

44-25
OAL Dkt. No. EDU 04834-21
Agency Dkt. No. 73-5/21

New Jersey Commissioner of Education
Final Decision

Lara Lovett,

Petitioner,

v.

Board of Education of the Township of Sparta,
Sussex County,

Respondent.

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

The material facts are uncontested. Petitioner is an environmental science teacher at Sparta High School. On February 10, 2021, the Interim Superintendent of Schools placed her on administrative leave pursuant to *N.J.S.A. 18A:25-6*, pending a psychiatric evaluation to be conducted by the Board's psychiatrist. That day, petitioner was emotional at school while speaking to her supervisor and expressed that she was extremely overwhelmed by various stressors, including family health concerns and school-related challenges that arose while teaching in-person during the COVID-19 pandemic. Petitioner agreed to be evaluated by the Board's psychiatrist.

Following an evaluation on February 17, 2021, the Board's psychiatrist concluded that petitioner needed weekly therapy and treatment for panic disorder, and that if the Board would not allow her to work from home, then she should be reassessed in 3 months to determine her readiness to return to in-person teaching. Subsequently, the Interim Superintendent informed petitioner that working from home was not an option and that she would be placed on paid sick leave from March 2, 2021, through April 23, 2021. He also advised petitioner that she should be reevaluated the week of May 3, 2021, regarding her fitness to return to work and that a letter from her therapy provider would suffice.

On March 4, 2021, petitioner emailed the Interim Superintendent to report that her two main stressors had been resolved, that she would soon receive both doses of the COVID-19 vaccine, that her children would be returning to school, and that she no longer felt unsafe returning to in-person teaching. She asked whether she could return to in-person teaching prior to May 2021 if cleared by her therapist. The Interim Superintendent replied that since the Board's psychiatrist did not provide recommendations regarding what should happen if her stressors were relieved, he was hesitant to allow her to return to work prior to May 2021 but added that they could revisit the topic in the future. Petitioner signed releases of information to allow her therapist to communicate with the Board's psychiatrist, but the Board's psychiatrist refused to do so and advised petitioner to contact her employer.

On March 13, 2021, petitioner provided the Interim Superintendent with a note from a psychiatrist who evaluated her that day. The psychiatrist diagnosed her with anxiety/panic disorder and stress disorder/adjustment, recommended that she continue with her medication and weekly therapy, and cleared her to return to work with no restrictions. The Interim

Superintendent acknowledged receipt of the medical note but maintained that he wanted petitioner to remain out of work for 3 months. He did not reach out to the Board's psychiatrist, despite petitioner's email informing him about the alleviation of her stressors and the medical note from her psychiatrist clearing her to return to work. He also knew that petitioner's therapist wanted to provide the Board's psychiatrist with updated information regarding her treatment and progress, but he never contacted the Board's psychiatrist regarding same.

On April 14, 2021, the Interim Superintendent emailed petitioner to ask whether she wanted to be reevaluated by her own physician at her expense or by the Board's psychiatrist at the Board's expense. On or about April 25, 2021, petitioner's psychiatrist reevaluated her and issued a report clearing her to return to work. As of April 26, 2021, petitioner was no longer charged sick days and she returned to her in-person teaching position on May 10, 2021.

At the conclusion of the proceedings at the OAL, which included testimony from petitioner and the Interim Superintendent, the ALJ determined that the Interim Superintendent acted arbitrarily, capriciously, and unreasonably and that petitioner's sick time charged from March 2 through April 23, 2021, should be restored. Specifically, the ALJ held that the Interim Superintendent violated *N.J.S.A. 18A:25-6* and *18A:16-2* because he unilaterally placed petitioner on paid administrative leave pending the psychiatric evaluation without a Board vote, and required petitioner to submit to a psychiatric evaluation absent Board approval. However, the ALJ recognized that petitioner consented to being placed on paid leave, had agreed to attend the psychiatric evaluation, and that her petition alleged only that she was improperly placed on sick leave pursuant to *N.J.S.A. 18A:16-4*.

The ALJ also concluded that the Interim Superintendent violated *N.J.S.A. 18A:16-4* by refusing to consider additional proofs submitted by petitioner in March 2021 indicating her fitness to return to work. Instead of seeking input from the Board's psychiatrist, the ALJ found that the Interim Superintendent used the Board's psychiatrist's evaluation "as a shield" to continue petitioner's sick leave. The ALJ further found that only once petitioner had remained out of work for 3 months did the Interim Superintendent unilaterally accept petitioner's psychiatrist's recommendation that she was ready to return to work. In sum, the ALJ concluded that the Interim Superintendent's actions were arbitrary because he failed to consider petitioner's March 2021 request to return to work and neither provided the Board nor the Board's psychiatrist with the proofs supplied by petitioner and her psychiatrist to review.

