

CLAUDINE HAYES :
 PETITIONER, :
 V. : COMMISSIONER OF EDUCATION
 STATE-OPERATED SCHOOL DISTRICT : DECISION
 OF THE CITY OF CAMDEN,
 CAMDEN COUNTY, :
 RESPONDENT. :

SYNOPSIS

Petitioner – a tenured special education teacher who was employed in respondent’s school district for approximately 12 years, until she was deemed mentally unfit for service – asserted that the District violated *N.J.S.A. 18A:16-4* by failing to reemploy her upon receiving proof of her recovery. Petitioner sought an order compelling the District to reemploy her or allow her to provide the District with additional proof of her recovery. This is the second petition filed by petitioner with the Commissioner in which she challenged the District’s refusal to accept her proof of recovery submissions after she was placed on administrative leave in December 2013, and required to undergo a psychological examination to determine her fitness to teach. The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: *N.J.S.A. 18A:16-2(a)* provides 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;” the Commissioner has recognized that the right to reemployment under *N.J.S.A. 18A:16-4* is conditioned upon a school board’s satisfaction with the proof of recovery offered by the employee; in the instant case, the District reasonably rejected a report by Dr. Michael Ferenschak, Psy.D., because the report neglected to mention any recovery efforts by petitioner, such as therapy or medication, and placed conditions on her return to work, including a recommendation that she work in a “non-high stress environment that is supportive and collaborative”; further, Dr. Ferenschak’s report failed to address why a return to work would not trigger a recurrence of petitioner’s stress and anxiety, leaving open a reasonable possibility of harm that justifies the District’s decision to reject his report as proof of Ms. Hayes’ recovery; however, partial summary decision in favor of petitioner is also appropriate because Ms. Hayes should have been given more time to provide the District with further proof of her recovery in accordance with *N.J.S.A. 18A:16-4*, as the District refused to accept further proof of recovery, resulting in less than the full two years to which she was statutorily entitled to prove her mental fitness to return to work; and the District should permit petitioner to submit additional proof of recovery within sixty days. The ALJ granted the District’s motion for summary decision in part and denied in part; and granted petitioner’s motion for partial summary decision.

Upon comprehensive review, the Commissioner concurred with the ALJ’s findings and determinations in this matter, and adopted the Initial Decision of the OAL as the final decision with the modification that petitioner be given 193 days from the date of this decision – representing the number of days she was prohibited from providing evidence of her mental fitness to teach – to submit proof of recovery that is satisfactory to the District, in accordance with *N.J.S.A. 18A:16-4*.

<p>This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.</p>

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The record of this matter and the March 28, 2018 Order of the Office of Administrative Law (OAL), granting in part and denying in part the District’s motion for summary decision, and granting petitioner’s motion for partial summary decision – submitted to the Commissioner pursuant to *N.J.A.C. 1:1-12.5(e)* – have been reviewed. The Commissioner has also reviewed the parties’ exceptions and replies thereto, filed pursuant to *N.J.A.C. 1:1-18.4*.

By way of background, petitioner was placed on administrative leave, effective December 16, 2013, and required to undergo a psychological examination to determine her fitness to teach. Following an examination, Dr. Jonathan Mack, Psy.D., issued a report on August 11, 2014, in which he found that petitioner was at an “unacceptable risk for future problems with the elementary school behaviorally disordered population” and that if petitioner is able to work with a “less stressful population,” she should be required to have weekly psychological counseling and be evaluated for medication. (Mack Report at 44) Accordingly, on March 3, 2015, the District informed petitioner that, pursuant to *N.J.S.A. 18A:16-4*, she was ineligible for further service with the District and would be terminated from payroll in 60 days. Thereafter, on March 31, 2015, petitioner submitted letters from her psychologist and primary

care doctor as proof of recovery, which the District ultimately found did not qualify as satisfactory evidence of proof of recovery.¹

On August 9, 2016, petitioner submitted as proof of recovery a report by another psychologist, Dr. Michael Ferenschak, which indicated that she is susceptible to flare-ups in highly stressful situations. As such, the report recommended that petitioner work in a “non-high stress environment that is supportive and collaborative,” but indicated that she “does not appear to possess any major current psychological barriers that should keep her from returning to full-time employment.” (Ferenschak Report at 6-7) On August 12, 2016, the District advised petitioner that the report was not satisfactory proof of recovery. Following an inquiry as to what the District would require to demonstrate her fitness to teach, the District informed petitioner on August 22, 2016 that the two year period for her to apply for reinstatement had expired.

Petitioner filed a petition of appeal and motion for emergent relief on November 21, 2016, seeking an order reinstating her as a teacher in the District or compelling the District to consider new proof of recovery submissions. On December 7, 2016, the Administrative Law Judge (ALJ) issued an Order denying the motion for emergent relief, which the Commissioner adopted.

Following the District’s motion for summary decision and petitioner’s motion for partial summary decision, the ALJ concluded that the District’s motion should be granted in part because it reasonably rejected Dr. Ferenschak’s report, but that partial summary decision should also be granted to petitioner because she should have been given more time to provide the

¹ Petitioner filed a petition of appeal on June 1, 2015, requesting to be reinstated to her position and alleging the District had not responded to her proof of recovery submission. Summary decision was granted in favor of the District in an Initial Decision that was adopted by the Commissioner. Petitioner appealed this matter to the Appellate Division, which issued a decision on August 23, 2017, affirming the Commissioner’s decision that the District did not act in an arbitrary, capricious or unreasonable manner in rejecting petitioner’s proof of recovery letters.

