

P.E.R.C. NO. 2024-46

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WOODBRIIDGE TOWNSHIP
EDUCATION ASSOCIATION,

Petitioner,

-and-

Docket No. TO-2024-001

WOODBRIIDGE TOWNSHIP
BOARD OF EDUCATION,

Respondent.

SYNOPSIS

The Commission grants a contested-transfer petition filed by the Woodbridge Township Education Association against the Woodbridge Township Board of Education, and orders the Board to return the affected teacher to his former work site. The petition alleged the transfer of the teacher (from his position as an Academic Coach providing small-group instruction to first-grade General Education students to a different school where he was teamed with a certified Special Education in-class support teacher) violated the statutory prohibition against the transfers of school employees between work sites for disciplinary reasons. The Commission finds a preponderance of the evidence supports that the transfer was predominately disciplinary, given that: (1) the relevant performance evaluations did not reflect the Board's professed concern that students' continuity of instruction was harmed by the teacher's allegedly excessive absenteeism; (2) the Board did not otherwise assert the teacher would be more effective in his new role than he was as an Academic Coach; and (3) the transfer was accompanied by an increment withholding that the Board certified was discipline for excessive absenteeism.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Petitioner, Detzky, Hunter & DeFillippo, LLC,
attorneys (Stephen B. Hunter, of counsel and on the
brief)

For the Respondent, The Busch Law Group, LLC, attorneys
(Jonathan Busch, of counsel; Nicholas Celso III, of
counsel and on the brief)

DECISION

On August 16, 2023, the Woodbridge Township Education Association (Association) filed a Petition for a Contested Transfer (CT) Determination. The Petition challenges a May 18, 2023 decision by the respondent, Woodbridge Township Board of Education (Board), to transfer a teacher, S.S., from his position as an Academic Coach at a Woodbridge Township School District (District) elementary school to an "undefined" position at a different elementary school. The CT Petition alleges the Board did not "proffer any educational justification for this involuntary transfer." It further alleges the transfer was

"exclusively disciplinary in nature." On September 19, 2023, the Board filed an answer, supported by a brief, denying that the transfer was for predominately disciplinary reasons. A Commission staff agent held an informal conference with the parties on November 29, 2023. Neither party requested an evidentiary hearing. The Association filed briefs, exhibits, and the certifications of S.S. The Board filed briefs, exhibits, and the certifications of its Assistant Superintendent for Human Resources, Dr. Maria A. Gencaralli, and the Principal of the School from which S.S. was transferred, Matthew Connelly. These facts appear.

S.S. was first employed by the Board as a Teacher on September 1, 2000. Throughout his 23 years of employment by the Board, S.S. received consistent "Highly Effective" performance observations and evaluations. From 2014 to 2023, S.S. held the position of Academic Coach at a District elementary school. The record indicates that the role of an Academic Coach is to provide first-grade General Education students who are reading below grade level with "intense guided reading instruction" through the District's Leveled Literacy Intervention (LLI) Program, a 14-week program of small-group instruction. As an Academic Coach, S.S. worked with small groups of LLI students who were pulled from their regular assigned classes on every school day. During S.S.'s nine years of service as an Academic Coach, all of his

Observations and Summative Year End Evaluations included Highly Effective ratings, including in his Summative Evaluation for the 2022-2023 school year.

Apart from S.S., the Board employs 15 other Academic Coaches.^{1/} Dr. Gencarelli certifies that the District provides no substitutes for Academic Coaches when they are absent. On such occasions, their students simply remain in their assigned class, receiving no LLI services for that day. She certifies that this usually happens a few times a year, as none of the other 15 Academic Coaches have attendance issues.

The Board admits awareness of S.S.'s Association membership and of his service at various times as a School Representative for the Association.^{2/}

On May 2, 2023, the principal of the school where S.S. served as an Academic Coach emailed Dr. Gencarelli as follows:

At _____ School the success of our Leveled Literacy Intervention (LLI) program is contingent on a continuity of instruction and support that our current Academic Coach [SS] has been unable to provide due to his attendance record. Over the last two school years, where our students' needs have grown

1/ The record does not indicate whether one of the other Academic Coaches was assigned to S.S.'s duties after his transfer from that role, or whether anyone was hired to replace him.