In its exceptions, the Board disputes the ALJ's legal conclusion that the Interim Superintendent acted arbitrarily, capriciously, and unreasonably. Specifically, the Board argues that: (1) the decision to place petitioner on administrative leave with pay did not violate *N.J.S.A. 18A:25-6*; (2) it did not violate *N.J.S.A. 18A:16-2* by not passing a resolution to compel petitioner to submit to a psychiatric examination because petitioner waived her right to a Board vote regarding same; and (3) the Interim Superintendent was not legally required to accept petitioner's doctor's recommendation pertaining to her ability to return to work.

Upon review, the Commissioner adopts the ALJ's Initial Decision as the final decision in this matter, with modification as explained herein. Because petitioner did not allege that the Board violated *N.J.S.A. 18A:25-6* or *N.J.S.A. 18A:16-2*, the ALJ's findings regarding those statutes were unnecessary. However, the Commissioner wishes to clarify that, pursuant to the plain language of *N.J.S.A. 18A:25-6*, the superintendent of schools may "suspend any assistant

superintendent, principal or teaching staff member” provided that the approval of the Board President is secured. *Emri v. Evesham Twp. Bd. of Educ.*, 327 F. Supp. 2d 463, 474 (D.N.J. 2004). *N.J.S.A.* 18A:25-6 does not require that the Board conduct a recorded roll call vote to suspend an employee, but rather that it conduct a recorded roll call vote for the subsequent “restoration or removal of such person as it shall deem proper.” Thus, the Commissioner finds that the Board did not act unreasonably by failing to conduct a recorded roll call vote prior to petitioner’s placement on paid administrative leave pending the psychiatric evaluation.

As for *N.J.S.A.* 18A:16-2, it states that the board of education—not solely the superintendent of schools—may require an employee to undergo a psychiatric evaluation under certain circumstances. *See Kochman v. Keansburg Bd. of Educ.*, 124 N.J. Super. 203, 212-214 (Ch. Div. 1973) (discussing board of education’s authority to require psychiatric evaluations under certain circumstances in the interest of protecting school children from unfit teachers, as well as the employee’s right to a statement of reasons for requiring the evaluation and a hearing before the board upon request). *Accord Gish v. Bd. of Educ. of Paramus*, 145 N.J. Super. 96, 106-07 (App. Div. 1976). Although the Interim Superintendent contemplated seeking Board approval for the psychiatric evaluation in this case, he ultimately did not do so because petitioner voluntarily consented to participate. The Commissioner finds that was reasonable under the circumstances.

That said, the Commissioner concurs with the ALJ that the Interim Superintendent violated *N.J.S.A.* 18A:16-4 by failing to adequately consider petitioner’s March 2021 request to return to work in that he neither provided the Board nor the Board’s psychiatrist with information supplied by petitioner and her psychiatrist to review. Pursuant to *N.J.S.A.* 18A:16-4, the employee must furnish “proof of recovery, satisfactory to the board” to return to work following

a psychiatric evaluation which indicated a “mental abnormality.” Petitioner, who was cooperative and forthcoming through the entire process, provided the Interim Superintendent with her own statement, a medical note from a psychiatrist who evaluated her, and even attempted to arrange for her therapist to communicate with the Board’s psychiatrist. The record supports the ALJ’s conclusion that the Interim Superintendent unilaterally rejected petitioner’s proofs and did not present them to the Board for review. While the Board was certainly not legally required to accept the proofs submitted by petitioner and permit her to return to work in March 2021, it was arbitrary and unreasonable for the Board not to review and consider the proofs at all.

Accordingly, the Initial Decision is adopted as the final decision in this matter, as modified, and the petition of appeal is hereby granted. The Board is directed to restore petitioner’s sick leave days charged from March 2, 2021, through April 23, 2021.

IT IS SO ORDERED.¹


ACTING COMMISSIONER OF EDUCATION

Date of Decision: February 7, 2025

Date of Mailing: February 10, 2025

¹ 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 04834-21

AGENCY DKT. NO. 73-5/21

LARA LOVETT,

Petitioner,

v.

**BOARD OF EDUCATION OF THE
TOWNSHIP OF SPARTA, SUSSEX
COUNTY,**

Respondent.

