, and the Yearbook’s content is created and reviewed in the Editing and Publishing class, whose teachers Fowler supervises. The teachers of that class, who also happen to be the

“Yearbook Advisors,” were sanctioned, as was the Principal who supervises the petitioner, and the Superintendent even received a verbal reprimand of no confidence due to this incident.

Here, while Fowler may not have been expressly assigned to review the content of the Yearbook, he is not completely disconnected from this mishap. He had oversight of the class responsible for creating and reviewing the content of the Yearbook, and of at least one of its teachers. It is undisputed that the 2019 Yearbook contained inappropriate writing that caused controversy among parents and other members of the public, and the Board was faced with having to respond to this controversy. This inappropriate and controversial writing was either missed or ignored, and the Board chose to act not only by holding the two teachers in the Editing and Publishing course accountable, but also those administrators who in their estimation failed to provide administrative oversight, leadership and supervision which resulted in “a public relations nightmare.” Fowler was one of these individuals who in his administrative capacity could have done something to prevent this mishap. While Fowler may consider the Board’s response as harsh or unfair, it acted rationally and within its authority. I **CONCLUDE** that the evidence does not support petitioner’s assertion that the Board’s decision to withhold petitioner’s salary increase was an arbitrary, capricious or unreasonable one; and that the Board had good cause to withhold Fowler’s salary increase. I also **CONCLUDE** that summary decision must be granted in favor of the Board, and that the petition should be dismissed.

ORDER

It is hereby **ORDERED** that the motion for summary decision filed by the Board of Education of the Passaic Valley Regional High School Board of Education is **GRANTED**, and the motion for summary decision filed by the petitioner is **DENIED**. It is further **ORDERED** that the petition be and hereby is **DISMISSED**.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision 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, PO 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.

November 9, 2020
DATE


SUSANA E. GUERRERO, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

jb

APPENDIX

WITNESSES

For Petitioner:

None

For Respondent:

None

EXHIBITS

For Petitioner:

Brief and reply brief

For Respondent:

Brief and reply brief