District with further proof of her recovery. Specifically, the ALJ found that Dr. Ferenschak's report failed to mention any recovery efforts that petitioner has taken, such as therapy or medication, and places the condition on her return to work that she work in a non-high stress environment. The ALJ noted that the report did not explain why a return to work would not trigger a recurrence of petitioner's stress and anxiety after having a major depressive episode and panic attack during her leave of absence, stating:

If she continued to have psychological issues while she was not working, it is difficult to see how, without any documented treatment efforts, such issues would not recur upon her return to work. These concerns represent "a reasonable possibility of harm" that, "given the interest of student safety," justify the District's decision to reject Dr. Ferenschak's report as proof of [petitioner's] recovery and to decline to reinstate her employment. (ALJ's Order at 13)

With respect to future proof of recovery, the ALJ found that "a reasonable reading of [N.J.S.A. 18A:16-4] leads to the conclusion that an employee has two years from the time he becomes 'ineligible for further service,' or 'the time his services were discontinued' due to psychological unfitness, to provide satisfactory proof of recovery." (ALJ's Order at 14) Even though Dr. Mack's report was issued on August 11, 2014, the ALJ noted that the District did not inform petitioner that she was ineligible for further service until March 3, 2015, so petitioner should have had until March 3, 2017 at the earliest to submit proof of recovery. However, due to the District's refusal to accept further proof of recovery after receiving Dr. Ferenschak's report in August 2016, and due to the denial of petitioner's application for emergent relief, petitioner's time period to submit proof of recovery was cut short. As such, the ALJ granted an additional 60 days to make up for the time lost, even though 60 days would still not provide petitioner with a cumulative two years.

In her submissions to the Commissioner, petitioner argues that she is entitled to the full amount of time statutorily mandated to submit proof of recovery, rather than the 60 days that the ALJ ordered. Specifically, petitioner contends that she is entitled to either another 193 days to submit proof of recovery – if the two year period began on March 3, 2015, when the District told her she was ineligible for further service – or 254 days if the two year period began when she was terminated on May 3, 2015. Petitioner contends that the ALJ did not rely on any legal precedent in shortening the time period set forth in *N.J.S.A. 18A:16-4*. Petitioner maintains that she should not be punished for the delays caused by the District, such as the 5 months between the time petitioner went out on administrative leave and when she was evaluated by Dr. Mack, or the 7 months after Dr. Mack’s report that it took for the District to deem her ineligible for service. Further, petitioner points out that the District “successfully opposed the emergent motion by arguing that any time remaining from the time [the District] refused to accept additional proof of recovery could be provided at the end of the case.” (Petitioner’s April 25, 2018 Submission at 4)

Petitioner also took exception with being denied a hearing on the proof of recovery that was already submitted. Petitioner argues that the ALJ relied on *Emily Diaz v. Board of Education of the Township of Mahwah, Bergen County*, Commissioner’s Decision No. 348-10, August 27, 2010 as a similar case, but the petitioner in *Diaz* had a hearing on the merits rather than being decided on a motion for summary decision. Petitioner argues that she has been unable to question Dr. Mack on whether the District’s interpretation of his report is accurate, so she will never be able to determine if the District’s requirement that she undergo weekly counseling is arbitrary. As such, petitioner seeks a hearing so that she can prove that the

District's criteria for proof of recovery – *i.e.*, evidence of weekly counseling sessions – is unreasonable, as her treating physicians have determined that such treatment is unnecessary.

In its submissions, the District argues that – contrary to petitioner's arguments – the issue of what is necessary for proof of recovery in this case has already been litigated. The Commissioner and Appellate Division have already “deemed that any proof of recovery submission by Petitioner would have to describe her recovery efforts and/or any treatment regimen in place to address Dr. Mack's concerns, including proof that she followed the recommendation to undergo weekly psychological counseling and be evaluated for psychiatric medication.” (Respondent's April 10, 2018 Submission at 5) The District explains that it appropriately rejected Dr. Ferenschak's report because it did not address petitioner's recovery efforts, and also made petitioner's return to work contingent upon placement in a “non-high stress environment that is supportive and collaborative” – which recommendation is similar to that included in Dr. Mack's report, and previously deemed unacceptable by the Commissioner and the Appellate Division. Further, even though there was a hearing in *Diaz, supra*, there is no requirement for a hearing in this matter because there are no genuine issues of material fact.

With respect to the ALJ's Order allowing petitioner 60 additional days to submit proof of recovery, the District argues that petitioner should not be afforded any additional time to submit proof of recovery because both the March 3, 2017 and May 3, 2017 dates have passed and this matter is moot. Alternatively, the District contends that petitioner is fundamentally misunderstanding the ALJ's Order in her arguments as to having 193 or 254 days to submit additional proof of recovery. The ALJ gives petitioner 60 days to submit proof of recovery detailing any recovery efforts that occurred during the two year period, which the ALJ found expired on March 3, 2017. The District maintains that the ALJ's Order does not permit

petitioner to seek weekly psychological counseling now in an attempt to obtain the required treatment, but rather that she can only submit evidence of her having completed the treatment during the two year period.

