

New Jersey Commissioner of Education

Final Decision

Tess Iannocco,

Petitioner,

v.

Board of Education of the Borough of
Wood Ridge, Bergen County,

Respondent.

Synopsis

Petitioner – a tenured teacher – suffered a medical episode in her classroom and required emergency services. Subsequently, the Board required that she undergo a fitness for duty evaluation before returning to work and placed her on sick leave until the evaluation was completed. The petitioner filed the within appeal, arguing that she should have been placed on paid administrative leave rather than forced to use her accrued sick time while she waited for clearance to return to work; petitioner demanded that her sick days be reinstated. The parties filed a joint stipulation of facts and motion 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; under *N.J.S.A. 18A:16-2(a)*, boards of education may conduct physical or psychiatric evaluations of its teachers to ensure they are mentally and physically fit to perform their duties; *N.J.S.A. 18A:16-4* addresses what occurs after a fitness evaluation and the use of sick time if the employee is not able to return to work such that when a physician determines there is a mental or physical issue precluding job service, the tenured employee may use sick leave until the board of education is satisfied that the employee has recovered; here, however, no physician concluded that petitioner was unfit to teach; rather, the physician performing the fitness evaluation permitted petitioner to return to her teaching position. The ALJ concluded that the Board could not compel petitioner to utilize her sick days before the completion of the fitness evaluation. Accordingly, the ALJ granted summary decision to petitioner and ordered the Board to return 39.5 days of sick leave to her.

The Commissioner concurred with the findings and determination of the ALJ herein; accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter.

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.

289-21

OAL Dkt. No. EDU 11442-20

Agency Dkt. No. 233-11/20

New Jersey Commissioner of Education

Final Decision

Tess Iannacco,

Petitioner,

v.

Board of Education of the Borough of
Wood-Ridge, Bergen County,

Respondent.

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

Petitioner, a tenured teacher, suffered a medical episode in her classroom and was required by the Board to undergo a fitness for duty evaluation before returning to work. The Board required her to use sick leave until the evaluation was completed, and petitioner appealed, arguing that she should have been placed on paid administrative leave. The Administrative Law Judge (ALJ) granted petitioner's motion for summary decision and denied the Board's cross-motion for summary decision, concluding that the Board could not require petitioner to use sick days before the completion of the fitness evaluation.

In its exceptions, the Board argues that there is no statutory provision authorizing the use of administrative leave. The Board further contends that the cases cited by the ALJ to support her

conclusion are distinguishable and do not directly address the issue of how the dates between a medical episode and a clearance to return to work should be characterized. According to the Board, there was no way for either the Board or petitioner to gauge whether she was able to return to the classroom after her medical incident, such that she must be placed on sick leave until she was cleared to return to work.

In reply, petitioner argues that the ALJ's decision was correct because the Board lacks statutory support to impose involuntary sick leave when a fitness evaluation had not been completed and no physician had determined that petitioner was unfit. Petitioner contends that the ALJ was correct in finding that a medical justification is required for sick leave and that the Board does not have the medical expertise to conclude that petitioner was too ill or disabled to work.

Upon review, the Commissioner concurs with the ALJ that the Board must reinstate petitioner's sick days. While a board of education may place a tenured teacher on involuntary sick leave pursuant to *N.J.S.A. 18A:16-4*, such leave may only be ordered after an examination is performed that indicates "mental abnormality or communicable disease." A board of education cannot require the use of sick leave without medical justification. *Mary Roberts v. Clinton Township Board of Education*, 1991 S.L.D. 751, 760 (Initial Decision, March 26, 1991), *aff'd* 1991 S.L.D. 763 (Commissioner Decision, May 14, 1991), *aff'd* 1991 S.L.D. 767 (State Board of Education Decision, September 4, 1991).

The Board's argument that a medical justification was present based on the medical incident in petitioner's classroom is unavailing. As the ALJ noted, simply having a medical condition does not necessarily make an individual too ill or disabled to work and requiring medical attention on a given day does not necessarily mean the individual is unable to work the next day. The Board does not have the medical expertise necessary to reach the conclusion

that petitioner was too ill or disabled to work. Unless and until a medical professional declared petitioner unable to work, there was no medical justification for her sick leave, and therefore she was not required to use her sick days.¹ While the Board contends that no statutory provision requires administrative leave during this time, the statutory framework protects an employee's sick days until after a fitness evaluation determines she is unable to work and further limits suspensions without pay to circumstances that do not apply here. Accordingly, a paid leave of absence – whether termed “administrative leave” or something else – is the only permissible option.

Accordingly, petitioner's motion for summary decision is granted, and the Board's motion for summary decision is denied. The Board is ordered to reinstate 39.5 days of sick leave to petitioner.

