New Jersey Commissioner of Education

Decision

Jared Deppeler,

Petitioner,

v.

Board of Education of the Township of Middletown, Monmouth County,

Respondent.

Synopsis

Petitioner, formerly a tenured teacher in the respondent Board's school district, was absent from his teaching duties for a majority of the 2017-2018 school year due to alcohol use disorder. Petitioner alleged that the Board: violated *N.J.A.C.* 6A:32-6.3 when it required him to undergo a psychiatric evaluation without providing a written statement of reasons or notifying him of his right to a hearing; violated his rights regarding sick leave; and required him to enter into a Last Chance Agreement (LCA) that violated his tenure rights. Petitioner sought to: have the LCA declared void; be paid for his unused sick leave; rescind his resignation; and be reemployed in his former position without loss of tenure or seniority rights and with full salary and benefits.

The ALJ found, *inter alia*, that: petitioner failed to prove that the Board did not have the legal authority to require him to submit to a psychiatric examination or to require alcohol testing as part of those examinations; the Board's October 2017 letters indicating that the administration was concerned with petitioner's ability to perform his job were sufficient to constitute the Board's written statement of reasons for requiring the psychiatric examination; petitioner himself advised district staff that he had been self-medicating with alcohol due to anxiety; petitioner had exhibited excessive absenteeism without notifying the district, to the point that the administration was so concerned that they twice requested welfare checks by local police; *N.J.A.C.* 6A:32-6.3(b)(2) did not require the Board to notify petitioner that he had a right to a hearing, but only required that a hearing be held if petitioner requested one, which he did not; petitioner's argument that the LCA violated District Policy 3218 because it was punitive and disciplinary rather than therapeutic is without merit; petitioner voluntarily entered into the LCA and the agreement did not violate his tenure rights; the Board did not terminate petitioner, as he voluntarily resigned and did not withdraw his resignation before it was accepted by the Board; and the LCA did not violate petitioner's sick leave rights, as it did not contain any terms addressing sick leave. Accordingly, the ALJ affirmed the Board's acceptance of petitioner's resignation and dismissed the petition.

Upon review, the Commissioner concurred with the findings and conclusion of the ALJ and adopted the Initial Decision as the final decision in this matter. The petition was dismissed.

42-23
OAL Dkt. No. 01471-19
Agency Dkt. No. 309-12/18

New Jersey Commissioner of Education

Final Decision

Jared Deppeler,

Petitioner,

v.

Board of Education of the Township of Middletown, Monmouth County,

Respondent.

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

Petitioner, a tenured high school social studies teacher, was absent from his teaching duties for a majority of the 2017-2018 school year due to alcohol use disorder.[2] He used accumulated sick days and was then approved for leave pursuant to the Family and Medical Leave Act (FMLA), with several extensions. During that time, petitioner missed several appointments for psychiatric assessments which had been scheduled by the district in order to determine petitioner's fitness for duty.[3] In April 2018, petitioner asked to be allowed to return

[1] The Board did not file a reply to petitioner's exceptions.

[2] Petitioner testified that he suffers from anxiety and depression and that his alcohol use was a form of self-medication to attempt to deal with those conditions.

[3] Petitioner did attend an appointment for an assessment in October 2017.

to work, and district administration again scheduled petitioner for a psychiatric assessment, which was completed on May 31, 2018. Dr. Alexander Iofin recommended that petitioner not return to teaching for the 2017-2018 school year, attend outpatient treatment, submit to drug and alcohol screenings, and have another psychiatric assessment in August 2018. The recommendations were incorporated into a Last Chance Agreement (LCA) that petitioner signed on August 20, 2018. On August 23, 2018, petitioner missed both his appointment with Dr. Iofin and a drug and alcohol screening appointment. On September 14, 2018, petitioner received a *Rice*[4] notice informing him that his employment would be discussed at an upcoming Board meeting. Petitioner submitted his resignation to the Board on September 17, 2018, and it was accepted by the Board on September 26, 2018.

On December 21, 2018, petitioner filed a petition of appeal, alleging that: the Board violated *N.J.A.C.* 6A:32-6.3 when it required him to undergo a psychiatric evaluation in October 2017 without providing a written statement of reasons or notifying him of his right to a hearing; the Board violated his rights regarding sick leave; the Board could not require him to enter into the LCA; and the LCA violated his tenure rights. Petitioner sought to: have the LCA declared void; be paid for all unused sick leave; rescind his resignation; and be reemployed – effective July 1, 2018 – without loss of tenure or seniority rights and with full salary and benefits for that time period.

Following multiple days of hearings, the Administrative Law Judge (ALJ) found that petitioner failed to prove that the Board did not have the legal authority to require petitioner to submit to a psychiatric examination or to require alcohol testing as part of those examinations.

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[4] *Rice v. Union County Reg'l High Sch. Bd. of Educ.*, 155 *N.J. Super.* 64, 73 (App. Div. 1977).

The ALJ rejected petitioner's argument that the Board failed to comply with the requirements of *N.J.A.C.* 6A:32-6.3(b)(1), finding that the Board's October 2017 letters indicated that the administration was concerned with petitioner's ability to perform his job, which the ALJ deemed sufficient as the Board's written statement of reasons for requiring the examination. The ALJ also noted that petitioner himself advised district staff that he had been self-medicating with alcohol due to anxiety, and that petitioner had exhibited excessive absenteeism without notifying the district, to the point that the administration was so concerned that they twice requested welfare checks by local police. Additionally, the ALJ concluded that *N.J.A.C.* 6A:32-6.3(b)(2) did not require the Board to notify petitioner that he had a right to a hearing, but rather only required that a hearing be held if petitioner requested one, which he did not.

The ALJ rejected petitioner's argument that the LCA violated District Policy 3218 because it was punitive and disciplinary, rather than therapeutic, in nature. The ALJ noted that the Board did not require the LCA; rather, petitioner's union suggested the agreement as a compromise in order to return petitioner to his position rather than having tenure charges filed against him. The ALJ also noted that case law authorizes LCAs specifying terms of employment, if those terms do not contravene statutes or public policy. Here, the ALJ found that petitioner voluntarily entered into the LCA, and that the agreement did not violate petitioner's tenure rights. Moreover, the Board did not terminate petitioner; he voluntarily resigned and did not withdraw his resignation before it was accepted by the Board. Finally, the LCA did not violate petitioner's sick leave rights, as it did not contain any terms addressing sick leave; petitioner received all the sick time allotted to him and was not owed any additional sick leave compensation.

In his exceptions, petitioner argues that the ALJ failed to consider or to give proper weight to a number of facts.[5] Petitioner contends that the LCA was punitive and disciplinary because it characterized his conduct as "behavioral and performance deficiencies," required petitioner to both acknowledge that he was subject to disciplinary action and to immediately resign upon notice that he had engaged in further deficiencies, and compelled petitioner to waive his tenure and contract rights. According to petitioner, a board of education cannot impose disciplinary conditions on a tenured teaching staff member as a stipulation of returning to his teaching duties following a board-approved absence for voluntary treatment of a board-recognized disability. Finally, petitioner argues that the Board cannot require petitioner to waive his statutory tenure rights in the absence of just cause such as insufficiency, incapacity, or conduct unbecoming, such that petitioner's resignation is void as a matter of law.

Upon review, the Commissioner concurs with the ALJ that petitioner's resignation should be affirmed. Initially, the Commissioner concludes that the LCA did not violate board policy. District Policy 3218, regarding substance abuse, provides that when an employee has reported a substance abuse problem but is not under the influence of, in possession of, or distributing the substance during work hours, the employee shall be required to obtain professional counseling or complete an appropriate rehabilitation program. The policy does not provide for discipline based solely on the existence of a substance abuse problem. Petitioner therefore argues that the LCA is in violation of the policy because the LCA is disciplinary in nature. The Commissioner notes that Policy 3218 does not preclude the

[5] These facts generally consist of information about petitioner's employment history, including positive evaluations and lack of discipline; information regarding his treatment for his alcohol use and mental health issues; and a timeline of his interactions with the Board regarding the events at issue. Petitioner does not identify which facts were not considered and which were not given proper weight, nor does petitioner explain how giving any of the facts greater weight would change the outcome in this case.

possibility of discipline when an employee's substance abuse affects his work performance, or if an employee fails to comply with the professional counseling or rehabilitation program requirements imposed by the district pursuant to the policy. Moreover, the LCA is clear that petitioner's performance deficiencies are "due to work absences and the negative impact on the continuity of instruction he is required to provide." Petitioner's acknowledgment in the LCA that he is subject to disciplinary action is therefore based on his attendance issues. The record demonstrates that petitioner failed, on multiple occasions, to call in his absences,[6] which he was required to do under District Policy 3432 regarding sick leave. Further, District Policy 3212 provides that a teacher who fails to give prompt notice of an absence may be subject to discipline, which may include the withholding of salary increments or certification of tenure charges. Accordingly, the statement in the LCA whereby petitioner acknowledged that he is subject to discipline for his absences merely reiterates existing Board policies and is not in violation of those policies. Additionally, as the ALJ noted, the Board did not require petitioner to sign the LCA.