Upon review of the record, the Commissioner concurs with the ALJ – for the reasons thoroughly set forth in the March 28, 2018 Order – that the District did not act in an arbitrary, capricious or unreasonable manner in rejecting Dr. Ferenschak’s report. Petitioner’s exceptions on this issue are not persuasive. It was reasonable for the District to find that Dr. Ferenschak’s report – which placed limitations and necessary accommodations on petitioner’s ability to return to work, and failed to address petitioner’s recovery efforts – was not satisfactory. Further, regardless of whether *Diaz, supra*, was decided following a hearing, there are no material facts in dispute here and the matter was ripe for summary decision. Although petitioner argues that she is unable to question Dr. Mack about whether she complied with his recommendations or whether the District’s criteria for proof of recovery is unreasonable, the Appellate Division previously found in this matter that “the ultimate resolution of these issues has no bearing on whether [the District’s] exercise of its statutory authority was reasonable.” *C.H. v. State-Operated School District of the City of Camden, Camden County*, A-3383-15T1, slip op. at 14 (App. Div. Aug. 23, 2017).

The Commissioner also agrees with the ALJ that petitioner should be given additional time to submit proof of recovery. However, the Commissioner disagrees with the ALJ that petitioner’s additional time to demonstrate her fitness to teach should be limited to 60 days, and instead agrees with petitioner that she should be given an additional 193 days to submit evidence of her recovery to make up for the time she was prevented from doing so during part of the two year period.

N.J.S.A. 18A:16-4 provides that “[i]f the result of any such examination indicates mental abnormality or communicable disease, the employee shall be ineligible for further service until proof of recovery, satisfactory to the board, is furnished . . . unless his absence shall exceed a period of two years.” It is only logical that the two year period would begin when the employee is informed that she is “ineligible for further service” with the District. *See Emily Diaz v. Board of Education of the Township of Mahwah, Bergen County*, EDU 01751-09 (March 2, 2010), adopted by Commissioner’s Decision No. 348-10, August 27, 2010 (noting that the two year period within which the petitioner could demonstrate her fitness to teach began on October 13, 2008 – the date, following the results of her psychiatric evaluation, that the Board informed her that she was unable to perform her teaching duties, would need proof of recovery in order to return to work, and would be placed on a medical leave of absence and charged sick days, pursuant to *N.J.S.A.* 18A:16-4). Here, such notice was provided by the District on March 3, 2015. It is unclear from the record why the District waited 7 months between the receipt of Dr. Mack’s report in August 2014 and notification to petitioner that she was ineligible for service in March 2015, but it would be inequitable for the District to reap the benefit from its own delay of the process.

Petitioner’s two year period was cut short because the District refused to accept further proof of recovery as of August 22, 2016, and petitioner was unsuccessful in her emergent attempt to compel the District to accept evidence of her fitness to teach. It is relevant to note that in the District’s opposition to petitioner’s motion for emergent relief, the District argued that irreparable harm did not exist because “the Commissioner could also order the District to accept future proof of recovery submission if she ultimately prevails.” *Claudine Hayes v. City of Camden State-Operated School District, Camden County*, EDU 18048-16 (December 7, 2016),

adopted by Commissioner's Decision No. 6-17E, decided January 10, 2017 (Slip Op.) As such, petitioner should be permitted an additional 193 days to seek any necessary medical treatment and submit proof of recovery that is satisfactory to the District. This time limit represents the number of days from when the District refused to accept future proof of recovery submissions on August 22, 2016 to March 3, 2017.

Accordingly, the March 28, 2018 Order of the OAL – granting in part and denying in part the District's motion for summary decision, and granting petitioner's motion for partial summary decision – is modified as stated herein. Petitioner has 193 days from the date of this decision to submit proof of recovery that is satisfactory to the District, in accordance with *N.J.S.A. 18A:16-4*. No aspect of this matter remains pending at the OAL.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: June 22, 2018

Date of Mailing: June 22, 2018

² This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36* (*N.J.S.A. 18A:6-9.1*).



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INTERLOCUTORY ORDER
GRANTING IN PART AND DENYING
IN PART RESPONDENT'S MOTION
FOR SUMMARY DECISION, AND
GRANTING PETITIONER'S MOTION
FOR PARTIAL SUMMARY DECISION

OAL DKT. NO. EDU 18048-16

AGENCY DKT. NO. 301-11/16

CLAUDINE HAYES,

Petitioner,

v.

STATE-OPERATED SCHOOL

DISTRICT OF THE CITY OF CAMDEN,

Respondent.

Morrison Kent Fairbairn, Esq., for petitioner (Michael A. Armstrong and Associates, LLC, attorneys)

Benjamin Teris, Esq., for respondent (Brown & Connery, LLP, attorneys)

BEFORE **SUSAN M. SCAROLA, ALJ:**

STATEMENT OF THE CASE

Petitioner Claudine D. Hayes (Hayes), a tenured special-education teacher who was employed by respondent State-Operated School District of the City of Camden (District) for approximately twelve years until she was deemed mentally unfit for service, asserts that the District violated N.J.S.A. 18A:16-4 by failing to reemploy her upon receiving proof of her recovery, and seeks an order compelling the District to reemploy her or to allow her to provide the District with additional proof of her recovery.

