

CHRISTINE CUMMINGS, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE TOWNSHIP : DECISION

OF LITTLE EGG HARBOR, OCEAN COUNTY, :

RESPONDENT. :

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SYNOPSIS

Petitioner – an elementary supervisor who has been employed in respondent’s school district since 1992 – challenged the Board’s directive that she submit to a mental and physical examination before she is permitted to return to work, pursuant to *N.J.S.A.* 18A:16-2(a). The petitioner contended that the Board cannot – by a preponderance of credible evidence – prove that her behavior deviated from normal physical or mental health. The Board argued that it had ample reason to require the evaluation based on petitioner’s demeanor, poor decisions and work performance; among the allegations cited by the Board were multiple episodes during which petitioner fell asleep during meetings and a questionable decision to call the Division of Child Protection and Permanency (DCPP) regarding a parent without the authorization of school administrators.

The ALJ found, *inter alia*, that: under *N.J.S.A.* 18A:16-2(a), a school 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;” in the instant matter, the Board cited three different occasions where petitioner fell asleep during staff meetings – as well as an incident wherein petitioner called DCPP to report a student matter without first obtaining correct information and without consulting or advising the District administration of same – to demonstrate that petitioner exhibited inappropriate and unprofessional behavior that justified the Board’s request for a professional evaluation; petitioner’s decision to call DCPP based on scant facts and without regard for established procedures which required her to notify school administrators of her actions – coupled with petitioner’s well-documented sleeping during meetings – were legitimate reasons for the Board to request that petitioner submit to an evaluation before returning to work; and petitioner’s testimony in this matter was not credible, whereas witnesses for the Board were credible and provided documentation that contradicted petitioner’s testimony. The ALJ concluded that the Board’s directive to petitioner to undergo a fitness for service evaluation was not arbitrary, capricious or unreasonable. In so determining, the ALJ also concluded that the Board cannot rely on evidence that it did not consider when deciding to require petitioner to undergo an evaluation; however, the Board presented enough evidence to meet its burden of proof by a preponderance of the credible evidence. Accordingly, the ALJ affirmed the decision of the Board to require petitioner to undergo a mental and physical evaluation. The petition was dismissed.

Upon independent review, the Commissioner concurred with the findings of the ALJ and adopted the Initial Decision as the final decision in this matter. The petitioner may not return to work until she has had a mental and physical examination as directed by the Board.

<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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OAL DKT. NO. EDU 3912-17  
AGENCY DKT. NO. 33-2/17

CHRISTINE CUMMINGS, :  
PETITIONER, :  
V. : COMMISSIONER OF EDUCATION  
BOARD OF EDUCATION OF THE : DECISION  
TOWNSHIP OF LITTLE EGG HARBOR,  
OCEAN COUNTY, :  
RESPONDENT. :

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C.* 1:1-18.4 by the petitioner, Christine Cummings, and the Little Egg Harbor Board of Education’s (Board) reply thereto.<sup>1</sup> In this matter the petitioner, a tenured employee, is challenging the Board’s decision to require her to have a mental and physical examination before she is permitted to return to work. Following a hearing at the OAL, the Administrative Law Judge found that the credible evidence in the record established that the petitioner’s behavior deviated from normal mental health. Therefore, the Board’s decision to require a mental and physical examination was not arbitrary, capricious or unreasonable.

It is well established that school officials have an obligation to ensure that teachers and school employees are physically and mentally fit to perform the duties required to maintain the integrity of the school system. *See, John Gish v. Board of Educ. of the Borough of Paramus, Bergen County*, 145 *N.J. Super.* 96 (App. Div. 1976); *Emily Diaz v. Board of Educ. of the Township of Mahwah, Bergen County*, EDU 01751-09, Initial Decision March 2, 2010,

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<sup>1</sup> The record does not include transcripts from the hearing that was held at the OAL on September 25, September 29, October 10 and October 16, 2017.