2/ The Board states in its Answer that it is without sufficient information to either admit or deny the various Association positions held by S.S. during the course of his employment with the Board, as listed in his certification.

post-pandemic, [SS] has been absent for a significant amount of time:

- During the 2021-22 school year, Mr. [S.S.] missed 54.5 days of school (30%)
- During the current school year, Mr. [S.S.] has missed 36 days of school to date (24%)

Despite receiving attendance letters from the school- and district-level, this attendance pattern has persisted. As a result, I am inquiring to see if [S.S.] can be transferred in order to staff our school's Academic Coach position in a way that will more consistently meet the daily needs of our struggling readers.

In a letter dated May 5, 2023, Dr. Gencaralli notified S.S. of an administrative recommendation to the Board to transfer him, effective September 1, 2023, from his Academic Coach position to a different elementary school.^{3/} This letter did not state a reason for the transfer.

In opposition to the CT Petition, Dr. Gencarelli certifies that the transfer was necessary in order to minimize the deprivation of services to the LLI students caused by S.S.'s absences in the 2021-2022 and 2022-2023 school years. She certifies that the District had a vacant elementary classroom position available in the school to which S.S. was transferred,

^{3/} S.S. certifies he was not advised of this involuntary transfer until the week of May 22, 2023. The Board disputes this. The record includes a copy of the transfer letter that the Board sent to S.S. via certified U.S. mail that was returned unclaimed, as well as an email receipt indicating the Board sent S.S. a copy via email that was "read" on May 9, 2023.

where S.S.'s role would be to work with a certified Special Education in-class support teacher all day, so that in the event S.S.'s chronic absenteeism continued, the students in the class would still receive services from the other in-class support teacher. Dr. Gencarelli further certifies that, unlike an Academic Coach, substitutes are used for classroom teachers' daily absences; and that S.S. is appropriately certified to perform his new assignment, which requires the same Elementary Teacher Certificate as his former assignment.

By memorandum to the Superintendent dated May 10, 2023, Dr. Gencarelli recommended that S.S.'s salary increment be withheld for the upcoming school year. The recommendation was based on an "extensive and thorough investigation into the attendance patterns" of S.S., both in the current school year and over the course of his employment. By letter dated May 12, 2022, the Superintendent notified S.S. of his recommendation that the Board withhold his employment and adjustment increments for the 2023-2024 school year. The Board adopted the Superintendent's recommendation at its May 18, 2023 meeting. S.S.'s increment withholding is presently the subject of an Association grievance that has been submitted to binding arbitration, and for which an arbitrator has been assigned.^{4/}

^{4/} Docket No. AR-2024-023. We do not consider or address the merits of that pending matter in deciding the CT Petition at (continued...)

In support of the CT Petition, S.S. certifies that the Board's concerns over his attendance record support his contention that it had predominantly disciplinary reasons for involuntarily transferring him, and that this is also shown by the Board's contemporaneous decision to withhold his increment for alleged chronic attendance-related problems. The Board disputes both contentions. Dr. Gencarelli certifies that the Board's purpose in effectuating the transfer was to avoid any further loss of educational services to the LLI students; and that where the Board felt discipline was needed for S.S.'s chronic absenteeism, it imposed the appropriate disciplinary penalty of an increment withholding.

S.S. contends in his certifications that his consistent Highly Effective ratings in his observations and summative performance reviews, including in the 2022-2023 school year, establish that his LLI students did very well and met all of their goals under his instruction, and further that none were deprived of the intervention services that they were supposed to receive, contrary to the Board's contentions that his absences caused a lack of continuity of instruction to his students. In response to the Board's claim that he was absent for 54.5 school days in 2021-2022 and 36 days in 2022-2023, S.S. cites his

Summative Evaluations for those years, which respectively state that he used 23 sick days in 2021-2022, 12 sick days in 2022-2023, and three personal days in each year. S.S. also certifies, and the Board denies, that virtually all of his absences since the initial date of his employment were accompanied by medical certifications or other documentation that resulted in the Board rarely raising attendance issues prior to the 2022-2023 school year.

Dr. Gencarelli certifies that S.S.'s emphasis on his positive evaluations is misleading, because the evaluation rubric used by the District does not include attendance patterns (which are addressed separately under the Board's attendance policy), and that classroom observations focus on what the observer actually witnesses during the observations.