Randi Doner April, Esq., for petitioner Lara Lovett (Oxford Cohen, P.C., attorneys)

Marc H. Zitomer, Esq., for respondent Board of Education of the Township of Sparta
(Schenck Price Smith & King, attorneys)

Record Closed: October 28, 2024

Decided: November 19, 2024

BEFORE **JULIO C. MOREJON**, ALJ:

STATEMENT OF THE CASE

Petitioner, Lara Lovett, (Lovett) appeals the determination made by the Board of Education of the Township of Sparta (the District) placing her on leave after a psychiatric evaluation. Lovett disputes the District's decision to continue her time on leave dispute her

request to return to work after her submission of a psychiatric report allowing her to return to work sooner. Lovett seeks a return of the sick days charged to her for the disputed time she was on leave.

PROCEDURAL HISTORY

On or about May 4, 2021, Lovett filed a Petition of Appeal with the New Jersey Commissioner of Education (Commissioner). On or about May 27, 2021, the District filed an answer with affirmative defenses. The Commissioner then deemed this matter a contested matter and the case was transmitted to the New Jersey Office of Administrative Law (OAL) on June 2, 2021, a zoom hearing was held on November 18, 2022. Appearing to testify was Lara Lovett, Patrick McQueeney, and Marisa Wilson.

The parties agreed to submit post-hearing briefs by February 15, 2023, which was subsequently extended to February 17, 2023. The record remained open to allow for the review of exhibits in evidence, reading the transcript and post hearing summations, and for the parties confirmation of the exhibits. I closed the record on October 28, 2024.

FACTUAL DISCUSSION

The following **FACTS** are not in dispute, and I **FIND** them as **FACT** herein.

Lovet is currently employed by the District and has been since September 2012 and has tenure. She is a teacher of Environmental Science. Lovett stated that in September of 2020 she was physically located at her home and teaching remotely. At that time, due to the COVID-19 epidemic, the District had teachers physically come into the school building to conduct the teaching classes remotely to the students who were in their homes. Lovett did not report to the school as she had been granted an accommodation to teach remotely from home, as her then eleven-year-old daughter a Sparta student who was learning remotely from home, required all medical supervision. (Lovett also had a nine-year old child who remained home taking classes remotely). The District's teaching/learning arrangements changed in mid-January 2021, as all teachers would report to school while

the students would be split in half with one group learning in person and the other group joining remotely on the computer.

Lovett concerned about returning to work in person because of her health concerns about COVID, as well as her daughter's risks sought a medical accommodation, allowing her to remain working remotely, until she could receive her first COVID-19 immunization. (J-1). Lovett's medical accommodation was denied by the Interim Superintendent Patrick McQueeney (McQueeney). Because of McQueeney's decision denying her medical accommodation, Lovett and her husband decided that they would leave their eleven-year and nine-year old child at home learning remotely, while Lovett and her husband were at work. Lovett returned to school on January 19, 2021. The District was aware of Lovett's home-work arrangement.

On February 10, 2021, Lovett's supervisor, Marisa Wilson, (Dr. Wilson) stopped by Lovett's classroom to see how she was doing. Lovett became emotional, cried and expressed that she was extremely overwhelmed on several fronts: family, school, and health. Dr. Wilson left Lovett's classroom and returned later with Principal Ronnie Spring (Spring). They accompanied Lovett to the principal's office where Lovett was told that she had to call her husband to pick her up. After being told that she would not be able to leave alone, she contacted her husband, who had to leave his teaching job, and then follow her while she drove herself home.

Prior to leaving the school, Lovett was directed by the District to attend a zoom appointment later that evening for a risk assessment to be conducted by Tri County Behavioral Health (Tri County). Lovett participated in the risk assessment on February 10, and later that day Tri-County' submitted the risk assessment evaluation to Lovett and McQueeney (J-3). The Tri-County evaluation recommended that Lovett could return to work, and also reported the following:

Symptoms reported: anxiety, decreased appetite, avoidance, depression (since January 2021), panic, avoidance, and sleep changes;

History: migraines, and no history of mental illness, mild anxious mood, and no cognitive impairment, no suicide, no self-injury, and no homicide tendency reported;

Triggers reported: reported as “attacks from parents and students”

Diagnosis: a diagnosis of adjustment disorder with anxiety was made;

Treatment: individual out-patient mental health services.

[J-3]

Later the same day on February 10, 2021, after receiving the Tri-County evaluation, McQueeney send Lovett a letter by email and regular mail, informing her that she was being placed on administrative leave pursuant to N.J.S.A. 18A:25-6, pending psychiatric clearance by Dr. Michael Finkelstein, as a result of “our [the District’s] concern about your mental health and well-being.” (J-4). McQueeney’s letter to Lovett stated that her return to work was contingent upon Dr. Finkelstein’s opinion that Lovett was “fit for duty”, and that the District could begin to charge Lovett “sick days”. Id.