*adopted*, Commissioner Decision No. 348-10, decided August 27, 2010. Pursuant to *N.J.S.A.* 18A:16-2, a board of education “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.” It has been recognized that the “bar set by [*N.J.S.A.* 18A:16-2] is low, which comports with the overriding purpose in this and related statutes that the health, safety and wellbeing of students is paramount.” *Diaz, supra*, EDU 01751-09 at 9 (citations omitted). Importantly, boards of education are not required to wait until harm occurs, but instead, a reasonable possibility of its occurrence warrants a fitness examination. *Gish, supra*, at 105. Moreover, a board of education’s exercise of its discretionary powers “may not be upset unless patently arbitrary, without rational basis or induced by improper motives.” *Kopera v. Board of Education of West Orange*, 60 *N.J. Super.* 288 (App Div 1960).

Upon a comprehensive review of the record in this matter, the Commissioner concurs with the ALJ – for the reasons thoroughly set forth in the Initial Decision – that the Board’s decision to require the petitioner to undergo a physical and mental examination was not arbitrary, capricious or unreasonable.<sup>2</sup> The multiple episodes during which the petitioner clearly fell asleep in meetings – as well as her questionable decision to call the Division of Child Protection and Permanency regarding a parent – demonstrate a deviation from normal physical and mental health on the part of the petitioner.

The Commissioner also finds that there is no basis in the record to reject either the ALJ’s recitations of the testimony or her determinations of witness credibility. The ALJ had the

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<sup>2</sup> The Commissioner is also in accord with the ALJ’s conclusion that only the petitioner’s conduct which was outlined in the statement of reasons for the examination, provided by the Board to the petitioner, should be considered in determining whether the required fitness examination was reasonable. The Board’s attempt to bring in additional evidence of other conduct at the hearing was not appropriate.

opportunity to assess the credibility of the various witnesses who appeared before her and made findings of fact based upon their testimony. In this regard, the clear and unequivocal standard governing the Commissioner's review is:

The agency head may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible evidence in the record.  
[*N.J.S.A.* 52:14B-10(c)].

Notably in this case, the ALJ found that the petitioner was not credible in her testimony when she stated that she simply closed her eyes at the meetings and did not actually fall asleep. The petitioner's testimony directly contradicts the evidence in the record that includes pictures of the petitioner sleeping at meetings that were taken by her co-workers. Finally, the Commissioner finds the exceptions submitted by the petitioner to be unpersuasive. The petitioner's exceptions largely replicate the arguments advanced at the OAL that were fully considered and appropriately addressed by the ALJ in the Initial Decision.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter and the petition of appeal is hereby dismissed. The petitioner may not return to work until she has had a mental and physical examination as directed by the Board.

IT IS SO ORDERED.<sup>3</sup>

COMMISSIONER OF EDUCATION

Date of Decision: October 19, 2018

Date of Mailing: October 19, 2018

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<sup>3</sup> Pursuant to *P.L.* 2008, c. 36 (*N.J.S.A.* 18A:6-9.1), Commissioner decisions are appealable to the Superior Court, Appellate Division.



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. EDU 3912-17

AGENCY DKT. NO. 33-2/17

**CHRISTINE CUMMINGS,**

Petitioner,

v.

**TOWNSHIP OF LITTLE EGG HARBOR**

**BOARD OF EDUCATION, OCEAN COUNTY,**

Respondent.

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**Wayne J. Oppito**, Esq., for petitioner (New Jersey Principals and Supervisors Association)

**Yolanda N. Melville**, Esq., for respondent (Cooper Levenson, attorneys)

Record Closed: December 12, 2017

Decided: September 10, 2018

BEFORE **LISA JAMES-BEAVERS**, Acting Director and Chief ALJ:

**STATEMENT OF THE CASE**

Petitioner Christine Cummings (petitioner or Cummings) seeks an order returning her to active employment and denying the directive of the Little Egg Harbor Township Board of Education (Board) for a psychological examination arguing that the Board's decision was arbitrary and capricious. Cummings argues that the Board cannot prove

by a preponderance of the credible evidence in the record that the petitioner's behavior deviated from normal physical or mental health such that the Board was justified in requiring a mental fitness for duty examination before petitioner could return to work. N.J.S.A. 18A:16-2(a). The Board argues that it had ample reasons in the form of petitioner's demeanor, poor decisions and work performance to justify the mental fitness test.