IT IS SO ORDERED.²


ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 18, 2021
Date of Mailing: November 18, 2021

¹ This is consistent with the definition of sick leave as an “absence . . . because of personal disability due to illness or injury” or because of exclusion from school due to a contagious disease or quarantine. *N.J.S.A.* 18A:30-1.

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

SUMMARY DECISION

OAL DKT. NO. EDU 11442-20

AGENCY DKT. NO. 322-11/20

TESS IANNACCO,

Petitioner,

v.

**WOOD-RIDGE BOARD OF
EDUCATION,**

Respondent.

Colin M. Lynch, Esq., for petitioner (Zazzali, Fagella, Nowak, Kleinbaum & Friedman, P.C., attorneys)

Daniel R. Roberts, Esq., for respondent (Kenney, Gross, Kovats & Parton, attorneys)

Record Closed: September 29, 2021

Decided: October 4, 2021

BEFORE **NANCI G. STOKES**, ALJ:

STATEMENT OF THE CASE

Tess Iannacco, a tenured teacher, suffered a medical episode in her classroom while wearing a mask due to COVID and needed emergency services. The Wood-Ridge Board of Education (Wood-Ridge) immediately placed Iannacco on sick leave. Is Iannacco required to use her sick days pending medical clearance to return to work? No. A teacher would use sick leave following a fitness examination revealing “mental abnormality or communicable disease,” not before. N.J.S.A. 18A:16-4.

PROCEDURAL HISTORY

On November 17, 2020, Iannacco filed a Verified Petition with the Commissioner of Education (Commissioner), contesting Wood-Ridge’s insistence that she use sick leave pending the outcome of a fitness for duty evaluation. Instead, she maintains that while Wood-Ridge can require a teacher to undergo a psychiatric or physical examination, Wood-Ridge must place her on paid administrative leave pending the results of that evaluation.

On December 8, 2020, Wood-Ridge filed its answer, maintaining the propriety of its actions.

On December 11, 2020, the Department of Education (DOE) transmitted this case to the Office of Administrative Law as a contested case under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -13, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

On January 21, 2021, I held a pre-hearing conference wherein the parties advised of their desire to resolve the case.

On May 28, 2021, the parties advised that settlement negotiations were unsuccessful. Still, the parties agreed that the material facts were undisputed, and no hearing was necessary to resolve the legal issue presented. Moreover, the parties agreed to give a joint stipulation of facts and exhibits with the motions for summary decision.

On August 6, 2021, the parties filed cross-motions for summary decision, and on September 10, 2021, the parties filed responses.

On September 17, 2021, Iannacco supplied a reply.

On September 29, 2021, the parties revised the joint stipulation of facts, and I closed the record.

FINDINGS OF FACT

The parties presented a joint stipulation of facts and exhibits. Thus, I **FIND** the following as **FACT** for purposes of these motions only:

Wood-Ridge employed Iannacco as an Italian teacher, and she acquired tenure as a teacher.

Iannacco suffers from a medical condition that makes it difficult for her to wear a face mask. Iannacco requested medical accommodation during the COVID-19 pandemic, and Wood-Ridge permitted her to remove her mask when students were not in her classroom.

On October 26, 2020, Wood-Ridge's school physician evaluated Iannacco about mask-wearing. The physician concluded that Iannacco did not qualify for an exemption from wearing a mask while teaching in the classroom.

On October 27, 2020, while in her classroom, Iannacco suffered a medical episode requiring local emergency medical services. Iannacco's mask-wearing prompted the medical event, and Iannacco used half of a sick day on October 27, 2020.

Later that same day, former Superintendent of Schools Nicholas Cipriano advised Iannacco that Wood-Ridge placed her on immediate sick leave due to the medical episode and required Iannacco to use her sick days pending a fitness for duty evaluation.

On December 22, 2020, Iannacco underwent a fitness examination.

On January 14, 2021, the school principal contacted Iannacco and advised her that the evaluation's results permitted Iannacco to return to work.

On January 15, 2021, Iannacco returned to teaching, providing in-person instruction.

Wood-Ridge did not grant Iannacco any paid administrative leave pending her medical clearance and return to teaching in the classroom. Instead, Wood-ridge required Iannacco to utilize thirty-nine and one-half sick days.

DISCUSSION AND CONCLUSIONS OF LAW

Summary-Decision Standard

A party may move for summary decision upon all or any of the substantive issues in a contested case. N.J.A.C. 1:1-12.5(a). Briefs, with or without affidavits must accompany the motion. When the filed papers and discovery, together with any affidavits, show that no genuine issue of material fact exists and that the moving party is entitled to prevail as a matter of law, the judge may grant the motion. N.J.A.C. 1:1-12.5(b). When a party makes such a motion, an adverse party, to prevail, must submit

an affidavit setting forth specific facts showing that a genuine issue of material fact exists that an evidentiary proceeding can only determine. Ibid.

