

**PUBLIC EMPLOYMENT RELATIONS BOARD  
FOR THE STATE OF DELAWARE**

<b>RED CLAY EDUCATION ASSOCIATION, DSEA/NEA,</b>	)	<b>PERB Decision on</b>
<b>Petitioner,</b>	)	<b>Motion to Stay</b>
<b>v.</b>	)	
<b>BOARD OF EDUCATION OF RED CLAY</b>	)	<b><u>ULP NO. 05-10-496</u></b>
<b>CONSOLIDATED SCHOOL DISTRICT,</b>	)	
<b>Respondent.</b>	)	

**BACKGROUND**

On July 6, 2006, the Hearing Officer of the Public Employment Relations Board (“PERB”) issued an unfair labor practice decision wherein she found the District violated its duty to bargain in good faith by unilaterally modifying the evaluation process during the term of the parties’ collectively bargained agreement. The District was ordered to cease and desist from implementing the non-negotiated procedure and to post copies of the Notice of Determination accompanying the decision in locations where notices affecting bargaining unit employees were normally posted.

On July 17, 2006, the District filed a Request for Review of the Hearing Officer’s Decision which included a request that PERB stay enforcement of the Order pending the Board’s consideration of its request for review. On July 31, 2006, the District filed a supporting Motion to Stay Enforcement of Decision and Order Pending Review in which it argued that unless the stay is granted, the District would be forced to implement a sudden change in its use of Individual Improvement Plans (“IIP”) which would result in administrators not being able to address deficiencies in underperforming teachers. Because the evaluation process used by the

District is the statewide Delaware Performance Appraisal System (“DPAS” was developed by the State Department of Education), the Hearing Officer’s decision has statewide impact and a stay is necessary to avoid irreparable educational harm to Delaware’s schoolchildren. It also argued that failure to grant the stay would result in confusion that would be compounded by the PERB’s likely reversal of the Hearing Officer’s decision and that the granting of the stay would not prejudice the Union, stating:

. . . the District is currently in summer recess and it is unlikely that any teacher will be placed on an IIP under circumstances contrary to the Hearing Officer’s Decision and Order before the PERB is able to issue a decision. In the improbably event that such an IIP is implemented, and the PERB upholds the Hearing Officer’s decision and Order, any such IIP could be revoked following the ruling of the full PERB. *District’s Motion to Stay Enforcement*, ¶6.

The Association filed its Response to the District’s Motion on August 14, 2006, in which it opposed the District’s requested stay. The Association argued the District failed to establish either the likelihood that it would prevail on the merits of its appeal or that complying with the order would result in irreparable harm to any party. The District is not limited in its ability to issue IIP’s in compliance with the DPAS guidelines or in identifying recommended areas of growth for underperforming teachers.

The full Board convened in public session on August 16, 2006, to consider the District’s Motion to Stay Enforcement of Decision and Order Pending Review. The Board was provided with and reviewed the submissions of the parties and the Hearing Officer’s decision prior to its meeting. Deliberations were conducted based on the written arguments of the parties.

### **DISCUSSION**

Upon consideration of the record and arguments of the parties, the Board declines to grant the District’s request for stay of enforcement of the Hearing Officer’s decision and order.

This Board established its standards for granting a stay of a decision and enforcement of an order in *Capital Educational Secretaries Association, DSEA/NEA v. Board of Education of Capital School District* (Rep. Pet. 90-10-056, II PERB 777, 779, 1992). Specifically a stay may be granted at the Board's discretion where the petitioning party establishes:

- 1) There is a likelihood that the appellant will succeed on the merits;
- 2) That immediate, prejudicial and irreparable injury will result to the appellant if the stay is not granted; and
- 3) There is no substantial harm to other interested parties if the stay is granted.

In this case, the District has not established the elements necessary for granting the requested stay of enforcement. The Decision and Order required that the District not prospectively use the IIP in a manner contrary to the parties' negotiated agreement, and specifically in the manner in which it was used in this case. By its own admission, because schools are currently in summer recess, it is unlikely that any teacher will be placed on an IIP as a result of a classroom observation within the next thirty (30) days. The District is also required to post the Notice of Determination in the workplace. The District has not provided a compelling basis for its conclusion that either of these limited actions will result in immediate, irreparable, or prejudicial harm to either the District or any of its employees or students.

### **DECISION**

Consistent with the foregoing discussion, the District's Request for Stay of Enforcement of the Hearing Officer's Decision and Order is denied.

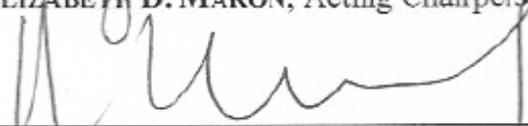
**WHEREFORE**, the District is ordered to comply with the decision and order, specifically,

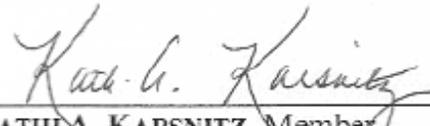
. . . to cease and desist from implementing Individual Improvement Plans following classroom evaluations in which the educator's overall performance is not rated unsatisfactory unless and until such procedure is negotiated with the Red Clay Education Association.

The District is further ordered to post copies of the Notice of Determination in all places where notices affecting employees represented by RCEA are normally posted, including in the workplaces and the District's administrative offices. The Notice must remain posted for thirty (30) days.

**IT IS SO ORDERED.**

  
ELIZABETH D. MARON, Acting Chairperson

  
R. ROBERT CURRIE, JR., Member

  
KATHI A. KARSNITZ, Member

DATE: 17 August 2006