PROCEDURAL HISTORY

This is the second petition Hayes has filed with the Commissioner of Education to challenge the District's refusal to accept her proof of recovery submissions after a psychological examination conducted in 2014 indicated that she suffered from mental abnormalities. The first petition, which was filed in 2015, was dismissed on summary decision upon a finding by an administrative law judge that, in accordance with N.J.S.A. 18A:16-4, the District had reasonably rejected letters from two doctors as proof of Hayes' recovery. That decision was adopted by the Commissioner and affirmed by the Appellate Division.

On November 21, 2016, while the first petition was pending on appeal in the Appellate Division, Hayes filed a separate petition of appeal and motion for emergent relief with the Commissioner, alleging that the District again violated N.J.S.A. 18A:16-4 by rejecting a report from a psychologist, Dr. Michael Ferenschak, as additional proof of her recovery and seeking an order compelling the District to reemploy her or allow her to provide the District with further proof of her recovery.

On November 29, 2016, the Commissioner transmitted the motion for emergent relief and the underlying petition to the Office of Administrative Law (OAL). N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. On December 9, 2016, Hayes' motion for emergent relief was denied pending a plenary hearing.

On September 1, 2017, shortly after the Appellate Division affirmed the Commissioner's decision to dismiss the first petition, the District filed a motion for summary decision on the second petition, arguing that the District reasonably rejected the report of Dr. Ferenschak as proof of recovery.

On November 27, 2017, Hayes filed a brief in opposition to the District's motion and in support of a cross-motion for partial summary decision on the issue of whether she is entitled to provide additional proof of recovery. Oral argument was held on February 9, 2018.

FACTUAL DISCUSSION

During her nearly twelve years of employment with the District, Hayes mostly taught high-school students with specials needs. However, for the last several years of her employment, she taught special-education elementary-school students. During the 2011–2012 school year, Hayes was assigned to teach autistic students, but, in March 2012 she was reassigned to a class for behaviorally challenged students at a different school after she requested a transfer for her “own well-being and physical safety.” She stayed in that position until February 2013, when she requested a leave of absence for panic attacks, anxiety, and insomnia.

When she returned from her leave of absence in March 2013, she was assigned to a class for behaviorally challenged students at a different elementary school. However, shortly thereafter, she was involved in an incident in which she physically restrained one of her students, and, as a result, she was reassigned to yet another elementary-school class for behaviorally challenged students for the 2013–2014 school year.

On December 11, 2013, Hayes suffered a panic attack in the school and was taken to the hospital by paramedics. On December 13, 2013, the District advised Hayes that, due to her “concerning pattern of behavior this year,” she would be placed

on paid administrative leave effective December 16, 2013, and required to undergo a psychological examination to determine her fitness to teach.³

On May 28 and May 29, 2014, Hayes was evaluated by a psychologist, Jonathan Mack, Psy.D. During the evaluation, Dr. Mack “conducted a battery of psychological tests” and interviewed Hayes. In an August 11, 2014, report, Dr. Mack concluded that Hayes suffered from a personality disorder and a panic disorder, and that, in his opinion, “Ms. Hayes is at an unacceptable risk for future problems with the elementary school behaviorally disordered population throughout the [District] at this time.” He also opined that “[i]f another less stressful population is found for [her] to work with . . . she should be mandated to have weekly psychological counseling with a licensed psychologist and to be evaluated for mood stabilizing medications.”

On March 3, 2015, the District officially notified Hayes that, based on Dr. Mack’s report and “pursuant to N.J.S.A. 18A:16-4, the State District Superintendent has determined that you are ineligible for further services with the District and shall be terminated from payroll effective sixty (60) days from receipt of this correspondence.” The District further informed Hayes, “[y]ou will remain ineligible for service absent the submission of proof of recovery, satisfactory to the District,” and, “[i]f you fail to submit such proof within (2) years from the beginning of your leave of absence, you will be permanently ineligible for service with the District.”

On March 31, 2015, Hayes provided the District with a one-page letter from her psychiatrist, Safeer Ansari, D.O., and a one-page letter from her primary-care physician, Chris Colopinto, D.O., as proof of her recovery. According to Dr. Ansari, who reviewed Dr. Mack’s report:

I currently find her to be stable and mentally healthy to return to work. However, due to Ms. Hayes’ physical disabilities and limitations . . . I do agree with Dr. Mack’s recommendation that Ms. Hayes is not to be placed in a B.D. or Behaviorally Disordered Classroom with students who are

³ Hayes has not worked for the District since December 13, 2013.

emotionally disabled and can become physically violent particularly at the elementary level. As stated by Dr. Mack, it appears that [Hayes] had the most success working with students at the High School level who suffer from Multiple/Learning Disabilities, Other Health Impairments, and/or the Autistic population.

And according to Dr. Colopinto, who also reviewed Dr. Mack's report, "[b]ased on my own independent findings I believe Ms. Claudine Hayes is mentally healthy enough to return to work granted that she is provided with the accommodations that have been recommended as appropriate."

Petition I

On June 1, 2015, Hayes filed a petition of appeal with the Commissioner in which she alleged that the District had not responded to her proof-of-recovery submissions, and requested reinstatement to her position ("Petition I"). After Hayes filed Petition I, the District, in a letter dated June 16, 2015, informed Hayes that it had reviewed the letters from Dr. Ansari and Dr. Colopinto, but stated that the letters "confirm that she continues to be ineligible for service since neither letter provides proof of Ms. Hayes' recovery satisfactory to the District so that she can return to work."

