SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3688-15T3

JOHN COSTELLO,

Plaintiff-Appellant,

v.

NORTHFIELD BOARD OF EDUCATION,[1]

Defendant-Respondent.

Argued November 2, 2017 – Decided April 5, 2018

Before Judges Simonelli, Haas and Rothstadt.

On appeal from Superior Court of New Jersey, Chancery Division, Atlantic County, Docket No. C-000010-16.

Aileen M. O'Driscoll argued the cause for appellant (Zazzali, Fagella, Nowak, Kleinbaum & Friedman, PC, attorneys; Aileen M. O'Driscoll, of counsel and on the briefs; Marissa McAleer, on the briefs).

John G. Geppert, Jr. argued the cause for respondent (Scarinci & Hollenbeck, LLC, attorneys; John G. Geppert, of counsel and on the brief; John A. Boppert and Saiju George, on the brief).

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[1] Improperly pled as School District of the City of Northfield, Atlantic County.

PER CURIAM

Plaintiff John Costello, a former tenured school nurse employed by respondent Northfield Board of Education (Board), appeals from the March 24, 2016 Law Division order, which denied his application to vacate an arbitrator's award issued pursuant to the New Jersey Tenure Employees Hearing Law (NJTEHL), N.J.S.A. 18A:6-10 to -18.1, based on incapacity. On appeal, Costello argues the award violates the law and public policy because the arbitrator improperly relied on a psychologist's report rather than a psychiatrist's report. Costello also argues the Board failed to provide evidence that may have changed the outcome. In the alternative, Costello argues the award violates the doctrines of progressive discipline and mitigation of penalty. For the following reasons, we affirm.

I.

Costello began his employment as a full-time certified school nurse in September 2001, and obtained tenure in the position. During the 2013-2014 school year, he covered the middle school and another full-time nurse covered the elementary school. After the other nurse retired in 2014, Costello became responsible for both schools and the Board hired a part-time nurse to replace the retiring nurse.

On February 19, 2015, the Board placed Costello on administrative leave following a series of incidents. The first incident occurred on November 5, 2014. A teacher called Costello to her classroom, where a student was having a seizure. When Costello arrived, he told the teacher he "had to go to work." Without consulting the teacher about the student's seizure, Costello walked over to the student, escorted him from the classroom, and turned him over to the other nurse upon arriving at the nurse's office. Several days later, Costello sent the teacher a flyer entitled "First Aid for Seizures," but did not discuss with her the procedures set forth in the flyer. The teacher attempted to discuss the procedures with Costello, but he was out of the building.

On November 10, 2014, Costello was called to a hallway where an ill, unresponsive third-grade student was lying in a teacher's arms. The student was unresponsive, gagging, and apparently on the verge of vomiting. Costello approached the student with no sense of urgency. He hummed with a sheet of paper in his mouth, and waited for a class to pass in the hallway before approaching the student. Without consulting the three teachers present, Costello grabbed the student by her hand, pulled her to her feet, and walked her to the nurse's office. Costello's conduct brought

the three teachers to tears. There was a video recording of the incident.

At a meeting on November 19, 2014, between Costello, a union representative, and the interim superintendent, Costello could not recall the November 10 incident. He stated: "I don't know if I'm coming or going to be honest with you. . . . I will be honest with you, I don't remember a lot of things this year."

On November 24, 2014, the Atlantic County Department of Human Services (ACDHS) conducted an audit of student immunization records and found thirty-seven deficiencies, which resulted from Costello's failure to collect and/or record student immunizations. These deficiencies violated N.J.S.A. 26:1A-10 and N.J.A.C. 8:52-4.1 to -4.24.

On January 16, 2015, two principals were summoned to the nurse's office after a staff member reported that Costello needed them immediately. When they arrived, they saw a third-grade student sitting at Costello's desk crying while Costello sat behind the desk. Costello immediately got up and sat down in another chair in the back of the office. In the student's presence, he yelled, "I am tired of this. I can't take this anymore[,]" and "I get no respect from the teachers, and I'm tired of how they speak to me." His entire body began to shake and his hands were

trembling. He went home and was later placed on paid administrative leave pending a psychological examination.