The following day, February 11, 2021, Lovett emailed McQueeney, agreeing to the District’s conditions, and to meet with Dr. Finkelstein. In addition, Lovett explained in her email about the “stresses” that she had been exposed to due to her interactions with parents at the school and teaching children in the Covid pandemic, and admitting that “yes, it has taken its toll” on her and providing examples of incidents of interactions with parents at the school, as well as receiving parent emails complaining about the educational changes related to Covid. (J-5). In her email to McQueeney she refuted Dr. Wilson’s statement that she would “hurt” herself. Id. Lovett stated specifically:

I never said I would hurt myself. My husband never said he was worried about me hurting myself. We were very surprised to see that in writing as a reason for referral. I assure all parties that I would never hurt myself - in fact that is paradoxical to my requesting accommodations from the district to teach remotely in order to not contract covid for concern of high-risk health complications/death for myself and my SMS daughter.

[Id.]

Lovett was examined by Dr. Finkelstein on February 17, 2021, who concluded that she was unable to return to teaching in-person classes at that time (J-6). Dr. Finkelstein

opined that her condition of panic disorder required psychological and psychiatric treatment and that she should be referred for weekly cognitive behavioral therapy and for psychiatric evaluation and treatment. He further opined that she remained “very vulnerable” and that [r]eturning to work in an in-person environment at school at [that] time would most likely worsen her condition and she would not be able to work.” Id. Dr. Finkelstein concluded that “[i]f the option of working from home [was] not available, [she] should remain on disability and be reassessed in 3 months to determine if she is ready to return to in-person teaching.” Ibid.

Since working from home was not available to the District employees, Lovett remained out on a paid leave of absence from work. On March 2, 2021, Lovett received Dr. Finkelstein’s report and recommendations. McQueeney informed Lovett that she would no longer be on paid administrative leave and that she could take Family and Medical Leave Act (“FMLA”) and/or utilize her accumulated sick days until she returned to work. Lovett would be placed on sick leave from March 2, 2021 through April 23, 2021, for a total of twenty-eight days (J-20). McQueeney further informed Lovett that she should be re-evaluated the week of May 3, 2021 for her fitness to return to work. (J-7).

Because Lovett was not cleared for in-person instruction and did not elect to take FMLA leave the District continued to pay her but began charging her sick days on March 2, 2021. On March 4, 2021, Lovett wrote to McQueeney informing him that her “two main stressors” had been resolved and that she no longer had a need to request remote accommodations. She informed him that after completing both doses of the COVID-19 vaccine, she would no longer feel “unsafe” with in-person instruction. Lovett requested to return to in-person instruction sooner if cleared by her therapist. (J-8).

On March 8, 2021, McQueeney sent Lovett an email and informed her that since Dr. Finkelstein did not provide recommendations for her treatment should her “stressors be relieved” he was “hesitant to go against Dr. Finkelstein’s recommendations” of Lovett’s condition, and informed Lovett that they could “revisit the topic in the future.” (J-9).

Lovett provided McQueen with a medical note from Dr. Thomas D'Amato, M.D., (Dr. D'Amato), a psychiatrist who examined Lovett on March 13, 2021 (J-13). Dr. D'Amato diagnosed Lovett with anxiety/panic disorders, stress disorder/adjustment. He recommended that she continue taking psychiatric medication and continue seeing a therapist weekly. He concluded by clearing her to return to work with no restrictions. Id.

On March 16, 2021, McQueeney wrote to Lovett via email to inform her that he had received Dr. D'Amato's note, but that he still wanted her to follow Dr. Finkelstein's recommendations to remain out of work for a total of three (3) months while she received the recommended treatment of three months and that she could then be reevaluated "no earlier than the week of May 17th (based upon the evaluation date of February 17, 2021)." (J-14).

On April 14, 2021, in anticipation of Lovett's return to work on or about May 3, 2021, McQueeney wrote to Lovett via email to inquire whether she wanted to be re-evaluated by her own physician at her expense or by Dr. Finkelstein at the Board's expense. (J-15). On April 19, 2021, Lovett informed McQueeney that she would be re-evaluated by her own physician, which could be scheduled for April 24, 2021 (J-16), which was acceptable to McQueeney (J-17).

On April 25, 2021, Dr. D'Amato issued his re-evaluation report clearing Lovett to return to work.¹ McQueeney sent an email to Dr. D'Amato on April 30, 2021, concerning certain "inaccuracies" which were contained in the report (J-18). Dr. D'Amato responded on April 30, 2021, to same explaining the reasons for any "errors" in his re-evaluation (J-19).