On June 23, 2015, the Commissioner transmitted Petition I to the OAL as a contested case. The District subsequently moved for summary decision, arguing that Petition I should be dismissed because Hayes had failed to provide adequate proof of recovery in accordance with N.J.S.A. 18A:16-4. On January 4, 2016, the administrative law judge (ALJ) granted the District's motion and, in an initial decision, dismissed Petition I, finding that the District had reasonably rejected the letters from Dr. Ansari and Dr. Colopinto as unsatisfactory proof of recovery.

On February 19, 2016, the Commissioner adopted the initial decision as the final decision. According to the Commissioner:

Here, the record supports a finding that the District's rejection of petitioner's proof of recovery—which consisted of

one-page letters from two practitioners—was reasonable. Indeed, neither letter references the multiple diagnoses made by Dr. Mack, nor do the letters describe petitioner’s recovery efforts and/or any treatment regimen in place to address Dr. Mack’s concerns. Both letters merely provide conditional recommendations that petitioner be permitted to return to work—with certain parameters in place, e.g., that she only be permitted to teach certain grade levels and student populations. Under the law, student safety must be the District’s paramount concern.

[Footnotes omitted.]

And in a footnote regarding Dr. Mack’s recommendations, the Commissioner explained that, “[s]ignificantly, petitioner fails to address Dr. Mack’s recommendation that she be mandated to undergo weekly psychological counseling and be evaluated for medication by a psychiatrist—and provides no proof that same has occurred.”

Hayes subsequently filed an appeal with the Appellate Division and, on August 23, 2017, the court affirmed the Commissioner’s final decision on Petition I:

we discern no basis to disturb respondent’s decision. Dr. Mack’s extensive report diagnosed petitioner with several mental conditions, which placed her at risk for inappropriate behavior with students. The report left no question that petitioner’s mental health issues affected her teaching and disciplinary abilities. Moreover, Dr. Mack only noted a different position “may” be better for petitioner, and only upon certain specified conditions. Although the report raised the possibility that petitioner could return to a “less stressful population,” given the totality of Dr. Mack’s findings, respondent acted reasonably by deeming her ineligible for service absent proof of recovery.

We further agree with the Commissioner that respondent acted reasonably by rejecting petitioner’s proof of recovery letters. Both letters stated petitioner was able to “return to work,” while agreeing with Dr. Mack’s suggested conditions and accommodations. As a “reasonable possibility” of harm will justify a board decision, the Commissioner appropriately noted that given the interest of student safety, petitioner’s letters were insufficient proof of recovery. Therefore, under our deferential scope of review,

we find the Commissioner's decision to uphold respondent's actions was not arbitrary, capricious, or unreasonable.

Petitioner further argues the Commissioner and ALJ erred because they granted summary decision for respondent based on disputed facts. According to petitioner, these disputed issues included whether she actually threatened student safety; whether she failed to comply with Dr. Mack's recommendations; the basis for Dr. Mack's conclusions; and the sufficiency of her doctors' conclusions. We decline to discuss this argument at length, as the ultimate resolution of these issues has no bearing on whether respondent's exercise of its statutory authority was reasonable. In other words, this case turned on whether respondent reasonably deemed petitioner ineligible for service based on Dr. Mack's report and reasonably rejected petitioner's proof of recovery letters. Here, because a "reasonable possibility" of harm warrants board action, we find the Commissioner's grant of summary decision was appropriate in this matter.

[C.H. v. State-Operated Sch. Dist. of Camden, No. A-3383-15 (App. Div. August 23, 2017) (citations omitted), [https://njlaw.rutgers.edu/collections/courts/.](https://njlaw.rutgers.edu/collections/courts/)]

Petition II

While her appeal of Petition I was pending in the Appellate Division, Hayes visited another psychologist, Michael Ferenschak, Psy.D., for a fitness-for-duty evaluation on July 26 and July 27, 2016. Dr. Ferenschak administered several psychological tests, conducted a clinical interview and, in an August 4, 2016, report, concluded that Hayes was fit to teach. While Dr. Ferenschak diagnosed her with a depressive disorder and an anxiety disorder, he remarked that "Ms. Hayes' current symptoms are more transient and much less severe than they were when she was out of work for mental health reasons" and that "[s]he has not had a Major Depressive Episode in over a year, and she has not experienced a panic attack in six months."

According to Dr. Ferenschak,

Ms. Hayes appears to be susceptible to flare-ups of her mental health issues when in highly stressful situations.

Thus, if or when she returns to work, it is recommended that she work in a non-high stress environment that is supportive and collaborative. While teaching in a school can be considered a stressful job, Ms. Hayes showed she was able to psychologically handle such a job without incident for the first decade of her employment, when the perceived stressors were much lower. If Ms. Hayes does return to work, it is recommended that she seek psychotherapy to help her manage her work-related stress and guard against extreme emotional responses.

Ms. Hayes is not currently experiencing an acute psychological issue that should prevent her from working, nor is she a danger to herself or others. It needs to be stated that these conclusions are not guarantees of her future work performance or mental response to a return to work, as psychological assessment cannot predict the future. However, from this evaluation, Ms. Hayes does not appear to possess any major current psychological barriers that should keep her from returning to full-time employment.