The Commissioner further concludes that there is no basis to overturn petitioner's resignation. In *Tracey Pitts v. State-Operated School District of the City of Camden, Camden Co.*, Commissioner Decision No. 32-17 (January 30, 2017), the school district certified tenure charges against Pitts. Before the charges were filed with the Commissioner, Pitts agreed to retire in exchange for remaining on the payroll for a period of time and avoiding the prosecution of the tenure charges. Pitts then changed her mind and refused to sign the settlement agreement. She filed a petition of appeal, arguing that the district had violated her

[6] While petitioner testified that he believed he had always called in his absences, the ALJ found this testimony to be not credible and contradicted by the record, and the Commissioner finds no reason to disturb that conclusion.

tenure rights by removing her from the payroll without certifying tenure charges to the Commissioner. The Commissioner found that Pitts could only raise that claim if the agreement had been revoked. The enforceability of the agreement in the absence of the parties' signatures, and whether Pitts had effectively revoked the agreement, were the subject of separate proceedings in the Superior Court, which arose out of the district's motion to enforce the settlement agreement after Pitts refused to sign it.[7] Pitts did not appeal the Commissioner's decision, but she did appeal the Superior Court's decision that the settlement agreement was enforceable. The Appellate Division later determined that the agreement was not effective because it had not been signed, but nonetheless estopped Pitts from rescinding her promise to resign because the district had detrimentally relied on that promise by not certifying the tenure charges and paying Pitts' salary for an additional period of time. *Camden City. Sch. Dist. v. Pitts*, 2019 N.J. Super. Unpub. LEXIS 1686 (App. Div. Jul. 26, 2019). Based on the *Pitts* decisions, it is clear that a tenured employee can agree to resign and that such an agreement is enforceable.

Here, petitioner resigned his employment voluntarily. There is no evidence that anyone forced petitioner to resign. In fact, petitioner testified that resigning "seemed like the most reasonable thing to do" in order to avoid tenure charges, and further stated that he could not afford an attorney and was extremely concerned that the tenure charges could lead to the revocation of his teaching certificate. Tr. Jan. 6, 2021, 58:23-25; *see also* 43:22-44:4, 44:24-45:6, 58:2-4. At the time of his resignation, petitioner had received a *Rice* notice indicating that his employment would be discussed at an upcoming Board meeting, but the Board had taken

[7] The Commissioner lacked jurisdiction to resolve this portion of the dispute because it arose out of contract law rather than the school laws.

no other action regarding petitioner. Petitioner could have appeared at the Board meeting to make a case for his continued employment. If he was unsuccessful and the Board voted to certify tenure charges, he could have challenged them.[8] The fact that petitioner's choice may have been difficult does not mean that his resignation was involuntary or should otherwise be overturned.

Additionally, for the reasons thoroughly detailed in the Initial Decision, the Commissioner concurs with the ALJ's conclusions that: the Board met the requirements of *N.J.A.C.* 6A:32-6.3 regarding petitioner's psychiatric evaluation in October 2017; the Board had the authority to require petitioner to undergo psychiatric evaluations and alcohol testing; and petitioner failed to prove that the Board violated any of his rights regarding sick leave.

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[9]

Angelica Allen-McMillan, J.D.S.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: February 17, 2023
Date of Mailing: February 17, 2023

[8] The Commissioner recognizes that the LCA stipulated that petitioner waived his tenure rights. However, the effectiveness of that waiver could also have been disputed by petitioner.

[9] 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
OAL DKT. NO. EDU 01471-19
AGENCY DKT. NO. 309-12/18

JARED DEPPELER,
Petitioner,
v.
BOARD OF EDUCATION OF THE TOWNSHIP OF MIDDLETOWN, MONMOUTH COUNTY,
Respondent.

James T. Hundley, Esq., for petitioner (Hundley and Bradley, LLC, attorneys)

Roshan D. Shah, Esq., for respondent (Anderson & Shah, LLC, attorneys)

Record Closed: October 13, 2022 Decided: November 28, 2022

BEFORE **JEFFREY N. RABIN**, ALJ:

STATEMENT OF THE CASE

Petitioner, a former employee of the respondent, the Board of Education of the Township of Middletown (Board), claims that respondent violated N.J.A.C. 6A:32-6.3 when it required him to undergo a psychiatric evaluation as part of claims regarding sick leave related to his attempts to regain his position as a high school teacher for the Board,

and that the Last Chance Agreement entered into by the parties was not an enforceable agreement.

PROCEDURAL HISTORY

On December 21, 2018, petitioner filed a Petition of Appeal with the Commissioner of the Department of Education. The petition was transmitted to the Office of Administrative Law (OAL), where it was filed on January 29, 2019, for determination as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

On April 2, 2019, respondent filed a motion for summary decision claiming petitioner's due process case should be dismissed because petitioner failed to file his Petition of Appeal within the ninety-day time limit set forth in N.J.A.C. 6A:3-1.3(i). Respondent's motion was denied on December 17, 2019.

Seven hearing dates were conducted by Zoom due to Covid-19 pandemic protocols, on January 4, January 5, January 6, January 22, January 26 and January 27, 2021, and February 1, 2021. Closing briefs were submitted on or about November 1, 2021, and after delays caused by the ongoing Covid-19 pandemic, the record was closed on October 13, 2022.

FACTUAL DISCUSSION AND FINDINGS OF FACT

Based upon the parties' arguments and briefs related to this hearing, I **FIND** the following to be undisputed facts:

1. Petitioner was a high school teacher employed by respondent beginning on February 4, 2013. As the result of a relapse of alcoholism, petitioner was absent from his teaching duties for the majority of the 2017-18 school year, using accumulated sick days until he was approved by respondent for leave pursuant to the Family and Medical Leave Act (FMLA), 29 U.S.C. 2601 et seq., on or about October 30, 2017.

2. Respondent approved extensions of petitioner's paid leaves, extending the end dates to December 2, 2017, and then to December 8, 2017. On January 15, 2018, petitioner requested a third extension of his medical leave. On January 25, 2018, respondent approved petitioner's request that his medical leave be extended through the end of the 2017-18 school year.

3. In April 2018, petitioner asked respondent to allow him to return to teaching beginning on April 16, 2018. Having missed three prior appointments for a Fitness For Duty (FFD) exam, a fourth appointment was scheduled with Dr. Iofin for May 31, 2018. Dr. Iofin recommended that petitioner not be permitted to return to teaching, recommending instead that petitioner focus on maintaining his sobriety.

4. Dr. Iofin's recommendations were incorporated into a Last Chance Agreement (LCA). Petitioner executed the LCA on August 20, 2018.

5. Petitioner missed his mandatory appointment with Dr. Iofin on August 23, 2018, scheduled pursuant to the LCA. By letter dated September 14, 2018, respondent advised petitioner that he was in breach of the LCA. As a result, on September 17, 2018, petitioner submitted his resignation to the Board. The Board formally accepted petitioner's resignation on September 28, 2018[1], retroactive to September 17, 2018.

Testimony for petitioner

Petitioner, **Jared Deppeler**, began working with the Middletown Board of Education in February 2013, as a social studies teacher at Middletown High School South, and later a world history teacher. He achieved tenure in February 2016. Petitioner was absent from work six and a half days in the 2013-14 school year, five and a half days in 2014-15, ten days in 2015-16, and thirty-nine days in 2016-17. He attributed the thirty-nine absences to relationship issues, which caused him to suffer anxiety.

[1] The parties state different dates for the Board's acceptance of petitioner's resignation, with petitioner stating September 26, 2018, and respondent using September 28, 2018.

Prior to becoming a teacher with Middletown, petitioner had been treated for alcoholism and anxiety. He sought rehabilitation in facilities in 2000 and on or about 2003-04. Petitioner also sought treatment in 2017 from a Mr. Richard Hadley, from Neuropsychology and Counseling Associates. Hadley wrote letters dated April 19, 2017, May 31, 2017, and September 18, 2017, regarding petitioner's treatment. Petitioner sought treatment for four days at Hampton Behavioral Health's inpatient treatment program in September 2017.

Petitioner returned to work for a few days in September 2017, before realizing he needed longer-term help. Using FMLA approved by his employer, petitioner subsequently entered inpatient treatment for alcohol abuse at Recovery Unplugged in Austin, Texas on October 28, 2017, being discharged on November 26, 2017, and an inpatient program at Immersion Recovery in Florida on or about December 6, 2017. After completing a thirty-six-day program, he went to an Intensive Outpatient Program (IOP), where he was discharged on March 26, 2018. Petitioner was out pursuant to FMLA until February 2018. Petitioner stated that during these treatment periods he remained in contact with Ms. Shopp and John Cholette, president of his union (the Middletown Teachers Education Association, MTEA).

Before being able to return to teaching, respondent required petitioner to be evaluated by Dr. Alexander Iofin, whom he saw on May 31, 2018. Iofin issued a report dated June 14, 2018. Petitioner then began a program at GenPsych in Brick, New Jersey. Petitioner did not receive an employment contract for the following school year like he normally would by June of the prior year.

On July 30, 2018, petitioner met with Cholette at the MTEA's office, where he was presented with a Last Chance Agreement (LCA) provided by Pickus. Petitioner was not familiar with LCAs or tenure charges, which could lead to the revocation of his teaching license. The LCA required petitioner to submit to blood tests twice per month. Petitioner did not speak with his union attorney, but was told by Cholette that the union attorney had seen the LCA. Petitioner wanted to show the LCA to an attorney, but Cholette made it

clear that if petitioner did not execute the LCA right then, his case would be added to the next school board agenda for tenure charges. Petitioner executed the LCA.