The comment section of S.S.'s 2021-2022 Summative Report states:

During the 2021-22 school year, as reported in his formal observations, [S.S.] administered well-planned and executed daily lessons that delivered individualized instruction and assessment to each student within his caseload. Lessons were designed to address students' level-appropriate learning needs established and monitored by the teacher. As our Academic Coach, [S.S.] maintains regular communication with the administration, teachers and parents to ensure a cooperative effort in meeting the students' needs.

As individualized and small-group interactions are a cornerstone of the LLI

program [S.S.] provides to our students, improved attendance for the upcoming school year can only enhance the service he provides in his capacity as Academic Coach.

The comment section of S.S.'s 2022-2023 Summative Report similarly states:

During the 2022-23 school year, as reported in his formal observations, [S.S.] administered well-planned and executed daily lessons that delivered individualized instruction and assessment to each student within his caseload. Lessons were designed to address students' level-appropriate learning needs established and monitored by the teacher. [S.S.] maintained regular communication with teachers and parents to ensure a cooperative effort in meeting the students' needs.

As consistency and continuity of instruction are critical components to successful teaching at the elementary level, improved attendance for the upcoming school year would significantly enhance [S.S.] capacities as an elementary educator.

S.S. further certifies that as an Academic Coach, he only taught General Education students, whereas he now teaches a full classroom of "ICR" (In Class Resources) students, consisting of almost 50% Special Education students and 50% General Education students. S.S. certifies that he has never been trained or certified to teach Special Education students, and further that he has no training or experience working in an ICR classroom or as part of "team teaching."

S.S. certifies that other evidence also supports that his involuntary transfer was for predominantly disciplinary reasons.

This includes a December 23, 2022 letter of reprimand that was issued to S.S. for his "failure to follow a directive and take a staff photo" in accordance with the District's opening day agenda stating that "every staff member must have a photo in Genesis." S.S. certifies that he objected to this requirement in his capacity as an Association representative on the grounds that it violated employees' constitutional rights to privacy. The Board denied a grievance demanding the removal of this reprimand from S.S.'s file following correspondence between counsel for the Association and the Board. The Board counsel's correspondence states that "Genesis" is third-party software sold by the Genesis Company, known as the "Personnel and Financial Management Tool (Genesis SchoolFi)" that is run on a "self-hosted" server that is owned, operated and maintained by the District; and that the Board uses this software internally only, "without any photographs or other information or materials being placed online via the Internet in any way whatsoever." S.S. contends in his certification that the Board's refusal to remove the reprimand from his file despite affirming that no employee photographs would be provided to Genesis (upon which S.S. complied with the photograph requirement) is evidence that the discipline was intended to retaliate against him because of his Association advocacy. The Board denies this contention.

S.S. also cites the Board's denial of his November 14, 2022 request to make up an absence on either of two specified days in June 2023, and instead directing him to make it up during a different week in the same month. The Board denies that this was disciplinary in nature. S.S. further points to letters of reprimand he received during the 2022-2023 school year respectively for three occasions of tardiness, leaving work early on one occasion, and for his use of a walker for a brief period while he was recovering from an injury. The Board denies that these actions contributed to the transfer decision, and further denies that the letter he received regarding the walker, which merely notified S.S. that such use was not permitted without medical authorization, was discipline.

N.J.S.A. 34:13A-25 prohibits transfers of school employees between work sites for disciplinary reasons. The Commission has jurisdiction to determine whether a transfer is predominately disciplinary and, if so, to take reasonable action to effectuate the purposes of our Act. N.J.S.A. 34:13A-27(a) and (b). Where we find that a school employee was transferred for predominately disciplinary reasons, the remedy is to return the employee to the former work site. The petitioner has the burden of proving its allegations by a preponderance of the evidence. Irvington Bd. of Ed., P.E.R.C. No. 98-94, 24 NJPER 113 (¶29056 1998).

In West New York Bd. of Ed., P.E.R.C. No. 2001-41, 27 NJPER 96 (¶32037 2001), the Commission set standards for assessing whether a transfer is disciplinary under our statute. The Commission stated:

Our case law does not establish a bright line test for assessing whether a transfer is disciplinary. . . . [O]ur decisions indicate that we have found transfers to be disciplinary where they were triggered by an incident for which the employee was also reprimanded or otherwise disciplined or were closely related in time to an alleged incident of misconduct. In all of these cases, we noted that the employer did not explain how the transfer furthered its educational or operational needs.

By contrast, we have found transfers not to be disciplinary where they were effected predominantly to further an employer's educational, operational, or staffing objectives.