On August 12, 2016, after having received Dr. Ferenschak's report on August 9, 2016, the District's attorney informed Hayes' attorney that the report was "*not* satisfactory proof of recovery." The District rejected the report because Hayes failed to provide the District with Dr. Ferenschak's qualifications; the report did not indicate that Dr. Ferenschak was provided with or considered certain information, including a job description and Dr. Mack's report; the report indicated that Hayes stopped attending counseling sessions a year prior; and, Dr. Ferenschak's "statement that Ms. Hayes cannot work in a highly stressful environment shows she is unable to work as a teacher of the handicapped in the District." The District's attorney stated that "[t]he District takes the safety of its students and staff seriously and is willing to act reasonably concerning this difficult situation," and, "[i]f you would like to discuss, I am available to speak at your convenience."

The same day, Hayes' attorney emailed the District to express his disagreement with the District's opinion of the adequacy of Dr. Ferenschak's report, and asked the District to provide "a detailed written statement of what the District requires for satisfactory proof of recovery and how soon you need it."

Then, in an August 22, 2016, letter to Hayes' attorney, the District's attorney denied that the District "would be willing to accept future proof of recovery submissions pursuant to N.J.S.A. 18A:16-4," and stated, "please let this letter confirm the District's position that the time has now expired for Ms. Hayes to apply for reinstatement pursuant to N.J.S.A. 18A:16-4, as her absence from the District has exceeded a period of two years."

On November 21, 2016, Hayes filed a petition of appeal and motion for emergent relief with the Commissioner alleging that the District violated N.J.S.A. 18A:16-4 by failing to reemploy her upon receiving proof of her recovery from Dr. Ferenschak and seeking an order compelling the District to reemploy her or allow her to provide the District with additional proof of her recovery ("Petition II"). On November 29, 2016, the Commissioner transmitted the motion for emergent relief and the underlying petition to the OAL. On December 9, 2016, Hayes' motion for emergent relief was denied pending a plenary hearing.

Cross-Motions for Summary Decision

On September 1, 2017, after the Appellate Division issued its opinion on Petition I, the District filed a motion for summary decision on Petition II, arguing that the District reasonably rejected Dr. Ferenschak's report as proof of recovery and that, pursuant to N.J.S.A. 18A:16-4's two-year time limit for submitting proof of recovery, the District was under no obligation to accept additional proof of recovery after August 11, 2016, or two years after Dr. Mack found Hayes unfit for duty.

According to the District,

[t]he instant action must fail for the same reason as Petitioner's prior action. Her most recent purported proof of recovery submission, although longer than the previous one, fails to outline Petitioner's recovery efforts and also places qualifications on any return—i.e., must be in a "non-high stress environment that is supportive and collaborative." It also deficiently fails to outline the steps she has taken to recover from the conditions diagnosed in the initial report—

which should have been the very purpose of the submission. Moreover, Petitioner admits she has not been attending counseling sessions and has not been evaluated for psychiatric medication, which the Commissioner already deemed necessary.

. . . As to the time remaining for Petitioner to submit proof of recovery, it indisputably expired on August 11, 2016—two years following the issuance of [Dr. Mack’s] report

On November 27, 2017, Hayes filed a brief in opposition to the District’s motion and in support of a cross-motion for partial summary decision on the issue of whether she is entitled to provide additional proof of recovery. In opposition to the District’s motion, Hayes argues that a hearing is necessary to determine genuine issues of material fact regarding the adequacy of Hayes’ proof of recovery. In particular, Hayes submits that “[t]he issue of whether it is possible to recover from a sleep disorder, panic disorder and a personality disorder without weekly counseling remains an issue of fact,” and that whether Hayes can work for the District “if she cannot work in a highly stressful environment is obviously a factual inquiry that requires testimony to determine what the teaching environment requires and whether that environment falls in the category of environments Dr. Ferenschak is warning against.”

In support of her cross-motion for partial summary decision, Hayes maintains that the two-year period in which to submit proof of recovery under N.J.S.A. 18A:16-4 began to run “from the date Respondent told [her] she would be removed from payroll as a result of her services being discontinued,” or May 3, 2015, and not the date on which Dr. Mack concluded Hayes was unfit for duty, August 11, 2014. Thus, according to Hayes, she should have had until May 3, 2017, to submit further proof of recovery.

Hayes essentially argues that she did not receive the benefit of the full two-year period under N.J.S.A. 18A:16-4 for two reasons. First, on August 22, 2016, the District informed Hayes that it “would [not] be willing to accept future proof of recovery submissions pursuant to N.J.S.A. 18A:16-4” because “the time has now expired for Ms. Hayes to apply for reinstatement pursuant to N.J.S.A. 18A:16-4, as her absence from the District has exceeded a period of two years.”

Second, Hayes' motion for emergent relief seeking in part an order compelling the District to allow her to submit additional proof of recovery beyond Dr. Ferenschak's report was denied. The requested relief was denied in part upon a finding that she would not suffer irreparable harm if the District was not compelled to accept further proof of recovery pending a plenary hearing because the Commissioner could order the District to accept further proof of recovery if Hayes prevailed at a plenary hearing, and in part on a finding that Hayes had failed to show a likelihood of success on the merits because "it appears from the language of N.J.S.A. 18A:16-4 that Hayes had two years to provide satisfactory proof of recovery either from the date she was placed on paid leave by the District (December 16, 2013), or from the date of Dr. Mack's fitness-for-duty determination (August 11, 2014), and that, at the latest, the time for proof of recovery expired on August 11, 2016."