Commencing on April 26, 2021, the District no longer charged Lovett sick days but continued to pay her full salary pending her re-entry meeting. (J-20). Lovett had a re-entry meeting with the administration on or about May 4, 2021 and she returned to her in-person teaching position on May 10, 2021.

¹ Dr. D'Amato's re-evaluation report was not produced in the hearing.

ADDITIONAL FACTS

The following factual discussion is derived from the testimony of the witnesses, Lovett, McQueeney and Wilson, whose testimony, I **FIND** credible and as **FACT** herein:

Lovett

Lovett admitted that she reached a “breaking point” on February 10, 2021, the day she met and spoke with Wilson. She testified that at that point in the school year, parents were as stressed as the students and staff. However, that week there was a new level of aggression from some parents. (T31:9-11). When Wilson stopped her classroom to check in on Lovett two days later, Lovett stated she was extremely upset because of her interactions with parents. Lovett testified that she told Wilson she was miserable; didn’t want to do this anymore; didn’t want to come to work in the morning; didn’t want to be yelled at by parents; didn’t want to teach remote students and live students simultaneously; didn’t want to leave her medically susceptible children at home unattended. However, she denied telling Wilson that she was suicidal, or wanted to hurt herself, or had lost the will to live. (T34:7-11). She explained that when she told Wilson she “didn’t want to do this anymore,” she was referring to leaving her children at home, worrying about them, being yelled at by parents all while doing two instructional jobs simultaneously. (T35:8-11).

Regarding Dr. Finkelstein’s evaluation report. (J-6), Lovett testified about a few inconsistencies in the document. She denied telling her husband that she was going to hurt herself and burn her school gear. She denied telling Dr. Finkelstein that she had never been out on disability, as the District did not place her on disability. (T51:16-20).

Lovett testified that at no time during this process did she dispute McQueeney’s right as superintendent to direct her to undergo a psychological examination. She stated that she disputed McQueeney’s decision to keep her out of work for three months, as his decision was contrary to the Tri-County assessment allowing her to return to work on February 23, 2021; she believed that Dr. D’Amato’s evaluation of March 13, 2021, satisfied

Dr. Finkelstein's recommendations. Lovett testified that she did return to work on May 7, 2021, following the submission of a second evaluation by Dr. D'Amato after April 30, 2021.

As a result of McQueeney's decision to adhere to Dr. Finkelstein's recommendation that she not return to work until a second evaluation, Lovett was out on sick time from March 2, 2021 through April 23, 2021 (J-20). Lovett testified that she believed thirty-three (33) sick days were deducted unnecessarily. Resulting in her suffering "an economic loss" of over \$3600 because of McQueeney's decision. (T67:22-68:5).²

McQueeney:

McQueeney testified that he requested Lovett to undergo the initial assessment with Tri-County solely relying on Wilson's report of her interactions with Lovett. He stated that when he requested Lovett undergo the initial wellness evaluation with Tri-County, he was going to have her undergo a psychiatric evaluation. He affirmed that Tri-County's determination that Lovett could return to work did not change his opinion that she could not return until she had a psychiatric evaluation. He claimed that his concern stemmed from Wilson's comments that she was a danger to herself, that her husband had concerns and that she burnt her Sparta gear. He admitted that he never spoke with Lovett's husband regarding these alleged statements. He also admitted that he never personally followed up even after Lovett explained what had happened.

With regard to Dr. Finkelstein's report, McQueeney testified that there was no language concerning what would occur should there be alleviation of stressors. McQueeney affirmed that while Dr. Finkelstein stated that Lovett was cleared for remote work, there was no remote work available. He stated that he determined that Lovett should go on leave while being charged sick days. When asked about Dr. Finkelstein's statement that if Lovett could not work remotely, she should remain on disability, McQueeney admitted that at the time of the report, Lovett was not on disability; she was on paid administrative leave.

² The District Absentee Report admitted in evidence reflects twenty-eight days of sick pay from March 2, 2021 to April 23, 2021 (J-20).

In looking at his own letter detailing Dr. Finkelstein's report dated March 2, 2021, McQueeney acknowledged that he did not note the erroneous conclusion that "Lovett was on disability." (T126:19-22). McQueeney recalled receiving a report from Dr. D'Amato (J-13), that Lovett was cleared to return to work. McQueeney stated that it did not alter his opinion because he "was not comfortable with foregoing Dr. Finkelstein's recommendations and permitting this to clear her return to work." (T112:8-11).

On cross-examination, McQueeney admitted that despite Dr. Finkelstein's error about Lovett's placement on disability, and despite Lovett's email informing him about the alleviation of stressors, he never reached out to Dr. Finkelstein to request additional information. He acknowledged that he was aware that Lovett's therapist reached out to Dr. Finkelstein as he was copied on the response, however, he still admitted that he did not reach out to Dr. Finkelstein.