Even though a statute calls for a “hearing,” where a party makes a motion for summary decision supported by documentary evidence and the objector submits no evidence to demonstrate that a genuine issue of material fact exists, the motion procedure constitutes the hearing, and no trial-type hearing is necessary. Contini v. Newark Bd. of Educ., 286 N.J. Super. 106, 120–21 (App. Div. 1995), certif. denied, 145 N.J. 372 (1996).

To determine whether a genuine issue of material fact exists that precludes summary judgment, the motion judge must consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to demonstrate that the moving party is entitled to a judgment as a matter of law. Brill v. Guardian Life Ins., 142 N.J. 520, 540 (1995).

In this case, no genuine issue about the material facts exists. The only question presented is whether Iannacco is required to use sick days beyond October 27, 2020, pending the outcome of a fitness for duty evaluation about a known medical condition. More pointedly, no genuine issue exists that Iannacco is a tenured teacher with a medical ailment causing difficulties with mask-wearing. Further, she suffered a medical episode in her classroom when wearing a face mask required by the COVID-19 pandemic. After the medical incident, Wood-Ridge placed Iannacco on sick leave and charged her thirty-nine and one-half sick days until her clearance and return to work. Since these facts are clear and undisputed, I **CONCLUDE** that this case is ripe for summary decision.

Fitness for Duty and Sick Leave

Under N.J.S.A. 18A:16-2(a), the Legislature authorized boards of education to conduct physical or psychiatric evaluations of its teachers to ensure they are mentally and physically fit to perform their duties:

Every board of education may require its employees and shall require any candidate for employment, who has received a conditional offer of employment to undergo a physical examination. The board may require individual psychiatric or physical examinations of any employee, whenever, in the judgment of the board, an employee shows evidence of deviation from normal, physical, or mental health.

[ibid.]

However, as Judge Lane cautioned in Kochman v. Keansburg Board of Education, 124 N.J. Super. 203, 212 (Ch. Div. 1973), the Legislature also “recognized that although a board of education may observe signs of what it considers a harmful, significant deviation, it does not have the expertise to question the teacher on the matter itself but must rely on the expertise of a psychiatrist.” See N.J.S.A. 18A:16-3 (a physician chosen by the board at the board’s expense may conduct the examination or a physician selected by the employee at the employee’s expense).

N.J.S.A. 18A:16-4 addresses what occurs after a fitness evaluation and the use of sick time if ineligible for service:

If the result of any such examination [by a physician] indicates mental abnormality [or impaired physical condition] . . . , the employee shall be ineligible for further service until proof of recovery, satisfactory to the board, is furnished, but if the employee is under contract or has tenure, he may be granted sick leave with compensation as provided by law and shall, upon satisfactory recovery, be permitted to complete the term of his contract, if he is under contract, or be reemployed with the same tenure as he possessed at the time his services were discontinued, if he has tenure, unless his absence shall exceed a period of two years.

[ibid.]

In other words, when the physician determines there is a mental or physical issue precluding job service, the tenured employee may use sick leave until the board of education is satisfied that the employee recovered.

Numerous cases addressing teacher fitness for duty evaluations demonstrate that school districts routinely place the employee on paid administrative leave before the fitness examination, not sick leave. See, e.g., Dickerson v. Pittsgrove Twp. Board of Education, 2011 N.J. AGEN LEXIS 538 (October 14, 2011); Hayes v City of Camden, State-Operated School District, Camden County, 2016 N.J. AGEN LEXIS 4 (January 04, 2016); Cummings v. Little Egg Harbor Twp. Board of Education, Ocean County, 2018 N.J. AGEN LEXIS 968 (October 19, 2018); Diaz v. Mahwah Twp. Board of Education, 2010 N.J. AGEN LEXIS 101 (March 2, 2010); Bristol v Northern Valley Regional High School District, Bergen County, 2004 N.J. AGEN LEXIS 472 (July 1, 2004).

Still, other decisions have considered the correct fitness-for-duty process. In Roberts v. Clinton Board of Education, 1991 N.J. AGEN LEXIS 2419 (Initial Decision, March 26, 1991), the board of education received parent complaints about Roberts, a tenured teacher, and placed Roberts on involuntary medical leave pending a psychiatric evaluation. Notably, the board filed no disciplinary charges against Roberts. Once Roberts' sick leave and accumulated sick leave expired, the board stopped paying her salary. Roberts sought to restore sick leave days she claimed the board improperly required her to use and her unpaid salary. Unlike here, Roberts refused to undergo a psychiatric examination. Regardless, the Administrative Law Judge (ALJ) ordered the restoration of Roberts' sick leave, highlighting that a medical determination must first occur:

It is recognized that a board of education may place a tenured teacher on involuntary sick leave under N.J.S.A. 18A:16-4. However, such leave may be ordered only after a physical or

psychiatric examination is performed and the results thereof
"indicate mental abnormalities or communicable disease."