As a result, Hayes argues that partial summary decision in her favor is appropriate and that she should be given more time to submit further proof of recovery if Dr. Ferenschak's report is not sufficient.

LEGAL ANALYSIS

Under N.J.S.A. 18A:16-2(a), a school board "may require individual psychiatric . . . examinations of any employee, whenever, in the judgment of the board, an employee shows evidence of deviation from normal . . . mental health." And under N.J.S.A. 18A:16-4,

[i]f 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, if he has tenure, unless his absence shall exceed a period of two years.

The Commissioner has recognized that the right to reemployment under N.J.S.A. 18A:16-4 is conditioned upon a school board's satisfaction with the proof of recovery

offered by the employee, such that “N.J.S.A. 18A:16-4 instructs that if it has been determined that an employee manifests a mental abnormality, he or she ‘shall be ineligible for further service until proof of recovery, satisfactory to the board[,] is furnished.’” Diaz v. Bd. of Educ. of the Twp. of Mahwah, EDU 1751-09, Final Decision (August 27, 2010), <njlaw.rutgers.edu/collections/oal>. A school board’s “obligation to determine the fitness of teachers is a reflection of their duties to protect the students from a significant danger of harm, whether it be physical or otherwise. And they need not wait until the harm occurs; a reasonable possibility of its occurrence warrants such action.” Gish v. Bd. of Educ. of Paramus, 145 N.J. Super. 96, 104–05 (App. Div. 1976) (citations omitted). Importantly, an “action of the local board which lies within the area of its discretionary powers may not be upset unless patently arbitrary, without rational basis or induced by improper motives.” Kopera v. Bd. of Educ. of W. Orange, 60 N.J. Super. 288, 294 (App. Div. 1960) (citations omitted).

In Petition I, the Commissioner concluded, and the Appellate Division agreed, that, in the interest of student safety, the District had reasonably rejected the one-page letters from Dr. Ansari and Dr. Colopinto as proof of Hayes’ recovery because neither letter adequately addressed the concerns raised by Dr. Mack in the report in which he concluded Hayes was psychologically unfit to teach. The Commissioner took issue with the fact that “neither letter references the multiple diagnoses made by Dr. Mack, nor do the letters describe petitioner’s recovery efforts and/or any treatment regimen in place to address Dr. Mack’s concerns,” but “merely provide conditional recommendations that petitioner be permitted to return to work—with certain parameters in place, e.g., that she only be permitted to teach certain grade levels and student populations.” The Appellate Division echoed those sentiments, and added that, “[a]s a ‘reasonable possibility’ of harm will justify a board decision, the Commissioner appropriately noted that given the interest of student safety, petitioner’s letters were insufficient proof of recovery.”

In Diaz, the Commissioner determined that a school board did not abuse its discretion in rejecting as proof of recovery two doctors’ reports submitted by a teacher who had been declared psychologically unfit due to job-related anxiety and stress issues. In that decision, the Commissioner noted that the rejected reports: failed to address why “a return to work would not trigger a recurrence of petitioner’s stress and

anxiety”; “found petitioner fit for work without identifying the means by which she had allegedly recuperated” or why “petitioner was prepared to handle the same stressors in the same work environment”; and “recommended the transfer [from high school to middle school] requested by petitioner, undermining somewhat [the doctors’] contentions that she was unconditionally fit for duty.” The Commissioner also noted that petitioner “had not availed herself of therapeutic interventions” despite the fact that each doctor she saw in connection with the matter thought that “she could benefit from same.”

Here, as in Petition I and Diaz, the District reasonably rejected Dr. Ferenschak’s report as proof of Hayes’ recovery. Like the rejected reports in Petition I and Diaz, Dr. Ferenschak’s report neglects to mention any recovery efforts by Hayes, such as therapy or medication, and places conditions on her return to work, such that “if or when she returns to work, it is recommended that she work in a non-high stress environment that is supportive and collaborative.”

And as in Diaz, Dr. Ferenschak’s report fails to address why a return to work would not trigger a recurrence of Hayes’ stress and anxiety. Importantly, Dr. Ferenschak noted that Hayes had had a “Major Depressive Episode” and a “panic attack” during her leave of absence, but nonetheless concluded that “Ms. Hayes does not appear to possess any major current psychological barriers that should keep her from returning to full-time employment.” If she continued to have psychological issues while she was not working, it is difficult to see how, without any documented treatment efforts, such issues would not recur upon her return to work. These concerns represent “a ‘reasonable possibility’ of harm” that, “given the interest of student safety,” justify the District’s decision to reject Dr. Ferenschak’s report as proof of Hayes’ recovery and to decline to reinstate her employment.

While Hayes argues that a hearing is necessary to determine genuine issues of material fact regarding Dr. Mack’s recommendations and the sufficiency of Dr. Ferenschak’s conclusions, the Appellate Division rejected a similar argument in Petition I, stating that “the ultimate resolution of these issues has no bearing on whether respondent’s exercise of its statutory authority was reasonable,” and that “because a

'reasonable possibility' of harm warrants board action, we find the Commissioner's grant of summary decision was appropriate in this matter." Here, too, partial summary decision in favor of the District is appropriate despite Hayes' argument to the contrary, because a review of Dr. Ferenschak's report shows there remained a "reasonable possibility of harm" if Hayes returned to work and that, as such, the District reasonably rejected the report as proof of recovery.