Cholette said respondent wanted a blood test performed that same day, but petitioner put off the test so he could have the LCA reviewed by an attorney. The blood test was rescheduled for August 23, 2018. Petitioner was to meet with Dr. Iofin on August 20, 2018, but did not attend that meeting because Iofin had already cleared petitioner to return to work and because petitioner felt that requiring blood tests was illegal and a violation of his rights.

Petitioner Deppeler met with Cholette again on September 17, 2018. Cholette told him that he would be brought up on tenure charges if he didn't resign. Petitioner then resigned that same date, thinking he was buying himself some extra time until the next school board meeting. He did not have the money to hire an attorney.

After resigning, petitioner continued alcohol counseling, using his New Jersey State health care insurance. He had been seeing a Dr. Franco beginning in December 2019. Petitioner was not currently receiving any medical treatment. He was unsuccessful at procuring another teaching position, but did accept other employment.

On cross-examination, petitioner stated that the break-up with his girlfriend of ten years led to debilitating anxiety. He had been addressing his problem with alcohol use since 2004, and agreed that he needed to be monitored, but disagreed that it was an employer's place to require monitoring. Employees should be able to monitor themselves. Petitioner acknowledged that his employment contract required mental health evaluations and FFD evaluations. Petitioner had advised Shopp in 2017 that he had been self-medicating with alcohol due to his anxiety. His doctor, Dr. Hadley, had advised the school on April 19, 2017, that petitioner was receiving neuropsychological and counseling help, but his letters of April 19, 2017, and May 31, 2017, did not mention an alcohol problem. Petitioner always called in sick any time he needed to be out.

On September 15, 2017, respondent sent petitioner a letter requesting that he contact Human Resources as soon as possible, which letter petitioner signed for. In

response, petitioner had Dr. Hadley send respondent a letter on September 18, 2017, to explain petitioner's absences. This letter also failed to mention alcohol abuse. On October 4, 2017, concerned about petitioner's absences, respondent sent a police officer to conduct a wellness check on petitioner Deppeler. This was a traumatic time period for petitioner, and he was not able to recall a lot of the details from that time. He was also taking various medications at this time, but could not recall which medications.

Respondent sent petitioner a letter dated October 11, 2017, stating that he would be placed on unpaid administrative leave as of October 16, 2017, pending his scheduling of a psychological assessment, and paid leave once he had scheduled the assessment. Respondent scheduled a FFD assessment for petitioner with Dr. Iofin for October 26, 2017. By letter dated October 30, 2017, petitioner requested that Ms. Shopp place him on unpaid medical leave for one week. On October 31, 2017, petitioner advised respondent that he would be seeking treatment and could be there until November 6, 2017.

Petitioner attended the October 26, 2017, Iofin appointment. Prior to receiving the results, petitioner voluntarily decided to go to Recovery Unplugged in Texas, to address his anxiety and because he was concerned for the safety of children.

On November 21, 2017, respondent approved petitioner's medical leave request, effective November 1, 2017 through December 1, 2017. On December 4, 2017, petitioner emailed a request for an FMLA extension to Shopp, the same date he had been scheduled for a FFD examination with Dr. Iofin. That appointment was rescheduled to December 6, 2017. Petitioner did not attend that FFD because he was not well, and was not well enough at that time to return to work. Shopp had emailed him a reminder of the FFD appointment. Petitioner could not recall advising anyone that he was going to miss the appointment.

On December 11, 2017, respondent wrote petitioner, advising him that he had missed another appointment with Dr. Iofin, and requesting that he send in a doctor's note substantiating his FMLA request

Respondent scheduled another psychiatric examination with Iofin for December 14, 2017. Petitioner instead flew to Florida to attend another rehabilitation facility, admitting himself on December 15, 2017. Petitioner was discharged from Immersion Recovery on March 22, 2018. During his stay there, respondent approved an extension of his FMLA leave. The facility was in contact with Shopp, when petitioner's estimated stay period was to be from December 12, 2017, to January 12, 2018. On January 10, 2018, petitioner telephoned Shopp and requested to use twelve weeks of FMLA and then take unpaid leave until the end of the 2017-18 school year. During this time, petitioner's mother made his health insurance payments.

Petitioner was sent a Rice notice by letter from respondent dated February 26, 2018, advising that he was going to be discussed during the closed session board meeting on February 28, 2018, which letter petitioner signed for. On February 28, 2018, petitioner requested another FMLA extension. Recovery Unplugged sent an email to Shopp advising that petitioner was in an outpatient program with a targeted completion date of March 26, 2018. Respondent approved petitioner's FMLA extension request.

By letter dated March 1, 2018, respondent advised petitioner that he was on approved leave, and that they would pay his insurance premiums during his twelve-week unpaid FMLA leave, set to expire on March 25, 2018, and that if his leave went beyond March 31, 2018, he would be responsible for paying his health care premiums.

Petitioner had a FFD evaluation scheduled with Dr. Iofin on May 31, 2018. Iofin issued his report on June 14, 2018. Iofin did not recommend that petitioner be able to return to finish the 2017-18 school year, but that petitioner attend an Intensive Outpatient Program (IOP) over the summer to address his alcohol use, and that petitioner be seen again in August 2018. Cholette advised petitioner to sign up for IOP if he wanted to return to work in September 2018. Respondent agreed to continued covering petitioner's health care premium payments, despite petitioner failing to pay them. Petitioner attended outpatient treatment at GenPsych that summer.

On July 16, 2018, petitioner received an email from Mr. Cholette advising that he had missed a scheduled meeting with Cholette and the school administration regarding

his employment. Petitioner contacted Cholette later that day to reschedule that meeting to July 20, 2018. On July 20, Cholette presented petitioner with a Last Chance Agreement, which they reviewed together. Petitioner would have to submit to drug tests. The LCA contained a waiver of claims. Respondent never told petitioner he could have his own doctor perform an examination, at his own expense, never told him he could have an attorney review the LCA, and never told him he could file an appeal with the Commissioner of Education. Petitioner executed the LCA, even though he had not met with Pinkus or the union attorney, Sandy Oxfeld, or hired any attorney to review it. Cholette had told petitioner that if he didn't execute the LCA, respondent would file tenure charges against him, affecting his teaching license.

Rather than face tenure charges, petitioner submitted his letter of resignation on September 17, 2018. He had left Oxfeld a voicemail message that day, but did not speak to him prior to submitting his letter of resignation.

Testimony for respondent

Dr. William George was the Superintendent of Schools for the Middletown Township Public School District for nine years, until his retirement on August 31, 2020, overseeing approximately 900 teachers and 1,500 employees, including administration, custodial, ground and security staff. He was aware that petitioner was a tenured teacher who had attendance issues, but did not know him personally.

The District had an Attendance Policy (Policy 3212), posted on its website. Attendance was regularly reviewed and documented as part of the teacher's annual evaluation. During the 2016-17 school year, there were gaps in petitioner's attendance, which became more significant during 2017-18. Petitioner had not complied with the protocols for getting substitute teachers, causing a gap in learning for the students and a disruption for them educationally. It was always difficult finding enough substitutes; some days over 100 teachers could be absent. In the 2016-17 school year, petitioner was absent from September 19through September 23, 2016 and February 21 through February 23, 2017.

Respondent was trying to be flexible and supportive of petitioner in 2016-17, and began to see that he was possibly having mental health issues. But petitioner's communication with respondent was poor in 2016-17 and virtually non-existent in 2017-18. At the start of 2017-18, petitioner attended the first week of school, but then began missing school days. Kimberly Pickus, Assistant Superintendent of Instruction and Personnel and Human Resources, wrote petitioner a letter dated September 15, 2017, indicating concern over his absences and failure to communicate with the school. On October 4, 2017, having not heard from petitioner, respondent asked the Manasquan Police Department to perform a wellness check on him.

Eventually George learned that petitioner was dealing with alcohol abuse issues in addition to mental issues. Shopp and Pickus were having increasing difficulty contacting petitioner. Respondent was not even sure that petitioner intended on returning to teaching. As a result, respondent wanted Dr. Iofin to perform a FFD evaluation. George kept the school board informed as to petitioner's issues. George stated that the intention was not to punish petitioner but rather to support him.

Employees could receive Family and Medical Leave Act benefits. Petitioner received these, and was also granted additional leave benefits and health benefits. Petitioner then missed several Iofin appointments. When petitioner finally attended a FFD appointment with Iofin, Iofin did not clear him to return to work, at which point the school began considering terminating petitioner's employment, via tenure charges.

When termination is under consideration, Dr. George would meet with the employee and in the presence of an MTEA representative. Because petitioner had not been present, the MTEA served as an intermediary between respondent and petitioner. It was Cholette who introduced the idea of an LCA as opposed to immediate tenure charges. An LCA was also discussed with Vice President Mason and MTEA attorney Oxfeld. The purpose of an LCA would be to give petitioner the expectations for him to follow in order to return to teaching. The LCA was reviewed by the respondent's counsel, Jeff Merlino.

Petitioner violated the LCA when he failed to communicate with respondent and missed his Iofin FFD examination in August 2018 and failed to submit to drug testing. There was no need to seek tenure charges because petitioner voluntarily resigned following his LCA violations.

Rosie Shopp was a secretary in respondent's Human Resources (HR) Department, working with principals and administrators regarding personnel issues and union negotiations, and monitoring teachers' attendance and hiring substitute teachers. Teachers enter their attendance records in the ASOP software program. A teacher must enter an absence at the beginning of the school day, or it would be entered by the Human Resource Department or the principal's secretary.