[Id. at *23.]

Moreover, the ALJ noted rejected that a dangerous situation permits a board to disregard procedural safeguards:

In the absence of an indictment or charges certified to the Commissioner, there is no acknowledged standard as 'clear and present danger' which would justify the suspension of a tenured teacher from employment through placement on involuntary sick leave without medical justification and to suspend the teacher's salary when accumulated sick leave expires.

[Id. at *24.]

The Commissioner upheld the ALJ's conclusions observing that other decisions address the correct process regarding psychiatric or medical evaluations to assess fitness. Specifically, the Commissioner highlighted conclusions reached in Emil Scachetti v. Board of Education of the Twp. of Rockaway, 1977 S.L.D. 142, affirmed State Board 153. In Scachetti, "a suspension without pay pending administration and results of a disputed psychiatric exam was [found] improper and [the ALJ] ordered Scachetti restored to employment with mitigated back pay until a medical exam properly led to the invocation of N.J.S.A. 18A:16-4 [requiring the use of sick leave] or filing of tenure charges." Roberts, 1991 N.J. AGEN LEXIS 2419 (Commissioner's Decision, May 14, 1991) at *4-5.

Wood-Ridge suggests that Roberts is distinguishable because Iannacco has a known medical condition and required emergency services, whereas the board in Roberts had no medical justification for its actions. Yet, this position belies the explicit procedural protections under N.J.S.A. 18A:16-4, precluding a board of education from substituting its judgment for that of a physician. Simply having a medical condition does not make an individual too ill or disabled to work. Similarly, requiring medical

assistance on a given day cannot determine the employee is too ill to work beyond that incident.

In addition to procedural defects, Iannacco also maintains that using sick leave in this situation conflicts with the statutory framework for such absences. The Legislature defines “sick leave” as “absence from [work] . . . because of personal disability due to illness or injury.” N.J.S.A. 18A:30-1. Under N.J.S.A. 18A:30-2, all employees have sick leave with full pay for a minimum of ten school days in any school year. Iannacco maintains she was neither sick nor disabled during the imposed sick leave and Wood-Ridge’s evaluating physician concurred.

Consistently, the Appellate Division addressed whether an employee could use sick time for a period when she was not ill but as a means to extend her maternity leave. In re Hackensack Bd. of Education, 184 N.J. Super. 311 (App. Div. 1982). The court reviewed the statutory framework of sick leave and concluded that sick leave could not be “used for child-rearing purposes by a nondisabled teacher.” Id. at 317. Indeed, “the teacher simply would not be sick, as that term is [specifically] defined in N.J.S.A. 18A:30-1.” Id.

The court highlighted that while N.J.S.A. 18A:30-3 provides for the accumulation of unused sick leave “to be used for additional sick leave as needed in subsequent years,” any use “for other purposes would be directly contrary to N.J.S.A. 18A:30-3.” Id. The court concluded that the Legislature’s inclusion of the terms “as needed” must mean the need “for additional sick leave.” Id. Consequently, the Board has the right to request a physician’s note before granting sick leave. N.J.S.A. 18A:30-4. Yet, the statute does not authorize a board to determine whether a teacher is sick or disabled.

Here, no physician concluded that Iannacco was unfit to teach, and instead, the physician performing the fitness evaluation permitted Iannacco to return to her teaching position. Therefore, even if Wood-Ridge observed Iannacco’s “deviation from normal,

physical, or mental health,” then I **CONCLUDE** it must wait until a physician determines she is unfit for teaching before requiring her to utilize sick days.

Further, I **CONCLUDE** that Wood-Ridge could not require Iannacco to utilize thirty-nine and one-half sick days before the fitness-for-duty evaluation and her return to work, and thus, Iannacco is entitled to summary decision in her favor as a matter of law.¹

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that Iannacco be **GRANTED** summary decision and that the Wood-Ridge Board of Education be **DENIED** summary decision. I further **ORDER** that Iannacco be returned thirty-nine and one-half days of sick leave.

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.

¹ Iannacco also maintains that the improper use of sick leave violates her tenure rights by reducing her compensation without cause or the due process required by N.J.S.A. 18A:6-10. Yet, I need not reach this issue because I granted her relief on other grounds.

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.



October 4, 2021

DATE

NANCI G. STOKES, ALJ

Date Received at Agency:

October 4, 2021

Date Mailed to Parties:

October 4, 2021

ljb