On cross-examination, McQueeney stated that he was aware that Lovett had two children in the Sparta School System and further understood that one of them had medical issues. He admitted that he approved her remote accommodation for the first part of the school year in part because of that child.

Wilson

Wilson testified that Lovett had been having parent/student issues which was not uncommon during COVID. She stated that Lovett had been having issues with parents over the days preceding days. Wilson stated that "it was a tough time in general to be a teacher, and I did a lot of checking in on a lot of teachers during that time." (T165:1-3).

Wilson recalled that when she visited Lovett on February 10, Lovett began venting about the current situation with the students and teachers and became increasingly upset. She stated that Lovett claimed to be at a "breaking point and didn't want to wake up" anymore. (T156:22-24). She testified that Lovett said that she had been sleeping a lot, found it hard to celebrate her daughter's birthday; that her husband was worried about her

hurting herself and that she burnt her Sparta gear. (T157:1-16). She was also crying at that point. Wilson said that it “was really, really scary to me...” (T157:25).

Wilson testified that after sitting with her, Wilson testified that she then left Lovett in the classroom and went to the main office to inform the principal. She stated that she did not suggest that Lovett accompany her because she wanted to talk to the principal first. She stated that she then sent an email to the principal and the superintendent describing the incident. (J-2). When looking at J-2, Wilson stated that there was a line that could have been “better articulated.” (T162:15). She stated that the line about the husband’s fears could have been rephrased. Her only involvement after that was ensuring that Lovett’s classes were covered while she was out. (T163:5-7).

On cross-examination, Wilson admitted that despite having training at the school regarding how to handle an employee undergoing an emotional moment, she left Lovett alone when her training taught her to do so otherwise. She admitted she did the same despite their being a telephone in Lovett’s classroom, that Wilson could have used to call the principal. Wilson also stated that when she saw Lovett’s husband in the office, she did not ask him about Lovett’s statements concerning his fears.

LEGAL ANALYSIS AND CONCLUSIONS

N.J.S.A. 18A:25-6

This matter is before the OAL because McQueeney determined on February 21, 2021, to place Lovett on “administrative leave of absence with pay from all of your employment duties in the Sparta School District, pending psychiatric clearance based upon our concerns about your mental health and well-being.” (J-4). As a condition to return to work, McQueeney informed Lovett that she will be able to return to work after conducting a risk assessment and psychiatric evaluation by Dr. Finkelstein. Id.

Finally, McQueeney advised Lovett that “Should you wish for the Board to pass a resolution compelling you to go for this examination rather than you going for the

examination voluntarily, please let me know and I will take the appropriate steps to do so.”
Id.

On February 11, 2021 (J-5), Lovett volunteered to the conditions that McQueeney had communicated to her. On March 2, 2021, McQueeney received the psychiatric medical report from Dr. Finkelstein, and based upon the same McQueeney determined that Lovett would not be returned to work until her psychiatric “reassessment” the week of May 3, 2021. (J-7). McQueeney would then place Lovett on sick leave until her return to work (J-20).

In making his determination on February 10, 2021 , McQueeney cites N.J.S.A. 18A:25-6, as his authority, which provides in part:

The superintendent of schools may, with the approval of the president... of the board ... employing him, suspend any... teaching staff member, and shall report such a suspension to the board ... forthwith. The board ..., each by a recorded roll call majority vote of its membership, shall take such action for the restoration or removal of such person as it shall deem proper.

However, the record reflects that the District did not take a vote to “suspend” Lovett as required under N.J.S.A. 18A:25-6, and I therefore **CONCLUDE** that McQueeney’s decision contained in his letter of February 10, 2021, to place Lovett on leave in accordance with N.J.S.A. 18A:25-6, is not in conformance with the statutory requirements therein, and said decision is therefore “patently arbitrary, without rational basis or induced by improper motives.” Boult v. Bd. of Educ. of Passaic City, 136 N.J.L. 521 (E & A. 1948).

Notwithstanding, my conclusion above, the record reflects that Lovett consented to McQueeney’s request on February 10, 2021 (J-4), to be put on administrative leave pending the assessment and psychiatric evaluation, as she “volunteered” to the same in her response on February 11, 2021 (J-5). While N.J.S.A. 18A:25-6 contains no such consent provision, Lovett’s Petition of Appeal filed herein, alleges that the District improperly placed Lovett on psychiatric leave under N.J.S.A. 18A:16-4, and requests a finding that the District’s

actions violate N.J.S.A. 18A:16-1 et seq. Moreover, the record reflects that the District and Lovett respectively argue the applicability of the requirements of N.J.S.A. 18A:16-2 and N.J.S.A. 18A:16-4, to the District's decision. A review of the District's compliance with N.J.S.A. 18A:16-2 and N.J.S.A. 18A:16-4 will follow.