The HR Department received a letter dated April 19, 2017, from Neuropsychology and Counseling Associates, addressing petitioner's absences from May 23, 2017, to May 31, 2017, that being close to the end of the 2016-17 school year. On September 15, 2017, the Board wrote petitioner to advise him that they had been trying to contact him but that he had not responded, and petitioner then sent respondent a medical note covering his absences from September 11, 2017 through September 18, 2017, as reflected in a spreadsheet Shopp kept of her communications with petitioner. In response, Shopp emailed and telephoned petitioner and asked him to contact HR. Petitioner told Shopp that he was suffering from anxiety and had a hard week.

On October 4, 2017, having not heard from petitioner that day, Shopp asked John McGuire, head of security, to check on him. The Manasquan Police Department conducted a welfare check and spoke with petitioner.

On October 4, 2017, Shopp scheduled petitioner for a FFD examination with Dr. Iofin for October 12, 2017. Shopp was told by petitioner's mother that he was treated at Hampton Hospital on October 5, 2017. On October 10, 2017, Shopp advised his mother that he would need to complete a FFD examination before returning to work. On October 13, 2017, petitioner's mother told Shopp he was going to be discharged from the hospital. Shopp sent petitioner a release for medical records so they could be forwarded to Iofin. On October 13, 2017, Shopp spoke with the hospital, who indicated that petitioner was

considering signing the release. On October 17, 2017, petitioner's mother advised Shopp that he was home. By letter dated October 19, 2017, respondent placed petitioner on paid leave effective October 11, 2017, which petitioner confirmed during a telephone call on that date. Shopp confirmed with petitioner that he was scheduled for a FFD exam with Iofin on October 26, 2017.

Petitioner attended the October 26 appointment with Iofin. On October 30, 2017, petitioner left Shopp a voicemail message informing her that he was going to Texas for treatment for two weeks, and emailed her requesting FMLA leave. She was advised that his anticipated release date was November 15, 2017. She sent an email to petitioner on November 1, 2017, requesting that he execute a release for medical records for Dr. Iofin.

On November 1, 2017, Shopp received an email from Cholette stating that petitioner sought to use the sick bank while at the Texas rehabilitation facility. Shopp advised Cholette that petitioner had used all of his paid leave and would have to use FMLA, and would have to start making payments towards his health benefits. On November 14, 2017, Shopp forwarded the FMLA documentation to petitioner at Recovery Unplugged. She received the completed documentation, indicating a discharge date of December 2, 2017. A letter dated November 21, 2017, was sent to petitioner confirming he would be on the Board agenda. On November 28, 2017, Shopp sent an email to Recovery Unplugged to confirm petitioner's discharge date of December 2, 2017, and to advised him that he was scheduled for December 2, 2017, FFD with Dr. Iofin. She spoke with petitioner when he returned home and reminded him of the December 4, 2017, FFD examination, then spoke with him again to advise that the FFD had to be rescheduled to December 6, 2017. Petitioner failed to appear for the FFD on December 6, 2017, telling HR on December 7 that he had not been feeling well. On December 11, 2017, respondent sent petitioner a letter confirming the missed appointment, and telling him that he needed to be at a FFD exam on December 14, 2017, otherwise, it would be considered an abandonment of his job; that same day, respondent hand-delivered to petitioner's home a Rice Notice advising him that the School Board would be discussing his case at the next closed personnel meeting. Shopp also left voicemail messages with petitioner confirming this information, which she confirmed in an email to Cholette. Petitioner missed the December 14 appointment.

Because petitioner missed his FFD and failed to communicate with the school for the last week, on December 15, 2017, respondent again requested that the Manasquan Police conduct a welfare check on petitioner. Shopp later became aware that petitioner had entered a new rehabilitation facility in Florida, and would be there until the end of February 2018. Respondent forwarded petitioner a second Rice Notice, dated February 26, 2018, which petitioner signed for. Shopp had a conversation with petitioner on February 27, 2018, wherein he requested an extension of his FMLA leave from February 8, 2018 to March 26, 2018, the new anticipated rehabilitation discharge date. Respondent approved his FMLA extension request.

Kimberly Pickus was respondent's Assistant Superintendent of Human Resources, Curriculum and Instruction, handling HR matters such as staffing, hiring, unemployment claims, bringing in substitute teachers, and addressing disciplinary matters. She was familiar with petitioner.

Petitioner had been absent from work thirty-nine days during the 2016-17 school year, this was a significant number, as the average was seven to ten days for school employees. Petitioner also failed to input his absences into the ASOP system in a timely fashion. He was a "no-show, no-report" type of employee. This had a trickle-down effect, because they would not know whether they needed to hire a substitute teacher to cover for petitioner.

When petitioner's Principal asked Pickus how to address his absences, she recommended requiring a doctor's note. Petitioner then provided a note from Mr. Hadley for his 2016-17 absences. The absenteeism issue arose again in 2017-18. Petitioner provided another doctor's note. Pickus sent a letter to petitioner on September 15, 2017, stating that respondent was trying to reach him because he failed to report for work. On October 4, 2017, they asked the Manasquan Police Department to conduct a welfare check.

Because respondent had become aware from his doctor's notes that petitioner had mental health issues, and because he was not reporting to work and not returning

telephone messages from the school, this was becoming an abandonment of position case, and respondent sent petitioner two letters advising him that he was on paid leave and would have to receive a FFD evaluation. Petitioner was given notice that he was scheduled for a FFD exam for October 26, 2017, which appointment he missed. He then advised work that he had entered a facility for alcohol abuse rehabilitation. Petitioner requested and was approved for FMLA leave for November 1, 2017, to December 1, 2017, during which time he would be responsible for paying his share of health benefit premiums.

Petitioner failed to appear for an FFD on December 6, 2017 which was then rescheduled for December 14, 2017. Respondent had difficulty getting petitioner's medical records from his rehabilitation facility, and difficulty having petitioner execute a release for them. On December 15, 2017, respondent requested the Manasquan Police Department to conduct a welfare check on petitioner, believing that petitioner had returned from Texas. She then learned that petitioner had begun treatment at another facility on December 15, 2017.

On January 17, 2018, respondent received an email from Immersion Recovery Center requesting additional FMLA leave on behalf of petitioner, and the Board at its next meeting extended his FMLA to February 7, 2018. Petitioner was then approved for unpaid medical leave until June 30, 2018; this allowed respondent to bring in a permanent substitute for his class.

On May 31, 2018, petitioner attended a FFD exam with Dr. Iofin (who later told respondent that he wanted to see petitioner again in August). Iofin concluded that petitioner was not fit to return to teaching for 2017-18. Respondent set up a meeting for the last week in June for petitioner to go over Iofin's recommendations with Dr. George, Board counsel Jeff Merlino, Esq., union representative John Cholette and union counsel, Sandy Oxfeld, Esq., but petitioner failed to attend. Petitioner had not been complying with Iofin's recommendations, and Pickus told Cholette and Oxfeld that respondent had no options left but to pursue tenure charges, and Oxfeld suggested an LCA reflecting Iofin's recommendations.

Pickus reviewed the initial draft LCA, the two sides negotiated some of the terms, and a final version was provided to petitioner's union; she had advised Cholette that if the LCA was not signed, they would pursue tenure charges. On August 20, 2018, petitioner met with Cholette and executed the LCA. Thereafter, petitioner was scheduled for alcohol testing on August 20, 2018, which petitioner then moved to August 23, 2018. Petitioner failed to appear for the alcohol test on August 23. As a result, Pickus told Cholette that petitioner had failed to comply with the terms of the LCA and that they would be pursuing tenure charges. Petitioner emailed his resignation to Shopp on September 17, 2018. No respondent employees forced petitioner to resign.

John Cholette had been employed by the District for thirty-three years. He had been the President of the Middletown Township Education Association for four years.

Cholette would often act as a go-between between school administration and an employee. The MTEA would pay for an attorney for a teacher facing tenure charges or if where there was an employment issue not covered by the Collective Bargaining Agreement (CBA); Cholette would not be privy to privileged discussions. Petitioner was a member of the MTEA.

On November 1, 2017, Cholette emailed Shopp about petitioner's FMLA request, as well as being able to use the sick bank. Cholette was aware that petitioner had attendance issues in the 2016-17 school year, and the effect this had on the school's ability to hire substitutes, and discussed this with Shopp and Pickus. He was aware that petitioner missed his October 2017 FFD exam, and knew about the Manasquan Police welfare check. Petitioner was approved for FMLA leave and received his health insurance the entire year from respondent. Petitioner attended a rehabilitation facility in Spring 2018, and once done, went for a FFD with Dr. Iofin in May 2018. Iofin did not recommend petitioner returning to his teaching position.

Respondent raised concerns about petitioner missing FFD appointments and suggested an LCA in lieu of tenure charges. Petitioner missed several meetings with Cholette in which they were to discuss the LCA. Cholette told petitioner that tenure charges could result in him losing his teaching certificate as well as his job. With

Cholette's recommendation, petitioner executed the LCA in August 2018. Cholette spoke with petitioner at some time regarding how to resign his teaching position, and gave him the protocol for submitting a resignation.

FINDINGS OF FACT

Credibility:

In evaluating evidence, it is necessary to assess the credibility of the witnesses. Credibility is the value that a finder of the facts gives to a witness's testimony. It requires an overall assessment of the witness' story in light of its rationality or internal consistency and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself," in that "[i]t must be such as the common experience and observation of mankind can approve as probable in the circumstances." In re Perrone, 5 N.J. 514, 522 (1950).