A substitute nurse who assumed Costello's duties after he left found the nurse's office in complete disarray and discovered numerous deficiencies that violated N.J.S.A. 18A:40-4 and N.J.A.C. 6A:16-2.1 to -2.4. Among other deficiencies, there were unsecured prescription medications, including Costello's personal medications, unlabeled and outdated medications, vaccine records in unmarked folders, no glucometer to evaluate for hypoglycemia of students or staff, unsecured student records and nurse's passes, and over 200 expired medications, including some that expired in 2008. There were no unexpired epi-pens, stock albuterol, nebulizer tubing, masks or wands, healthcare plans for a students who experience seizures, seizure log, or emergency action plans.

In addition, a nurse's aide found the nurse's office disorganized. There were stacks of papers, outdated materials, and unsecured student files with medical information. The nurse's aide testified before the arbitrator that she had to call an ambulance because there was no glucometer to test a staff member who came into the nurse's office with symptoms attributable to low blood sugar.

Chester E. Sigafoos, Ph.D. conducted a psychological evaluation to determine Costello's fitness for duty and issued a

comprehensive report. Sigafoos, who testified for the Board, reviewed documents, interviewed Costello, and administered numerous psychological tests. He found as follows, in pertinent part:

> In summary this is a very complex and distraught man. He is able to accurately perceive his world and his functioning in it. This presents as a double edge sword because just as much as he sees positive aspects he will also accurately see negative aspects. At the present time he is seeing negative aspects in himself which would account for why he tried to fake good in his presentation during the evaluation. He lacks a consistent and well defined coping style and will alternate ineffectively between expressive and ideational ways of dealing with his situations. He is likely to conduct himself in an unpredictable way. Recognizing that he does not have adequate coping styles to deal with his current levels of stress only heightens his anxiety and depression. He may have been effective in managing his stress in the past but current testing shows that he cannot do that now.

Sigafoos diagnosed Costello with generalized anxiety disorder, major depression, obsessive-compulsive personality disorder, and avoidant and schizoid personality traits. He opined that Costello's prognosis was poor, he was not fit for duty, and given his psychopathological condition and role as a school nurse, there were "no [meaningful] work place accommodations that [could] be made." Sigafoos testified that providing an accommodation of another school nurse to address the workload problem would not

address the central issue that in order to perform his duties as a school nurse, Costello had to be an independent health practitioner free of mental disease, defect and/or limitations.

Costello relied on the report and testimony of a psychologist, Robert L. Tanenbaum, Ph.D. In his report, Tanenbaum noted Costello suffered from some measure of depression and anxiety, although not to the degree Sigafoos had indicated. Tanenbaum concluded that Costello did "not demonstrate evidence of psychological disorder or dysfunction to a degree that would substantially interfere with his ability to perform his current job duties[.]" Tanenbaum noted Costello had a high degree of situational stress at work, and recommended he undergo psychological counseling. Costello did not undergo psychological counseling.

Costello also relied on a report of a psychiatrist, Charles E. Meusburger, M.D., who did not testify. In his report, Meusburger concluded that Costello did "not demonstrate any Axis 1 psychiatric diagnosis and [was] not required to have any subsequent ongoing treatment prior to returning to work." However, Meusburger admitted it was "understandable that [the Board] and superintendent would have concerns regarding [Costello's] performance, reliability, and standards of care." Meusburger concluded Costello's "performance [was] not due to psychiatric

causes[,]" but recommended he undergo treatment with a therapist. Costello did not undergo treatment with a therapist.

The interim superintendent issued four tenure charges against Costello. Following a six-day hearing, the arbitrator rendered an award sustaining the charge of incapacity. The arbitrator found it was not surprising that Costello's duties and stress levels of his position increased when the District eliminated one of the full-time school nurse positions and replaced it with a part-time nurse. The arbitrator concluded, however, that Costello could not handle the stress or properly function at the level necessary to perform his duties as a school nurse in a satisfactory manner.

Regarding the November 5, 2014 incident involving the student having a seizure, the arbitrator found Costello acted in a medically inappropriate manner. The arbitrator also found a school nurse's duties included interacting professionally with teaching staff and educating them on how to handle their students' health problems. The arbitrator determined Costello violated this duty by merely giving the student's teacher a leaflet on seizures without any explanation. The arbitrator concluded Costello's conduct on November 5 "was consistent with [Sigafoos'] analysis . . . that he inappropriately avoided interaction with" the teacher.