N.J.S.A. 18A:16-2(a) and N.J.S.A. 18A:16-4

N.J.S.A. 18A:16-2(a) states, in relevant part, that "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." [emphasis supplied]

N.J.S.A. 18A:16-4 sets forth the rights and obligations of the parties in the event of a finding of deviation from normal health made by the Board under N.J.S.A. 18A:16-2(a) , including the right to continued employment, stating:

If the result of any such examination indicates mental abnormality ... the employee shall be ineligible for further service until proof of recovery, satisfactory to the board, is furnished, but if the employee . . . has tenure, he may be granted sick leave with compensation as provided by law and shall, upon satisfactory recovery, . . . be reemployed with the same tenure as he possessed at the time his services were discontinued

The action of a local school board that lies within its discretionary powers may not be upset unless patently arbitrary, without rational basis or induced by improper motives. Boult v. Bd. of Educ. of Passaic City, 136 N.J.L. 521 (E. & A. 1948); Kopera v. Bd. of Educ. of West Orange, 60 N.J. Super. 288 (App. Div. 1960). The scope of the Commissioner's review is extremely narrow, and he may not substitute his judgment for that of those who made the decision, but rather, can only determine if the local board, and its administration, had a reasonable basis for their conclusions. Bd. of Educ. of Bernards Twp. v. C.M., 96 N.J.A.R.2d (EDU) 762.

I **CONCLUDE** that since McQueeney and not the District placed Lovett on administrative leave, determined that Lovett should undergo psychiatric evaluation, and thereby utilizing the results of the same to place Lovett on sick leave, the District did not comply with the requirements N.J.S.A. 18A:16-2 and N.J.S.A. 18A:16-4. Neither N.J.S.A. 18A:16-2 or N.J.S.A. 18A:16-4, provides an exception to school board approval to have a school teacher evaluated for mental illness and then place the teacher on sick leave because of the results of the same.

Notwithstanding my conclusion herein, assuming McQueeney sought the District's determination concerning his decisions herein, Lovett does not dispute McQueeney's initial decision to have her evaluated by Tri-County or by Dr. Finkelstein, as required by N.J.S.A. 18A:16-2. Lovett maintains that it is the entirety of McQueeney's actions that were arbitrary, capricious and unreasonable in maintaining her out of work for three months. In making her argument, Lovett cites in Bayshore Sewerage Co. v. Dept. of Environmental Protection, 122 N.J. Super. 184, 199-200 (Ch. Div. 1973), aff'd 131 N.J. Super. 37 (App. Div. 1974), and Galante v. Bd. of Ed. of the Borough of North Arlington, 2008 WL 2604872, in support of the same.

The District argues that it acted legally and appropriately under N.J.S.A. 18A:16-2, when McQueeney placed Lovett on a paid administrative leave, as its decision was neither arbitrary, nor capricious. The District cites Diaz v. Board of Education of the Township of Mahwah, Bergen County, OAL Docket No. EDU 01751-09, and Cummings v. Board of Education of the Township of Little Egg Harbor, Ocean County, OAL Docket No. EDU 3912-17 (2018), in support of the same.

The record reflects, and Lovett does not dispute that on February 11, 2021, she agreed to McQueeney's request on February 10, 2021, that she undergo the care assessment by Tri-County and the psychiatric evaluation by Dr. Finkelstein, which was performed, and McQueeney would then rely upon when deciding on March 2, 2021, that Lovett would not be able to return to work until she was "reassessed" to determine her "fitness" to return to work the week of May 3, 2021.(J-6 and J-7).

However, a review of the evidence presented herein discloses that whatever, consent to McQueeney's decision that Lovett initially made on February 10, 2021, was withdrawn or at the very least challenged by Lovett, when she wrote to McQueeney on March 4, 2021 (J-8). On said date, Lovett wrote to McQueeney inquiring if McQueeney would accept a "letter of fitness" for her return to work earlier than the week of May 3. Id. On March 8, 2021, McQueeney rejected Lovett's request for an earlier return to work, stating that he was "hesitant to go against Dr. Finkelstein's recommendations" (J-9).

The record again reveals Lovett's challenge of McQueeney's continued decision to abide by Dr. Finkelstein's report, when on March 13, 2021, Lovett submitted a psychiatric evaluation by Dr. D'Amato, which indicated she was fit to return to work (J-13). However, McQueeney did not accept the same on March 16, 2021, again relying exclusively on Dr. Finkelstein's evaluation. (J-14). While McQueeney's response could be viewed as cautious, there is no record of his or the District's consideration of her request to return sooner with medical clearance, other than to default to Dr. Finkelstein's evaluation.