A fact finder "is free to weigh the evidence and to reject the testimony of a witness . . . when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions which alone or in connection with other circumstances in evidence excite suspicion as to its truth." In re Perrone, 5 N.J. at 521–22; see D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997). A trier of fact may also reject testimony as "inherently incredible" when "it is inconsistent with other testimony or with common experience" or "overborne" by the testimony of other witnesses. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

Further, "'[t]he interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony.'" State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted). The choice of rejecting the testimony of a witness, in whole or in part, rests with the trier and finder of the facts and must simply be a reasonable one. Renan Realty Corp. v. Dep't of Cmty. Affairs, 182 N.J. Super. 415, 421 (App. Div. 1981).

Jared Deppeler testified in a calm, clear manner. He was knowledgeable of the facts in the matter, and spoke in a straightforward, open fashion regarding his alcohol abuse in a way that appeared honest. At times he gave emotional answers. Sometimes he stated when he was unable to recall details, but at other times he had difficulty remembering certain facts, such as information regarding a Doctor Abel, and the dates of his first rehabilitation stay. It was clear that he had not reviewed the exhibits prior to his testimony; he often had difficulty recalling specific dates, correspondence and conversations, such as how often he spoke with Cholette. He was apologetic when unable to recall details. He referred to the time period of his alcoholism relapse as a "muddy period," for which he had little recollection. He had difficulty with details on cross-examination; although he remained calm in his testimony, he also seemed somewhat evasive in his answers, often beginning an answer with, "Well, I assume. . ." Petitioner testified that he always called in to work to announce that he needed a sick day, but the records were clear that he often took a sick day without advising the school. I ultimately found petitioner not to be a credible witness.

Dr. William George was a credible witness. He appeared knowledgeable, saying when he knew something and when he did not. He spoke from memory, without relying on notes, and seemed to have an excellent memory of the general events that took place regarding petitioner, although he was unable to recall certain dates and other specific details. He remained calm and informative on cross-examination, and never became argumentative.

Rosie Shopp was a good witness, testifying in a calm, knowledgeable manner. She also was clear as to what she knew and what she did not know. She often began a statement by saying, "If I recall correctly. . ." that might have undercut some of the details she testified towards, but she also displayed an excellent memory regarding all the efforts expended in attempting to correspond with petitioner. As a result, I found her to be a credible witness.

Kimberly Pickus testified in a serious manner and seemed very knowledgeable of the facts and events regarding petitioner. She spoke in succinct sentences, with an

authoritative but non-judgmental manner. She remained composed on cross-examination. She was a credible witness.

John Cholette was a calm witness who answered with great specificity. He would state when he did not know an answer or when he did not understand a question. But he was unable to recall many details, stating that these events had happened too long ago. He required documents to refresh his memory, and even those did not always help. He often qualified his answers by first saying, “I believe...”, “I do not recall...”, “That could have happened...” Ultimately, I did not find him to be a credible witness.

Therefore, after reviewing the testimony and the evidence, I **FIND,** by a preponderance of credible evidence, the following additional **FACTS**:

Prior to becoming a teacher with Middletown, petitioner had been treated for alcoholism and anxiety, seeking rehabilitation in facilities in 2000 and on or about 2003-04; petitioner achieved tenure in February 2016; petitioner was absent from work six and a half days in the 2013-14 school year, five and a half days in 2014-15, ten days in 2015-16, and thirty-nine days in 2016-17; the average number of missed days for employees per school year were between seven and ten; respondent had an Attendance Policy (Policy 3212), posted on its website; teachers had to enter their attendance records in the ASOP software program; a teacher had to enter an absence at the beginning of the school day; petitioner had not complied with the ASOP requirements or protocols for getting substitute teachers, causing a gap in learning for the students and a disruption for them educationally.

In 2017, petitioner sought treatment from Dr. Richard Hadley, from Neuropsychology and Counseling Associates; petitioner sought treatment for four days at Hampton Behavioral Health’s inpatient treatment program in September 2017; petitioner had advised Shopp in 2017 that he had been self-medicating with alcohol due to anxiety, stating that the break-up with his girlfriend of ten years led to debilitating anxiety; Dr. Hadley had advised the school on April 19, 2017, that petitioner was receiving

neuropsychological and counseling help, but his letters of April 19, 2017, and May 31, 2017, did not mention an alcohol problem.

On September 15, 2017, petitioner received a letter from respondent requesting that he contact Human Resources as soon as possible; in response, petitioner had Dr. Hadley send respondent a letter on September 18, 2017, to explain petitioner's absences, which letter also failed to mention alcohol abuse; on October 4, 2017, concerned about petitioner's absences and his absence that day, respondent sent a police officer to conduct a wellness check on petitioner; respondent sent petitioner a letter dated October 11, 2017, stating that he would be placed on unpaid administrative leave as of October 16, 2017, pending his scheduling of a psychological assessment, and paid leave once he had scheduled the assessment; petitioner's employment contract required mental health evaluations and "fit for duty" ("FFD") evaluations; respondent scheduled a FFD assessment for petitioner with Dr. Iofin for October 26, 2017; petitioner attended the October 26, 2017, Iofin appointment; prior to receiving the Iofin results, on October 28, 2017, petitioner voluntarily entered inpatient treatment for alcohol abuse at Recovery Unplugged in Austin, Texas, using FMLA approved by respondent; by letter dated October 30, 2017, petitioner requested that Ms. Shopp place him on unpaid medical leave for one week; on October 31, 2017, petitioner advised respondent that he would be seeking treatment and could be there until November 6, 2017; on November 21, 2017, respondent approved petitioner's medical leave request, effective November 1 to December 1, 2017; a Rice Notice dated November 21, 2017, was sent to petitioner advising him that the School Board would be discussing his case at the next closed personnel meeting; petitioner was discharged from Recovery Unplugged on November 26, 2017.

On November 28, 2017, Shopp sent an email to the Recovery Unplugged to confirm petitioner's discharge date of December 2, 2017, and advised that he was scheduled for a December 4, 2017, FFD with Dr. Iofin; Shopp spoke with petitioner when he returned home and reminded him of the December 4, 2017, FFD examination, then spoke with him again to advise that the FFD had to be rescheduled to December 6, 2017; on December 4, 2017, petitioner emailed a request for an FMLA extension to Shopp; petitioner failed to appear for the FFD on December 6, 2017, telling HR on December 7

that he had not been feeling well; on December 11, 2017, respondent sent petitioner a letter confirming the missed appointment, and telling him that he needed to be at a FFD exam on December 14, 2017, otherwise it would be considered an abandonment of his job; on December 11, 2017, respondent hand-delivered to petitioner's home a Rice Notice advising him that the School Board would be discussing his case at the next closed personnel meeting, and Shopp also left voicemail messages with petitioner confirming this information, confirming the messages in an email to Cholette; petitioner missed the December 14, 2017 appointment, and because he failed to communicate with the school for the last week, on December 15, 2017, respondent again requested that the Manasquan Police conduct a welfare check on petitioner; instead of attending the FFD, petitioner had flown to Florida to enter Immersion Recovery rehabilitation facility, admitting himself on December 15, 2017; after completing a thirty-sixday program, he went to an Intensive Outpatient Program ("IOP"), where he was discharged on March 26, 2018; petitioner was approved in January 2018 for unpaid medical leave until June 30, 2018, which allowed respondent to bring in a permanent substitute for petitioner's classes.

Petitioner received a Rice Notice by letter from respondent dated February 26, 2018, advising that he was going to be discussed during the closed session Board meeting on February 28, 2018; Recovery Unplugged sent an email to Shopp advising that petitioner was in an outpatient program with a targeted completion date of March 26, 2018; respondent approved petitioner's FMLA extension request.

Petitioner attended a FFD evaluation with Dr. Iofin on May 31, 2018; Iofin issued his report on June 14, 2018, in which he concluded that petitioner was not fit to return to teaching for 2017-18; Iofin recommended that petitioner attend an Intensive Outpatient Program (IOP) over the summer to address his alcohol use, and that petitioner be seen again in August 2018; Cholette advised petitioner to sign-up for IOP if he wanted to return to work in September 2018; respondent agreed to continue covering petitioner's health care premium payments, despite petitioner failing to pay them; petitioner attended outpatient treatment at GenPsych.

Respondent had set up a meeting for the last week in June for petitioner to go over Iofin's recommendations with Dr. George, Board counsel Jeff Merlino, Esq., John Cholette and Sandy Oxfeld, Esq., but petitioner failed to attend; petitioner had not been complying with Iofin's recommendations, and Oxfeld suggested a Last Chance Agreement reflecting Iofin's recommendations; on July 16, 2018, petitioner received an email from Cholette advising that he had missed a scheduled meeting with Cholette and the school administration regarding his employment, and petitioner contacted Cholette later that day to reschedule that meeting to July 20, 2018; on July 20, Cholette presented petitioner with a LCA, which they reviewed together; the LCA required petitioner to submit to drug/alcohol tests; after negotiating minor changes to the LCA, petitioner executed the LCA without having an attorney review it or discussing it with Pinkus or the union attorney, Sandy Oxfeld; Cholette had told petitioner that if he didn't execute the LCA, respondent would file tenure charges against him, affecting his teaching license; petitioner was scheduled for alcohol testing on August 20, 2018, which petitioner then moved to August 23, 2018; petitioner failed to appear for the alcohol test on August 23, and Pickus then advised Cholette that petitioner had failed to comply with the terms of the LCA and that they would be pursuing tenure charges; rather than face tenure charges, petitioner submitted his letter of resignation via email to Shopp on September 17, 2018.