Regarding the November 10, 2014 incident involving the ill and unresponsive student lying in the hallway, the arbitrator found Costello's "conduct was totally inappropriate and consistent with Sigafoos' evaluation." The arbitrator also found Costello's testimony about the incident was not credible in light of the video recording of the incident.

Regarding the November 19, 2014 meeting with the interim superintendent, the arbitrator found Costello's inability to recall the November 10 incident nine days later and his emotional response to the superintendent was cause to question his ability to function effectively as a school nurse. The arbitrator emphasized a school nurse "must be able to function effectively" even when dealing with situational stress or an increased workload.

Regarding the January 16, 2015 incident when two principals were called to the nurse's office, the arbitrator found Costello's conduct in the presence of a student showed a "serious lack of judgment[,]" and when Costello began shaking and vibrating, it was apparent he "could not properly function[.]" The arbitrator found Costello provided no medical evidence that medication he was taking caused his emotional or physical state.

Addressing the observations made of the nurse's office after Costello was placed on leave, the arbitrator found he bore some responsibility for never disposing of the expired medications, and

bore a good deal of responsibility for the disarray in the nurse's office. The arbitrator noted Costello failed to provide a good reason "why books concerning proper medical procedures were not out in plain sight." The arbitrator also noted "Costello readily admitted that he never inputted medical information into the school computer system," and this violated school policy and would lead to confusion and delay. The arbitrator concluded "[t]here was a significant breakdown in Costello's health record keeping[,]" as determined by the ACDHS, and his failure "to keep up with his ministerial duties in maintaining the nurse's office [was] consistent with Sigafoos' evaluation[.]"

The arbitrator also considered Meusburger's and Tanenbaum's reports. He emphasized that Meusburger did not review the Board's documents about Costello's conduct, and the doctor acknowledged it was understandable the Board had concerns about Costello's conduct. The arbitrator also noted that Tanenbaum was unaware of the January 15, 2015 incident. He rejected Costello's argument that N.J.S.A. 18A:16-2 required a psychiatrist to perform an examination for incapacity, and concluded he may rely on Sigafoos' report. He stated:

> Given Costello's long record of satisfactory service with the district, his removal cannot be taken lightly. However, it is apparent that Costello was unable to competently perform his duties during the fall

> and winter of 2014-2015. He showed no self-awareness of his anxiety level and of how he was perceived by others. His own psychological expert, Dr. Tanenbaum recommended that Costello undergo counseling to help him cope with his stress, but there is no evidence that he ever did so. Unfortunately, there is no reason to think that if Costello were returned to the same work situation somehow he would behave any differently.
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> Accordingly, in light of the entire record,[2] including but not limited to the evaluation and recommendation of . . . Sigafoos . . . I find the Board . . . has met its burden of proof and will sustain the tenure charges against . . . Costello due to incapacity.
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> [(Emphasis added).]

The arbitrator ordered Costello's termination.

Costello filed an application in the Law Division to vacate the arbitrator's award and for reinstatement. He argued the arbitrator's award violated the law and was inconsistent with public policy because the arbitrator improperly relied on a psychologists' report instead of a medical doctor's report, in violation of N.J.S.A. 18A:16-2, N.J.S.A. 18A:16-3, and N.J.A.C. 6A:32-6.3. Costello posited the arbitrator was legally bound by Meusburger's report, and the report confirmed he would be capable of fully functioning as a school nurse with the abatement of

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[2] The record included the testimony of fifteen witnesses and seventy-seven exhibits.

institutional stress at work. In the alternative, Costello argued that, given his fifteen-year unblemished record, his termination violated the doctrines of progressive discipline and mitigation of penalty.

On March 24, 2016, Judge Mark H. Sandson entered an order denying Costello's application to vacate the arbitration award, and confirming the award. In a comprehensive oral opinion, the judge reasoned as follows:

> Here the Board filed charges against [Costello] which were submitted by the arbitrator . . . pursuant to New Jersey law after a five-day hearing and I would note this was not a slap dash affair. This was a five-day hearing and there were post-hearing briefs and there were numerous witnesses, there were numerous pieces of evidence submitted by both parties. The arbitrator rendered a decision [Costello] was to be dismissed from his position and his tenure revoked.
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> Now, [Costello] requests this [c]ourt to vacate that decision essentially based on the Board's use of a psychologist for a medical exam of [Costello] and [the] arbitrator's subsequent reliance on this examination. [Costello] asserts that the report and its reliance violates New Jersey law.
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> For the following reasons . . . the [c]ourt disagrees:
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> First, the arbitrator concluded [his] decision based on the record of evidence after over five days' worth of hearings . . . not just one report issued by Dr. Sigafoos.