### **PROCEDURAL HISTORY**

Petitioner filed her petition with the Commissioner of Education on February 17, 2017. On March 13, 2017, the Board filed an answer and affirmative defenses. The contested case was transmitted to the Office of Administrative Law, where it was filed on March 21, 2017, pursuant to N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. A hearing was scheduled for September 25 and 29, 2017. On those dates, I held the hearing. Additional dates of October 10, and October 16, 2017 were added because not all of the witnesses had testified by the end of September 29, 2017. The record closed after receipt of written summations.

### **FACTUAL DISCUSSION**

The following facts are undisputed and therefore **FOUND** as **FACT**. On December 2016, the superintendent gave Cummings a letter requesting a physical and mental examination before she could return to work. The letter gave two reasons for the request. They were nodding off at work on multiple occasions and contacting the Division of Child Protection and Permanency (DCPP) regarding the parent of one of the students. At the January 19, 2017, Board meeting, no other evidence of psychological problems was presented. Cummings consented to the physical examination, which according to her doctor, determined that she was fit to return to work without restrictions. The District did not question that finding.

## **TESTIMONY**

### **Respondent's witnesses**

#### **Jacqueline Truzzolino**

Jacqueline Truzzolino testified that she was Director of Curriculum and Instruction when Cummings worked for the Board. Truzzolino had been employed with the Board, and had known Cummings, since 2004. She knew Cummings as the elementary supervisor at Frog Pond Elementary School (FPE). Cummings was responsible for school testing as the District Testing Coordinator. They both have responsibility for implementing programs. Between 2011 and 2015, Cummings performed her job responsibilities well. However, in 2016, she noticed a change.

Under Cummings' watch as District Testing Coordinator, there was a transfer student who did not take the PARCC test. The student had transferred into the District in April 2014, after testing began. On April 14, 2016, Truzzolino wrote an email to Janine Palumbo as well as Cummings and Paul Nazarok to inform them of a new student who needed to take PARCC in the District because she had not taken it in the prior school district. Truzzolino did not find out until May 16, 2016 when she ran a report, that the student had not been tested.

Truzzolino immediately sent an email to Cummings asking why the student had not been tested. Cummings response was "oops . . . district entry date April 15<sup>th</sup>." Truzzolino had to inform the Department of Education testing coordinator because the window during which a student can make up an exam had closed. She had to fill out an irregularity report that gets uploaded to the testing company, Pearson. Cummings admitted to forgetting to put the student in a make-up exam. If Cummings had run a report or had more communication with the teachers, the student would have been tested.

On July 19, 2016, there was a District-wide administrative meeting run by the superintendent, Dr. McCooley. Truzzolino told Dr. McCooley that she thought that Cummings looked ill. The meeting was long as they discussed the items on the agenda. Afterward, Truzzolino and Dr. McCooley met with Cummings and her union representative. She took notes. She expressed concern about Cummings' demeanor during the meeting. Cummings stated that she was not doing drugs and that she was just in pain following a wrist injury in spring 2016.

### **John Acampora**

John Acampora testified that he is the Director of Curriculum and Instruction for the District. In July 2016, he was assigned as Elementary Supervisor at the George J. Mitchell School (GJM) for the 2016-2017 school year. Cummings was his colleague for six months from July 2016 to December 2016. He attended meetings with Cummings, both with the superintendent and with the technology department.

On July 19, 2016, he attended his first leadership/administration meeting. He had been working nineteen days at the time. He sat directly across from Cummings. She appeared to be sleeping. He was genuinely concerned and took a picture of her, which he gave to the superintendent. She was completely disengaged from the meeting, which was supposed to be collaborative. He took the picture on his own initiative. She nodded off for most of the meeting. He did not ask Cummings if there was a problem while in the meeting. Outside of the meeting, he asked Cummings if she was okay. Her response was that she was fine.

On December 8, 2016, around noon, he had a technology department meeting with Cummings and three or four technicians. Once again, Cummings was disengaged and appeared to be sleeping. The technology was the primary focus. He had prepared the agenda. Her responses were delayed or poorly articulated. He told the superintendent about Cummings by telephone. He had expected her to have input as the meeting was to be collaborative. He did not have any follow up conversations with



Cummings. He believes that there were ten technology meetings between July and December 2016.