LEGAL ANALYSIS AND CONCLUSION OF LAW

The issue is whether petitioner met his burden of proving by a preponderance of the evidence that respondent violated N.J.A.C. 6A:32-6.3 when it required him to undergo a psychiatric evaluation and drug/alcohol testing as part of claims regarding sick leave related to his attempts to regain his position as a high school teacher for the Board.

Petitioner argued that the Last Chance Agreement imposed by respondent as a condition of petitioner's return to his tenured teaching position was contrary to respondent Board's District Policy 3218 and violated petitioner's tenure rights under N.J.S.A. 18A:28-5 et. seq., as respondent did not provide a statement of reasons for the requirement of psychiatric evaluations. They also claimed that respondent singled out petitioner when it required him to execute an LCA, although petitioner offered no evidence proving such claim or indicating that this issue was germane to petitioner's appeal.

Respondent argued that it complied with N.J.A.C. 6A:32-6.3, which allowed them to require petitioner to undergo a psychiatric evaluation to ensure his fitness as a teacher, complied with N.J.S.A. 18A:30-1 et seq. when addressing petitioner's absenteeism issues, and that the LCA was a legally valid contract which petitioner voluntarily entered into.

Respondent was correct in asserting that teachers must be physically and mentally fit for the challenges of teaching young people. Diaz v. Bd. of Educ. of the Twp. of Mahwah, OAL Dkt. No. EDU 01751-09, Initial Decision (March 2, 2010), adopted, Comm'r (August 27, 2010).

In In re Tenure Hearing of Grossman, 127 N.J. Super. 13, 30 (App. Div. 1974) (quoting Adler v. Bd. of Educ. of New York, 342 U.S. 485, 493 (1952), the court found that because of the role teachers play in shaping young minds, state and school authorities had the right and duty to screen school officials, teachers, and employees as to their fitness to maintain the integrity of the schools. Respondent then relied on N.J.A.C. 6A:32-6.3(b), which states that, pursuant to N.J.S.A. 18A:16-2, district boards of education may require physical or psychiatric examinations of a school district employee when in the judgment of the district the employee showed evidence of deviation from normal physical or mental health. This was allowed in order to determine the individual's physical and mental fitness to perform their job or to detect any health risks to students and other employees.

N.J.A.C. 6A:32-6.3 states in pertinent part:

> Requirements of physical or psychiatric examinations
>
> (a) Pursuant to N.J.S.A. 18A:16-2, district boards of education shall require candidates for employment who have received a conditional offer of employment to undergo a physical examination such as testing for usage of controlled or dangerous substances or to determine whether the candidate is able to perform, with reasonable accommodation, job-related functions pursuant to P.L. 101-336, Americans with Disabilities Act of 1990.

(b) Pursuant to N.J.S.A. 18A:16-2, a district board of education may require physical or psychiatric examinations of a school district employee whenever, in the district board of education's judgment, an employee shows evidence of deviation from normal physical or mental health. The purpose of the physical or psychiatric examination shall be to determine the employee's physical and mental fitness to perform, with reasonable accommodation, the position the employee currently holds, or to detect any health risk(s) to students and other employees. When a district board of education requires an employee to undergo a physical or psychiatric examination:

1. The district board of education shall provide the employee with a written statement of the reason(s) for the required examination.

2. The district board of education shall provide the employee with a hearing, if requested.

It is therefore clear that a school may require a mental health evaluation of a teacher. Respondent further correctly asserted that petitioner did not object to respondent's requirement for a psychiatric evaluation prior to being allowed to return to teaching. Additionally, petitioner's employment contract required mental health evaluations and FFD evaluations. Petitioner's claim was that the respondent did not follow the protocols for such an evaluation by not providing him with a statement of reasons and not advising him of his right to a hearing.

Respondent had established, however, that petitioner received a letter from respondent on or about October 11, 2017, which required that petitioner undergo a psychiatric assessment with Dr. Iofin, which letter stated, "The administration of Middletown Township Public Schools is concerned with your ability to perform your job as a High School Social Studies Teacher. Therefore, this letter is to advise you that as authorized by state law, N.J.S.A. 18A:16-2(a), the Board of Education is hereby directing you to undergo a psychiatric assessment to ensure your fitness for continued full-time regular duty as a teacher with the Board psychiatrist . . . ." A second letter, dated October 19, 2017, was provided to petitioner, again advising him that the Board was concerned about his ability to perform his job.

N.J.A.C. 6A:32-6.3(b)(1) did not require statements of specific medical reasons for evaluations, only that in the judgment of the Board the employee had shown evidence of deviation from normal physical or mental health.

It would be disingenuous for petitioner to argue that he had never shown deviations from normal physical nor mental health, because in 2017 he himself had sought treatment from Dr. Richard Hadley, from Neuropsychology and Counseling Associates, and himself had requested that Dr. Hadley report to the school on April 19, 2017, that petitioner was receiving neuropsychological and counseling help. It is true that Dr. Hadley's letters of April 19, 2017, and May 31, 2017, referred to neuropsychological and counseling help, but did not mention an alcohol problem. Yet petitioner himself advised Ms. Shopp in September 2017 that he had been self-medicating with alcohol due to anxiety, telling her that the break-up with his girlfriend of ten years led to debilitating anxiety.

Further, petitioner exhibited excessive absenteeism, including many times when he failed to show for work or even call in sick, at the start of the 2017-2018 school year. After receiving notification from petitioner and Hadley that petitioner had neuropsychological and alcohol issues to address, petitioner's failure to appear for work or call the school to report absences was of such concern to respondent that on two occasions they had to request welfare checks by the Manasquan Police Department. Respondent was correct in citing to I/M/O Dugan and Jersey City Board of Education, 2012 N.J. Agen. Lexis 249, for the proposition that excessive absenteeism constituted incapacity, unbecoming conduct and/or just cause within the meaning of N.J.S.A. 18A:6-10.

Accordingly, I **CONCLUDE** that petitioner failed to meet his burden of proving by a preponderance of the evidence that respondent failed to comply with the requirements of N.J.A.C. 6A:32-6.3(b)(1) when it wrote to petitioner requiring a psychiatric examination.

Regarding petitioner's claim that respondent violated N.J.A.C. 6A:32-6.3 based on not being notified of his right to a hearing, respondent was correct in asserting that the statute does not require a board to "advise" a teacher of said right, only that a district

board of education shall provide the employee with a hearing "if requested." Petitioner offered no statutory or caselaw support to contradict respondent's interpretation. No evidence had been proffered showing that petitioner had requested a hearing.

I **CONCLUDE** that petitioner failed to meet his burden of proving by a preponderance of the evidence that respondent did not have the legal authority to require petitioner to submit to a psychiatric examination and/or a Fitness For Duty examination.

Petitioner in its summation brief confirmed that respondent adopted District Policy 3218, which recognized alcohol dependency as an illness. Further, it was petitioner himself who advised respondent that his issues included alcohol abuse as well as mental health issues. Therefore, I **CONCLUDE** that that petitioner failed to meet his burden of proving by a preponderance of the evidence that respondent did not have the legal authority to require alcohol testing as part of its psychiatric examination and/or Fit For Duty examination.

Petitioner argued that District Policy 3218 required a therapeutic approach to alcohol dependency rather than an approach which was solely punitive in nature, and that the Last Chance Agreement was therefore a violation of that policy because it was on its face both punitive and disciplinary. Towards that end, petitioner relied on language in the LCA wherein petitioner was to acknowledge that "he is subject to disciplinary action, up to and including termination because of such behavior and deficiencies," as well as the language stating that petitioner agreed "to resign from his employment with the Board immediately upon notice that his Principal had substantiated to the Superintendent of Schools that Employee engaged in further behavior and/or performance deficiency," and agreed to "to waive any notice, tenure and/or contracted rights with regard to same." More generally, petitioner argued that respondent lacked the authority to "require" a LCA.

Petitioner's argument is flawed in that it appeared that it was not respondent who "required" a LCA, but rather petitioner's own people. It was petitioner's union, via the union counsel, Sandy Oxfeld, who suggested a LCA as a compromise in order to get petitioner back to teaching. Oxfeld's intention was for Dr. Iofin's recommendations to be memorialized in a legal document. It was petitioner's union representative, John Cholette,

who presented the LCA to petitioner. Respondent did not present the LCA and state that petitioner had to sign it or lose his job. Rather, it was Cholette who told petitioner that if he didn't execute the LCA, respondent would file tenure charges against him, affecting his teaching license. Nothing was offered to show that the school or Board said or wrote anything to petitioner demanding that he execute the LCA. Petitioner could have refused to execute the LCA and then appeared before the School Board and challenged any tenure charges that might have been brought, or not executed the LCA and then provided respondent with proof that he had complied with the Board's requirement that he attend IOP and attend a follow-up appointment with Dr. Iofin.