The record is devoid of McQueeney or the District engaging in any significant discussion with Lovett or Dr. D'Amato in refusing to accept Dr. D'Amato's return to work report until he corrected certain alleged deficiencies. Moreover, McQueeney did not address Lovett's March 4, 2021 email where she set forth why a continued leave was unnecessary including but not limited to the vaccination status of herself and her children, both of whom were now in school as well as her continuing participation in therapy (J-8). McQueeney's so called responsive email did not adequately address the situation including a non-answer to her question about a fitness for work letter from her treating therapist.

McQueeney is not a mental health professional, and it would have been prudent for him to have sought the input of Dr. Finkelstein in considering Lovett's request to return to work on March 4, 2021, and Dr. D'Amato's initial evaluation. For whatever reason, he chose to make unilateral decision and use Dr. Finkelstein's evaluation as a shield to continue Lovett remaining on sick leave. McQueeney's decision making is highlighted in the very manner that he decided Lovett could return to work.

Sometime after April 30, 2021, McQueeney received Dr. D'Amato's second evaluation, and he determined that Lovett was fit to return to work, which Lovett did on May 7, 2021. However, I **FIND** from the record that McQueeney agreed with Dr. D'Amato's evaluation only because it was submitted following Dr. Finkelstein's recommended time frame for Lovett to remain out of work. I make this finding because the record is lacking any reason provided by McQueeney for distinguishing between Dr. D'Amato's second report from the first report in determining why Lovett was cleared to return. I **FIND** that the only reason McQueeney accepted Dr. D'Amato's second report recommending a return to work was that it was provided more than the three months recommended by Dr. Finkelstein, without considering any other factors. Thus, I **CONCLUDE** this conduct was arbitrary and to the detriment of Lovett remaining out on sick leave.

For the reasons set forth above concerning McQueeney's actions alone, I **CONCLUDE** that the same was arbitrary as he failed to consider or even address Lovett's request on March 4, 2021, to return to work and he did not present Dr. D'Amato's first evaluation to Dr. Finkelstein or the District for their consideration. I therefore **CONCLUDE** that Lovett is entitled to recoup her bank of sick days from March 2, 2021 to April 23, 2021 (J-20).

ORDER

It is **ORDERED** that Lovett's Petition of Appeal is granted for the reasons set forth herein, and she is entitled to recoup her sick days from the District from March 2, 2021 through April 23, 2021.

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 19, 2024

DATE



JULIO C. MOREJON, ALJ

Date Received at Agency:

November 19, 2024

Date E-Mailed to Parties:

November 19, 2024

JCM/lr

WITNESSES

Petitioner

Lara Lovett

Respondent

Patrick McQueeney

Dr. Marisa Wilson.

EXHIBITS

Joint

- J-1 Letter from J. Fisher, M.D., dated January 18, 2021
- J-2 E-Mail from M. Wilson, dated February 10, 2021
- J-3 Tri-County Behavioral Care School District Referral Form Evaluation/Release Form, dated February 10, 2021
- J-4 Letter from P. McQueeney, dated February 10, 2021
- J-5 E-Mail from L. Lovett, dated February 11, 2021
- J-6 Correspondence from M. Finkelstein, M.D., dated February 23, 2021
- J-7 Letter from P. McQueeney, dated March 2, 2021
- J-8 E-Mail from L. Lovett, dated March 4, 2021
- J-9 E-Mail from P. McQueeney, dated March 8, 2021
- J-10 Therapy Resources of Morris County, LLC Records & Information Release Authorization, dated March 9, 2021
- J-11 E-Mail from L. Lovett, dated March 10, 2021
- J-12 E-Mail from Miriam Fainsod, dated March 10, 2021
- J-13 Correspondence from Thomas D'Amato, M.D., dated March 13, 2021
- J-14 E-Mail from P. McQueeney, dated March 16, 2021
- J-15 E-Mail from P. McQueeney, dated April 14, 2021
- J-16 E-Mail from L. Lovett, dated April 19, 2021
- J-17 E-Mail from P. McQueeney, dated April 20, 2021

- J-18 Letter from P. McQueeney, dated April 30, 2021
- J-19 E-Mail from Thomas D'Amato, M.D., dated April 30, 2021
- J-20 L. Lovett Absence Report for September 1, 2020 – June 30, 2021
- J-21 Sparta Township Board of Education Policy 3,161
- J-22 Sparta Township Board of Education Policy & Regulation 3,432