> Second, no law has been proffered by [Costello] whereby the use of a psychologist examination report as evidence in the arbitration hearing is prohibited. On the contrary[,] psychologists are specifically authorized by law to perform assessments of job suitability and assessments in connection with legal proceedings and in the action of governmental agencies including but not limited to cases involving education such as this matter, [see] N.J.S.A. 13:42-1.1.
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> Third, and most importantly, if such law existed, [Costello's] entire argument would collapse upon itself as [Costello] submitted a psychologist's examination on [his] own as evidence of his mental health during the hearing; thus, [Costello's] contention that psychologists' reports cannot be used and would somehow validate this proceeding really [do not] hold water in my opinion.
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> Furthermore, the [c]ourt finds that the record of evidence submitted beyond just the one contested psychologist's report provides substantial evidence from which the arbitrator could have reasonably rendered [his] decision in conformance with all relevant statutes and standards established by statutes in such cases; thus, the arbitrator's decision is upheld and therefore [Costello's] request to vacate is denied.

Judge Sandson rejected Costello's progressive discipline/mitigation of penalty argument, finding as follows:

> modification of an award may only occur in narrow circumstances which are circumscribed by [N.J.S.A.] 2A:24-9[.]
>
> Here the aforementioned statutory reasons for modifying the arbitrator's award are not present; thus, even if the [c]ourt were to consider [Costello's] request in

> modification notwithstanding the statutory requirements, the law is clear that the arbitrator was not bound to apply progressive discipline as is maintained by [Costello] to address [Costello's] conduct; therefore, [Costello's] request to modify the arbitration award is denied.

This appeal followed.

II.

On appeal, Costello reiterates that the arbitrator's award violates the law and public policy because the arbitrator improperly relied on a psychologist's report instead of a medical doctor's report, in violation of N.J.S.A. 18A:16-2, N.J.S.A. 18A:16-3, and N.J.A.C. 6A:32-6.3. We disagree.

"Judicial review of an arbitration award is very limited." Bound Brook Bd. of Educ. v. Ciripompa, 228 N.J. 4, 11 (2017) (quoting Linden Bd. of Educ. v. Linden Educ. Ass'n ex rel. Mizichko, 202 N.J. 268, 276 (2010)). "An arbitrator's award is not to be cast aside lightly. It is subject to being vacated only when it has been shown that a statutory basis justifies that action." Ibid. (quoting Kearny PBA Local # 21 v. Town of Kearny, 81 N.J. 208, 221 (1979)). "As the decision to vacate an arbitration award is a decision of law, [we] review[] the denial of a motion to vacate an arbitration award de novo." Minkowitz v. Israeli, 433 N.J. Super. 111, 136 (App. Div. 2013) (quoting Manger v. Manger, 417 N.J. Super. 370, 376 (App. Div. 2010)).

Under the NJTEHL, "[t]he arbitrator's determination shall be final and binding and may not be appealable to the commissioner or the State Board of Education. The determination shall be subject to judicial review and enforcement as provided pursuant to [N.J.S.A.] 2A:24-7 through [N.J.S.A.] 2A:24-10." N.J.S.A. 18A:6-17.1(e). The court may vacate an arbitration award only in these limited circumstances:

> a. Where the award was procured by corruption, fraud or undue means;
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> b. Where there was either evident partiality or corruption in the arbitrators, or any thereof;
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> c. Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause being shown therefor, or in refusing to hear evidence, pertinent and material to the controversy, or of any other misbehaviors prejudicial to the rights of any party;
>
> d. Where the arbitrators exceeded or so imperfectly executed their powers that a mutual, final and definite award upon the subject matter submitted was not made.
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> [N.J.S.A. 2A:24-8.]