Respondent had been attempting to work with petitioner throughout the entire process. It scheduled a meeting with petitioner and Cholette for July 16, 2018, but petitioner missed the meeting and later received an email from Cholette advising that he had missed the scheduled meeting with Cholette and the school administration regarding his employment. Petitioner contacted Cholette later that day to reschedule that meeting to July 20, 2018, and petitioner did appear at the meeting on July 20. It was at the July 20 meeting that Cholette presented petitioner with the proposed LCA, which they reviewed together. That draft LCA required petitioner to submit to drug and alcohol tests. Petitioner negotiated minor changes to the LCA, but left in the drug and alcohol testing requirement. Then petitioner executed the LCA without having an attorney review it or discussing it with Oxfeld.

Petitioner had already submitted to a full FFD examination, and therefore it could not be argued that requiring continuing testing on its face was "punitive." Petitioner had a severe absenteeism and communication issue regarding his teaching position with the school, and the LCA was a compromise created in order to allow petitioner to return to his job. The LCA contained discipline language, but was in and of itself not a penalty imposed on petitioner. The "discipline" contained therein was only to be meted if petitioner failed to comply with the requirements set forth in the LCA, that being continued mental health and alcohol prevention care and testing to confirm that petitioner was no longer abusing alcohol.

Respondent correctly posited that public entities, such as school boards, were authorized to enter into LCAs specifying terms of employment, as long as the terms therein did not contravene statutes controlling an employee's terms or conditions of employment or violate New Jersey public policy, citing Watson v. City of E. Orange, 175 N.J. 442, 445, (2003); Merlino v. Borough of Midland Park, 172 N.J. 1, 12-13 (2002).

The New Jersey Supreme Court held in Merlino that, because the agreement between the employer and employee abrogated no legislative terms or conditions of employment, the agreement constituted a valid contract by mutual consent of the parties. Respondent found factual similarities between Merlino and the within matter: in both cases, an employee entered into an agreement with his employer in order to keep his job and preclude tenure issues. In both cases, the agreement was entered into by mutual consent. In both scenarios, no statutory terms or public policies were violated, and in both scenarios the employee had every right and opportunity to seek legal counsel or advice but chose not to.

Although respondent chose to expound on the Merlino decision, because it dealt with tenure issues, the afore-cited Watson case was even more on-point. In Watson, the New Jersey Supreme Court upheld an employer's ability to negotiate and enforce LCAs, and opted not to reinterpret the terms of the LCA lest the court "discourage their use by making their terms meaningless," citing to Golson-El v. Runyon, 812 F. Supp. 558, 561 (E.D.Pa.). In Watson, the City of East Orange chose to offer a patrolman an LCA rather than suspend or terminate his position, which LCA unambiguously reflected that the patrolman could return to work only when he completed a mutually acceptable program for alcohol recovery. When the patrolman failed to comply with the requirement of attending an alcohol recovery program in a timely fashion, he was found to have violated the LCA. The New Jersey Supreme Court upheld the LCA and affirmed the termination of the patrolman's employment.

The within LCA did not violate petitioner's tenure rights. Respondent properly argued that the right to tenure was created and governed entirely by statute, per Breitwieser v. State-Operated Sch. Dist., 286 N.J. Super. 633 (App.Div.1996) (citing Spiewak v. Board of Ed., 90 N.J. 63 (1982) at 72-73). In New Jersey, the statutory basis

for tenure of public-school employees was N.J.S.A. 18A:28-1, et seq. , which states that "The service of all teaching staff members . . . shall be under tenure during good behavior and efficiency and they shall not be dismissed or reduced in compensation except for inefficiency, incapacity, or conduct unbecoming such a teaching staff member or other just cause . . . " It is therefore clear that in New Jersey, tenured teaching staff members cannot be terminated or reduced in compensation except for those specific reasons.

Additionally, tenured teachers may voluntarily resign their positions, per N.J.S.A. 18A:28-8, which states that, "Any teaching staff member, under tenure of service, desiring to relinquish his position shall give the employing board of education at least 60 days written notice of his intention, unless the board shall approve of a release on shorter notice and if he fails to give such notice he shall be deemed guilty of unprofessional conduct and the commissioner may suspend his certificate for not more than one year." See Camden City Sch. Dist. v. Pitts, 2019 N.J.Super. Unpub. LEXIS 1686 (App. Div. July 26, 2019), which upheld the resignation of a tenured teacher, where that teacher had voluntarily entered into an agreement with her school board in exchange for the board's agreement not to pursue tenure charges for inefficiency.

Further, a teacher has the ability to withdraw their resignation prior to the school board meeting in which the board votes to accept the resignation, although the withdrawal may be rejected absent compelling and unique circumstances. See Lovett v. Flemington-Raritan Reg'l Bd. of Educ., 2013 N.J. Super. Unpub. LEXIS 2683, **23-24 (App. Div. 2013).

In the within matter, petitioner Deppeler missed two appointments for medical examinations scheduled for August 24, 2017, which were required by the LCA. Respondent did not terminate petitioner's employment as a result of those LCA violations. Instead, petitioner voluntarily submitted a letter of resignation to the respondent Board on September 17, 2018. Petitioner's resignation was submitted more than three weeks subsequent to his violation of the LCA, and subsequent to discussing the matter with his union representative Cholette. Petitioner had been informed that his resignation would be on the School Board agenda for September 26, 2018, but at no time between September 17, 2018 and September 26, 2018 did petitioner attempt to withdraw his

resignation. Respondent correctly asserted that petitioner did not attempt to withdraw his resignation until he filed the within appeal on or about December 17, 2018.

Not only was an LCA permissible in the within matter, but it was also further evidence that respondent did everything it could to help petitioner despite petitioner's numerous failings. Petitioner had been dealing with alcoholism and anxiety since 2000. Despite achieving tenure in February 2016, petitioner was absent from work six and a half days in the 2013-14 school year, five and a half days in 2014-15, ten days in 2015-16, and thirty-nine days in 2016-17, well above the average number of sick days taken by a typical teacher. Petitioner often failed to call the school to advise of his absences and often failed to enter his absences into the ASOP computer program, as required, which made it difficult for respondent to locate and hire substitute teachers to cover petitioner's classes. The school was so concerned about petitioner's unreported and unexplained absences that it twice had to request the police to conduct a wellness check of petitioner.

Despite mental health issues, alcohol issues, and a problem with absenteeism, respondent continued to work with petitioner. The Board continued to approve FMLA for petitioner and approve petitioner's leave requests, enabling him to continue to seek the help he so clearly needed. Respondent made every attempt to stay in communication with petitioner, as evidenced by the dozens of letters, emails and telephone calls made by the school to petitioner. Respondent continued scheduling FFD examinations for petitioner, despite petitioner continuing to miss those appointments. Respondent often had to play "catch-up" with petitioner, only learning after the fact that petitioner had missed doctor appointments because he had flown out-of-state to attend rehabilitation.

Respondent stood by petitioner even after he did attend an appointment with Dr. Iofin and Iofin deemed him not ready to return to work. This was where the LCA was suggested by petitioner's union representative and attorney, which the Board approved entering into. The respondent even agreed to continue covering petitioner's health coverage premiums to assist petitioner in meeting the terms of the LCA. Despite the Board sticking with petitioner through years of absenteeism, it was petitioner's own actions which led him to lose his job: petitioner continually missed FFD appointments as

well as meetings with respondent and his own union representatives, and petitioner failed to review the LCA with his union attorney, Sandy Oxfeld, and failed to seek independent review from an attorney of his own choosing. It was petitioner's choice to preclude the filing of any tenure charges by submitting a resignation and not attempting to withdraw it prior to the scheduled School Board meeting.

I **CONCLUDE** that the petitioner failed to meet his burden of proving by a preponderance of the evidence that the LCA was not a legally valid agreement voluntarily entered into between petitioner and respondent. I **CONCLUDE** that petitioner voluntarily resigned his position and did not withdraw his resignation prior to the School Board meeting to accept his resignation.

Regarding whether the LCA abrogated any legislative terms or conditions of employment, petitioner claimed in its Appeal that respondent had violated petitioner's rights regarding sick days. But the LCA did not violate any of his sick leave rights, as it contained no language addressing petitioner's sick time, and therefore on its face could not be contrary to any other statutory terms under N.J.S.A. 18A:30-1 et seq.

Unrelated to the LCA, petitioner further argued in its Appeal that respondent violated petitioner's rights to sick leave under N.J.S.A. 18A:30-1 et seq. when it placed him on 'unpaid days' status effective October 16, 2017. But N.J.S.A. 18A:30-2 states that all local school district employees were entitled to ten days paid sick leave in any school year, and N.J.S.A.18A:30-2.1 provides for the payment of sick leave to district employees for service-connected disability; subsection (a) allowed for payment of full salary when any employee was absent from work "as a result of a personal injury caused by an accident arising out of and in the course of his employment." As recorded by respondent, respondent allowed petitioner to use his full allotment of sick days and personal days, totaling sixteen days, which he used in consecutive absences from Monday, September 11, 2017, through Thursday, October 5, 2017. Based on this information, petitioner was paid in full for all the sick time he was entitled to for that time period, as he did not have a job-related injury. The record also indicated that from Friday, October 6, 2017, through Wednesday, February 7, 2018, petitioner was placed on paid medical leave by respondent. Regarding any claim that petitioner was entitled to sick leave pay because

respondent placed him on unpaid sick leave effective February 8, 2018, it is documented that from October 6, 2017, through February 7, 2018, respondent approved all of petitioner's FMLA leave requests permitted under law. As petitioner received all his sick pay starting at September 11, 2017, respondent was correct in arguing that petitioner was not entitled to additional paid sick leave starting on February 8, 2018.