However, partial summary decision in favor of Hayes is also appropriate because, even though the District reasonably rejected Dr. Ferenschak's report, Hayes should have been given more time to provide the District with further proof of her recovery in accordance with N.J.S.A. 18A:16-4. Under N.J.S.A. 18A:16-4, if a psychiatric examination shows that a teacher is unfit to work,

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, if he has tenure, unless his absence shall exceed a period of two years.

A reasonable reading of this provision leads to the conclusion that an employee has two years from the time he becomes "ineligible for further service," or "the time his services were discontinued" due to psychological unfitness, to provide satisfactory proof of recovery. Here, although Dr. Mack issued his report on August 11, 2014, the District, for whatever reason, did not notify Hayes that she was ineligible for further service until March 3, 2015. On that date, the District informed Hayes that, "pursuant to N.J.S.A. 18A:16-4, the State District Superintendent has determined that you are ineligible for further services with the District and shall be terminated from payroll effective sixty (60) days from receipt of this correspondence." The District also informed Hayes, "[y]ou will remain ineligible for service absent the submission of proof of recovery, satisfactory to the District," and that "[i]f you fail to submit such proof within (2) years from the beginning of your leave of absence, you will be permanently ineligible for service with the District."

Since the District did not notify Hayes that she was “ineligible for further services” until March 3, 2015, under N.J.S.A. 18A:16-4, Hayes should have had—at the earliest—until March 3, 2017, to prove to the District that she had recovered from her psychological issues.⁴ That is also when the District notified her that she had two years to submit proof of recovery before her eligibility for reemployment would be foreclosed. Thus, it follows that Hayes should have had more time than she was given to submit satisfactory proof of recovery to the District.

However, due to the District’s refusal to consider any further proof of recovery after receiving Dr. Ferenschak’s report in August 2016, and because Hayes’ request for emergent relief in the form of an order compelling the District to accept further proof of recovery was denied on December 9, 2016, Hayes did not get the full two years to which she was statutorily entitled to prove her mental fitness to the District. Upon reconsideration, Hayes’ request for emergent relief was denied in part based on a misinterpretation of the two-year period for proof of recovery under N.J.S.A. 18A:16-4, and Hayes should now be given the opportunity to make up for the time that was lost.

Accordingly, Hayes’ motion for partial summary decision should be granted and the District should permit Hayes to submit additional proof of recovery within a reasonable period of time. Sixty days should be sufficient to accomplish this.

While Hayes has not worked for the District in four years, and N.J.S.A. 18A:16-4 appears to limit the right to reinstatement to those employees who have been absent from work for two years or less, the clock should not start to run until the employee is notified in writing that she is ineligible for further service due to the results of a psychological or psychiatric exam. And although an order compelling the District to accept further proof of recovery for up to sixty days would still not provide Hayes with a

⁴ Hayes argues that she should have had until May 3, 2017, or two years from the date she was terminated, to submit satisfactory proof of recovery. It would seem that under N.J.S.A. 18A:16-4, the two-year period should start to run from the date Hayes was notified that she was ineligible for further service, which would have been on or about March 3, 2015. Regardless, whether March 3 or May 3, it appears that Hayes did not get a full two years to submit proof of recovery in accordance with N.J.S.A. 18A:16-4.

cumulative two years, it would also not be fair at this point to compel the District to wait much longer for satisfactory proof of Hayes' recovery.⁵

Accordingly, the District's motion for summary decision should be granted in part and denied in part, and Hayes' motion for partial summary decision shall be granted.

ORDER

I hereby **ORDER** that the District's motion for summary decision is **GRANTED** in **PART** and **DENIED IN PART WITHOUT PREJUDICE**. Hayes' motion for partial summary decision is **GRANTED**. Within sixty days, Hayes shall submit medical records and evidence of her purported recovery to the District. The District shall have sixty days thereafter to decide whether Hayes has recovered the ability to hold a teaching position in the District. The parties shall advise the OAL at the conclusion of the 120-day period of the status of the matter, and, if necessary, the matter shall then be listed for further motions or hearing.

This order granting in part and denying in part respondent's motion for summary decision and granting petitioner's motion for partial summary decision is being submitted under N.J.A.C. 1:1-12.5(e) for immediate review. This recommended order may be adopted, modified or rejected by the **COMMISSIONER OF EDUCATION**, who by law is authorized to make the final decision in this matter. If the Commissioner of Education does not adopt, modify or reject this order within forty-five days and unless such time limit is otherwise extended, this recommended order shall become a final decision in accordance with N.J.S.A. 52:14B-10.

⁵ At oral argument, Hayes' counsel indicated that, to his knowledge, Hayes had no current medical information to provide. Unless Hayes can demonstrate to the Board's satisfaction that she has recovered from her psychological issues, the previous determination of incapacity would not change. Dr. Mack provided specific recommendations, and no proof has been submitted to date to demonstrate that Hayes has complied with them to support her contention that she has recovered sufficiently to teach in the District. The passage of time is not sufficient to presume recovery.

Within thirteen days from the date on which this order 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.



March 28, 2018
DATE

SUSAN M. SCAROLA, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

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