Other of our cases have found that transfers effected because of concern about an employee's poor performance of core job duties -- as opposed to concerns about absenteeism or violation of administrative procedures -- were not disciplinary but instead implicated the employer's right to assign and transfer employees based on their qualifications and abilities.

This case law provides a framework for assessing whether a transfer is disciplinary under N.J.S.A. 34:13A-25, and is consistent with what appears to have been the Legislature's understanding that a transfer is predominately disciplinary when it is punitive and/or is not made for educational or staffing reasons. Accordingly, in exercising our jurisdiction under N.J.S.A. 34:13A-27, we will consider such factors as whether the transfer was intended to

accomplish educational, staffing or operational objectives; whether the Board has explained how the transfer was so linked; and whether the employee was reprimanded for any conduct or incident which prompted the transfer.

[27 NJPER at 98; citations omitted.]

Here, S.S.'s transfer decision was contemporaneous with a disciplinary increment withholding decision that was based upon alleged chronic absenteeism. We find this indicative that the Board's reasons for the transfer and the discipline were intertwined. West New York, supra. See also, East Orange Bd. of Ed., P.E.R.C. No. 2020-13, 46 NJPER 151 (¶35 2019).

In resolving a dispute over whether an increment withholding was predominantly disciplinary in nature,^{5/} we recognized that while "excessive absenteeism can adversely affect students[,] . . . a concern for that effect, while legitimate, does not predominately involve an evaluation of teaching performance." Scotch Plains-Fanwood Bd. of Ed., P.E.R.C. No. 91-67, 17 NJPER 144 (¶22057 1991). Consistent with Scotch Plains-Fanwood, the standards for evaluating whether a transfer is predominantly disciplinary, as set in West New York, supra, differentiate non-disciplinary concerns "about an employee's poor performance of core job duties" from disciplinary concerns "about absenteeism or violation of administrative procedures." Id.

^{5/} Not coincidentally, the resolution of this type of dispute is also governed by N.J.S.A. 34:13A-27.

Here, although the Board may have a legitimate concern that S.S.'s allegedly excessive absenteeism could negatively impact his LLI students' continuity of instruction, that alleged impact is not reflected in S.S.'s relevant summative performance evaluations. Regardless of the actual number of his absences (the numbers reflected in the record vary), these evaluations do not indicate that S.S. poorly performed his core job duties as an Academic Coach. Both the 2021-2022 and 2022-2023 summative evaluations of S.S. rated him as a Highly Effective Academic Coach, and identified improved attendance as potentially enhancing that highly effective performance, going forward. No mention is made of poor student performance, or of student needs not being met. C.f., Ridgefield Park Bd. of Ed., P.E.R.C. No. 92-67, 18 NJPER 55 (¶23023 1991) (reassignment based on belief teacher would be more effective in another grade and on performance review that included negative comments on absences, tardiness, use of grades, and poor student performance).

Moreover, the Board does not assert that S.S. was transferred because he would be more effective in his new role than he was as an Academic Coach. The Board merely states there was a vacancy in the school to which S.S. was transferred, and that S.S. was generally qualified to fill that vacancy. The Board asserts that in his new post as a classroom teacher, S.S.'s chronic absenteeism (if it continues) will result in no loss of continuity of instruction because his students can still receive services from the other in-class support teacher, and because

(unlike for Academic Coaches) substitutes are provided for classroom teachers' daily absences. While this may identify an operational concern, it appears to be of the Board's own making.

Based on the foregoing, and given that this transfer was accompanied by an increment withholding that the Board certifies was discipline for excessive absenteeism, we find that on balance a preponderance of the evidence supports that the reason for the transfer at issue was predominately disciplinary, in violation of N.J.S.A. 34:13A-25. As such, we do not address S.S.'s other contentions that the transfer was discipline in retaliation for protected activity, or in connection with other concerns over tardiness, early departures, or walker use.

ORDER

The Woodbridge Township Board of Education is ordered to return S.S. to his Academic Coach position at his former work site.

BY ORDER OF THE COMMISSION

Chair Hennessy-Shotter, Commissioners Ford, Higgins, Kushnir and Papero voted in favor of this decision. None opposed. Commissioner Eaton abstained from consideration. Commissioner Bolandi was not present.

ISSUED: March 28, 2024

Trenton, New Jersey