I **CONCLUDE** that that petitioner failed to meet his burden of proving by a preponderance of the evidence that respondent committed violations regarding its application of sick day leave for petitioner and owed additional sick leave compensation to petitioner.

ORDER

I hereby **ORDER** that petitioner's appeal be **DISMISSED**, and that respondent's acceptance of petitioner's resignation be **AFFIRMED**.

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 28, 2022
DATE

JEFFREY N. RABIN, ALJ

Date Received at Agency: November 28, 2022

Date Mailed to Parties: November 28, 2022

JNR/dw

APPENDIX

WITNESSES

For petitioner:

Jared Deppeler, petitioner

For respondent:

Dr. William George, former Superintendent

Rosie Shopp, Confidential Secretary- Human Resources

Kimberly Pickus, Assistant Superintendent

John Cholette, President of the Middletown Township Education Association

EXHIBITS

For petitioner:

P-1 Petitioner's 2017-18 Salary Statement

P-2 Notice scheduling appointment, dated October 11, 2017

P-3 Petitioner email to Shopp, dated October 30, 2017

P-4 Recovery Unplugged Letter, dated October 31, 2017

P-5 FMLA Certification, dated November 16, 2017

P-6 Respondent FMLA letter, dated November 21, 2017

P-7 Petitioner email, dated December 4, 2017

P-8 Respondent letter to petitioner, dated December 14, 2017

P-9 Immersion Recovery email, dated December 22, 2017

P-10 Petitioner email, dated January 15, 2018

P-11 Immersion Recovery email, dated January 17, 2018

P-12 Respondent letter, dated January 25, 2018

P-13 Immersion Recovery letter, dated February 26, 2018

P-14 Petitioner email, dated February 28, 2018
P-15 Iofin letter, dated June 14, 2018
P-16 Iofin Report, dated June 15, 2018
P-17 Last Chance Agreement, dated July 30, 2018
P-18 George letter, dated September 14, 2018
P-19 Petitioner resignation, dated September 17, 2018
P-20 FMLA Form, Department of Labor, undated
P-21 FMLA Form, Department of Labor, dated November 1, 2017
P-22 FMLA Form, Department of Labor, dated November 1, 2017
P-23 FMLA Form, Department of Labor, dated November 16, 2017
P-24 FMLA Form, Department of Labor, dated November 16, 2017
P-25 FMLA Form, Department of Labor, dated November 16, 2017
P-26 FMLA Form, Department of Labor, dated November 16, 2017
P-27 Agreement between Middletown Education Association and Board of Education 2017-2021
P-28 Petitioner's Masters of Education diploma, dated August 31, 2012

For respondent:

R-1 Middletown High School Faculty Manual
R-2 Covert letter to petitioner, dated January 29, 2013
R-3 Salary Statement
R-4 Delivery receipt, dated September 15, 2017
R-5 Pickus letter to petitioner, dated October 11, 2017
R-6 Pickus letter to petitioner, dated October 19, 2017
R-7 Pickus letter to petitioner, dated November 21, 2017
R-8 George letter to petitioner, dated December 11, 2017
R-9 Pickus letter to petitioner, dated December 14, 2017
R-10 Pickus letter to petitioner, dated December 14, 2017
R-11 Pickus letter to petitioner, dated January 25, 2018
R-12 Pickus letter to petitioner, dated January 25, 2018
R-13 Delivery receipt, dated February 27, 2018
R-14 Petitioner absence letter, dated August 20, 2018

R-15 Petitioner Employment Contract, dated May 8, 2015
R-16 Shopp email to petitioner, dated October 30, 2017
R-17 Email chain, dated November 1, 2017
R-18 Email to Shopp, dated November 16, 2017
R-19 Petitioner email, dated December 4, 2017
R-20 Shopp email, dated December 6, 2017
R-21 Shopp email, dated December 6, 2017
R-22 Pickus letter to petitioner, dated December 11, 2017
R-23 Shopp email, dated December 12, 2017
R-24 Immersion email, dated December 22, 2017
R-25 Immersion email, dated January 17, 2018
R-26 Bacos email to Shopp, dated January 18, 2018
R-27 Bacos email to Shopp, dated January 18, 2018
R-28 Last Chance Agreement, dated July 30, 2018
R-29 Correspondence Notes
R-30 FMLA Form, Department of Labor, dated November 1, 2017
R-31 FMLA Form, Department of Labor, undated
R-32 FMLA Form, Department of Labor, undated
R-33 Hadley letter, dated September 18, 2017
R-34 Abel letter, dated September 29, 2017
R-35 Consent to Release Records, dated December 2017
R-36 Advanced Psychiatric Care facsimile, dated June 14, 2018
R-37 Advanced Psychiatric Care facsimile, dated June 18, 2018
R-38 Petitioner resume
R-39 New Jersey Standard Certificate
R-40 Petitioner Oath of Allegiance
R-41 George letter, dated November 3, 2014
R-42 Provisional Teacher Program
R-43 Petitioner Absence Report for 2013-14
R-44 Middletown Dismissal Policy, dated March 21, 2006
R-45 Recovery Unplugged letter, dated October 31, 2017
R-46 (not admitted)
R-47 Shopp email, dated September 14, 2018

R-48 Shopp email accepting resignation, dated September 17, 2018

R-49 Collucci email, dated August 24, 2018

R-50 Iofin office email to Shopp, dated August 24, 2018

R-51 Merlino email, dated July 27, 2018

R-52 Shopp email to petitioner, dated February 28, 2018

R-53 Cholette email to Shopp, dated February 26, 2018

R-54 Bacos email to Shopp, dated January 17, 2018

R-55 Iofin staff email to Shopp, dated December 14, 2017

R-56 FMLA Former, Department of Labor, November 16, 2017

R-57 Immersion Discharge Documentation, dated October 9, 2018

R-58 Aftercare Plan/Discharge Instruction, dated November 22, 2017

R-59 Pauline Tyas, APN, Progress Note, dated July 12, 2018

R-60 Certification of Record Custodian, dated December 26, 2020

R-61 Agreement between Middletown Education Association and Board of Education 2017-2021

R-62 Facsimile to Iofin, dated October 20, 2017

R-63 Hundley letter to Respondent, dated October 10, 2018

R-64 DeRosa letter to petitioner, dated March 1, 2018

R-65 George letter to petitioner, dated December 11, 2017

R-66 Prescription data

R-67 Draft Last Chance Agreement

R-68 Pickus email, dated July 30, 2018

R-69 Cholette email, dated August 16, 2018

R-70 Hundley letter, dated August 6, 2020

R-71 Middletown Family Leave Policy, dated February 2016

R-72 Iofin staff email to Shopp, dated November 22, 2017

R-73 Proof of hand delivery, dated December 11, 2017

R-74 Proof of hand delivery, dated September 14, 2018

R-75 Pickus letter to petitioner, dated August 13, 2018

R-76 Anderson memo, dated October 5, 2017

R-77 Shopp email, dated November 1, 2017

R-78 Cholette email, dated November 1, 2017

R-79 Shopp email, dated January 20, 2021

R-80 Shopp email, dated November 14, 2017
R-81 Shopp email, dated December 13, 2017
R-82 Manasquan Police welfare check, dated October 4, 2017
R-83 Middletown Substance Abuse Policy, dated March 2016
R-84 Middletown Sick Leave Policy, dated March 2006
R-85 Middletown Family Leave Regulations, dated August 2007
R-86 Middletown Sick Leave Policy, dated March 2006
R-87 Middletown Substance Abuse Policy, dated March 2016
R-88 Middletown Pupil Liability Policy, dated March 2006
R-89 Middletown Pupil Liability Policy, dated March 2006
R-90 Middletown Certification of Tenure Charges, dated November 2010
R-91 Middletown Staff Attendance Policy, dated March 2006
R-92 Middletown Certification of Tenure Charges, dated March 2006
R-93 Middletown Attendance Policy, dated March 2006
R-94 Petitioner email, dated February 28, 2018
R-95 Shopp email, dated March 8, 2018
R-96 Lanzot email, dated January 20, 2021
R-97 Cholette email, dated March 9, 2018
R-98 Cholette email, dated March 16, 2018
R-99 Cholette email, dated March 30, 2018
R-100 Shopp email, dated April 13, 2018
R-101 Cholette email, dated April 13, 2018
R-102 Cholette email, dated April 19, 2018
R-103 Shopp email, dated April 24, 2018
R-104 Shopp email, dated May 1, 2018
R-105 Petitioner email, dated May 14, 2018
R-106 Pickus email, dated March 15, 2018
R-107 Shopp email, dated May 25, 2018
R-108 Shopp email, dated May 30, 2018
R-109 Shopp email, dated June 5, 2018
R-110 Cholette email, undated
R-111 Shopp email, dated July 3, 2018
R-112 Shopp email, dated August 13 2018

R-113 Shopp email, dated August 13, 2018

R-114 Shopp email, dated August 16, 2018

R-115 Cholette email, dated August 16, 2018

R-116 Petitioner email, dated August 19, 2018

R-117 Shopp email, dated August 23, 2018

R-118 Shopp email, dated September 14, 2018

R-119 Shopp email, dated January 20, 2021

R-120 Cholette email, dated January 26, 2018

R-121 Cholette email, dated April 2, 2018

R-122 Cholette email, dated May 15, 2018

R-123 Cholette email, dated December 11, 2017

R-124 Cholette email, dated March 13, 2018

R-125 Shopp email, dated September 14, 2018