The claim of error in this case implicates subsection (a), which provides for vacation of an arbitration award "[w]here the award was procured by corruption, fraud or undue means." "'[U]ndue means' ordinarily encompasses a situation in which the arbitrator has made an acknowledged mistake of fact or law or a mistake that

is apparent on the face of the record[.]" Borough of E. Rutherford v. E. Rutherford PBA Local 275, 213 N.J. 190, 203 (2013) (first alteration in original) (quoting N.J. Office of Emp. Relations v. Commc'ns Workers of Am., 154 N.J. 98, 111-12 (1998)). "[A]n arbitrator's failure to follow the substantive law may . . . constitute 'undue means' which would require the award to be vacated." In re City of Camden, 429 N.J. Super. 309, 332 (App. Div. 2013) (quoting Jersey City Educ. Ass'n, Inc. v. Bd. of Educ., 218 N.J. Super. 177, 188 (App. Div. 1987)).

In addition, the court may vacate an arbitration award for public policy reasons. Borough of E. Rutherford, 213 N.J. at 202. "However, '[r]eflecting the narrowness of the public policy exception, that standard for vacation will be met only in rare circumstances.'" Ibid. (alteration in original) (quoting N.J. Tpk. Auth. v. Local 196, I.F.P.T.E., 190 N.J. 283, 294 (2007)). "Public policy is ascertained by 'reference to the laws and legal precedents and not from general considerations of supposed public interests.'" Id. at 202-03 (quoting Weiss v. Carpenter, Bennett & Morrissey, 143 N.J. 420, 434-35 (1996)). "And, even when the award implicates a clear mandate of public policy, the deferential 'reasonably debatable' standard still governs. Thus, '[i]f the correctness of the award, including its resolution of the public-policy question, is reasonably debatable, judicial intervention

is unwarranted.'" Id. at 203 (alteration in original) (quoting Weiss, 143 N.J. at 443). As our Supreme Court explained, "[a]ssuming that the arbitrator's award accurately has identified, defined, and attempted to vindicate the pertinent public policy, courts should not disturb the award merely because of disagreements with arbitral fact findings or because the arbitrator's application of the public-policy principles to the underlying facts is imperfect." Weiss, 143 N.J. at 443.

The arbitrator did not violate the law or public policy in relying on Sigafoos' report, as N.J.S.A. 18A:16-2, N.J.S.A. 18A:16-3, and N.J.A.C. 6A:32-6.3 do not apply here. For tenured employees, these provisions govern sick leave and reemployment where a mental abnormality has been found, not where tenure charges have been brought against a tenured employee. Under N.J.A.C. 6A:32-6.3, a board

> may require physical or psychiatric examinations of [an] employee whenever, in the judgment of the . . . board . . . an employee shows evidence of deviation from normal physical or mental health, to determine the individual's physical and mental fitness to perform with reasonable accommodation the position he or she currently holds, or to detect any health risks to students and other employees.

See also N.J.S.A. 18A:16-2(a). N.J.S.A. 18A:16-3 provides that "[a]ny such examination may be made by a physician or institution

designated by the board[.]" For a tenured employee, if the results of any such examination indicate a mental abnormality, the employee

> may be granted sick leave with compensation as provided by law and shall, upon satisfactory recovery, be permitted to . . . be reemployed with the same tenure as he possessed at the time his services were discontinued, if he has tenure, unless his absence shall exceed a period of two years.
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> [N.J.S.A. 18A:16-4 (emphasis added).]

In other words, a tenured employee found to have a mental abnormality may be granted sick leave for up to two years and must prove satisfactory recovery to be reemployed in his or her tenured position.

The NJTEHL governs this dispute. Under the NJTEHL, a school district may dismiss a tenured employee for incapacity. See N.J.S.A. 18A:6-10. In the context of tenure cases based on incapacity, "the touchstone is fitness to discharge the duties and functions of one's office or position." In re Grossman, 127 N.J. Super. 13, 29 (App. Div. 1974). The NJTEHL does not require a psychiatric or psychological fitness for duty evaluation in order to prove a tenure charge of incapacity. Instead, a school board may consider "a broad range of factors" in determining an employee's fitness for duty. Id. at 30. One factor is the impact and effect upon students. Id. at 30-31.

A school board can evaluate fitness in light of its duty to protect students from harm, and is not required to wait until the harm occurs. Gish v. Bd. of Educ. of Paramus, 145 N.J. Super. 96, 104-05 (App. Div. 1976). Thus, a reasonable possibility that harm to students will occur is sufficient to determine fitness. Id. at 105. This reasoning recognizes that fitness is not measured solely by an employee's ability to perform his job duties, but also involves the consideration "that the [employee's] presence in the [school] might, nevertheless, pose a danger of harm to the students for a reason not related to academic proficiency." Ibid. (quoting Grossman, 127 N.J. Super. at 32). Moreover, "[u]nfitness to [remain an employee] might be shown by one incident, if sufficiently flagrant, but might also be shown by numerous incidents." Redcay v. State Bd. of Educ., 130 N.J.L. 369, 371 (Sup. Ct. 1943); see also In re Fulcomer, 93 N.J. Super. 404, 421 (App. Div. 1967).

Absent Sigafoos' report and testimony, there was ample credible evidence for the arbitrator to sustain the tenure charge of incapacity. The evidence clearly established Costello was unfit to perform the duties and functions of school nurse, and posed a danger to both students and staff if he remained in that position. The Board was not required to wait until actual harm

occurred and had the authority to take action to terminate Costello's employment for incapacity.

Even if the NJTEHL required a fitness for duty evaluation to prove an incapacity charge, there is no authority prohibiting a psychologist from conducting that evaluation. To the contrary, N.J.A.C. 13:42-1.1(a)(1) specifically authorizes psychologists to perform a "[p]sychological assessment of a person . . . for the purpose of . . . job placement, job suitability, personality evaluation . . . and assessments in connection with legal proceedings and the actions of governmental agencies including, but not limited to, cases involving education[.]" Accordingly, the arbitrator did not violate the law or public policy by relying, in part, on Sigafoos' fitness for duty evaluation and testimony in sustaining the tenure charge of incapacity.

III.

Costello also reiterates that, given his fifteen-year unblemished record, his termination violated the doctrines of progressive discipline and mitigation of penalty. This argument lacks merit.

N.J.S.A. 2A:24-9 provides that an arbitration award may only be modified:

> a. Where there was evident miscalculation of figures or an evident mistake in the

> description of a person, thing or property referred to therein;
>
> b. Where the arbitrators awarded upon a matter not submitted to them unless it affects the merit of the decision upon the matter submitted; and,
>
> c. Where the award is imperfect in a matter of form not affecting the merits of the controversy.

Costello did not specify which prong of N.J.S.A. 2A:24-9 warrants modification of the arbitrator's penalty. Nevertheless, none of the prongs apply. There was no miscalculation of figures or mistake in a description of a person; the arbitrator did not base his award on an argument or evidence not submitted to him; and the award was not imperfect in a matter of form.

In addition, Costello cites no authority applying the doctrines of progressive discipline and mitigation of penalty in tenure cases. In any event, the doctrines do not apply here. Progressive discipline is used "in two ways when determining the appropriate penalty for present misconduct." In re Herrmann, 192 N.J. 19, 30 (2007). The first is to "support the imposition of a more severe penalty for a public employee who engages in habitual misconduct." Ibid. The second "is to mitigate the penalty for a current offense." Id. at 32.

However, progressive discipline is not "a fixed and immutable rule to be followed without question." In re Carter, 191 N.J.

474, 484 (2007). Rather, "some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record." Ibid. Our Supreme Court has held:

> Although progressive discipline is a recognized and accepted principle . . . that is not to say that incremental discipline is a principle that must be applied in every disciplinary setting. To the contrary, judicial decisions have recognized that progressive discipline is not a necessary consideration when reviewing an agency head's choice of penalty when the misconduct is severe, when it is unbecoming to the employee's position or renders the employee unsuitable for continuation in the position, or when application of the principle would be contrary to the public interest.
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> [Herrmann, 192 N.J. at 33 (emphasis added).]

In addition, "progressive disciple has been bypassed when an employee engages in severe misconduct, especially when the employee's position involves public safety and the misconduct causes risk of harm to persons[.]" Ibid.

Costello was unfit to perform the duties of school nurse, and his incapacity posed a risk of harm to both students and staff. Thus, the doctrines of progressive discipline and mitigation of penalty are inapplicable. See ibid.

IV.

Lastly, Costello argues the arbitration award must be vacated for the Board's failure to provide evidence discovered post-

hearing that may have changed the outcome. Costello baldly asserts there were communications between the superintendent and Sigafoos suggesting they colluded "to not accommodate [his] needs and instead seek his termination." We have considered this argument in light of the record and applicable legal principles and conclude it is without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.