### **Teresa Martucci**

Teresa Martucci testified that she is a technical specialist at FPE. Cummings was her supervisor when she was Supervisor of Technology. Cummings interviewed her and later they became friends and stayed friends for seven years. Martucci saw Cummings every day. The District would have a technology meeting once a week. Nick Martucci and John Acampora would attend also.

Martucci's relationship with Cummings changed in 2016. They did not have as much to talk about as they used to. On December 8, 2016, Martucci attended the usual technology meeting with Cummings, Acampora, Nick Martucci and Mark McCloskey. She sat across the table diagonally from Cummings and observed her appearing to nod off. Her eyes were closed, and her head was down, bobbing occasionally. The meeting lasted from forty-five minutes to an hour. Her head bobbed about two or three times. She got the impression Cummings was very tired or not feeling well. She has seen her do this before, maybe five times at the most, all in 2016. She spoke during the meeting occasionally, but Acampora led it. She spoke to Acampora about it and he encouraged her to take it to Principal Henderson or Dr. McCooley. She told Henderson that Cummings appeared to be sleeping. She was worried whether her friend was okay. She told the superintendent who told her to put it in writing. She did so. (R-15.) She had been asked to take pictures by the administrative team approximately one month before. She took a picture of Cummings at that meeting. (R-14.)

### **Dominick Martucci**

"Nick" Martucci has been an IT specialist in the district for five years. He began in a substitute position with Cummings as his boss. He was present in the December 8, 2016 meeting and had to write a statement about it. He witnessed her falling asleep at the meeting. He saw her close her eyes multiple times. He sat across the table from

Cummings. He did not recall if she talked during the meeting. After the meeting, he talked to Acampora about what happened.

### **Troy Henderson**

Troy Henderson testified that he has been a building principal in Little Egg Harbor for nine years. He became Cummings' supervisor when she became the elementary supervisor in July 2013. She has been at Little Egg Harbor the entire time he has been there. She is responsible for formal and informal evaluations of teachers and helping to train teachers. Teachers were expected to communicate with Cummings, but they would approach him with questions saying they were afraid to go to Cummings. One third-grade teacher complained that Cummings "bit her head off" in fall 2015. Cummings demeanor was such that she would sometimes get upset at the question she was asked.

In fall 2015, he was asked to attend an emergency preparedness meeting. He received information from the police chief. When he went to Cummings office to bring her the information, she took it and threw it in the trash. She then went back to her computer. She did not look at him and he did not say anything to her. The information was important as she is a building leader. She is required to help lead drills for fire and lockdowns. He has become increasingly concerned about Cummings over the past two years.

In March 2016, Henderson left the school to go home and got a call from the school that a child was trashing Cummings' office. When he returned twenty minutes later, Cummings was on a bench in the main office with the student and her office was trashed. Cummings is trained in Crisis Prevention Intervention (CPI), which is a method to de-escalate a situation with a student.

Another incident was when Henderson was informed that Dr. McCooley received a call from an irate parent that Cummings had contacted the DCPD to investigate her. Cummings' secretary said that she received a call from the parent and she reported to

Cummings that the parent sounded incoherent. She lost the connection and the parent called back and at that point the parent could be clearly understood. The secretary said that Cummings told her that a call to the Department of Children and Families (DCF) needed to be made. Henderson found out when DCPD contacted the parent the next day. Cummings never told Dr. McCooley nor did her secretary. The only problem was that the parent was in a building with bad cellphone reception. The protocol is to notify him when DCPD is called and fill out a form. (R-40.) The form should state the reason that DCPD was called.

Henderson testified that Cummings also failed to perform her informal observations or walk-throughs. In 2016, Cummings performed only three when there is an expectation that they will be done daily or at least weekly. There should have been a minimum of fifty that she did before she left in December 2016. Walk-throughs are documented by the software Encourse and accessed by an application on a laptop computer. Henderson performed about one hundred and Nazarov did about 150. After seeing how few she was doing, he wrote her an email asking her to create an action plan to address the deficiency. (R-8.) Her primary role is to support and assist teachers. He never received her action plan, nor did she document any additional walk-throughs after his last email to her on November 18, 2016.

Henderson reviewed Cummings evaluation of April 6, 2016, covering July 2015 to April 2016. He noted that she had no issues in her evaluations prior to this 2015-2016 evaluation. In the April 2016 evaluation he noted his concerns with how Cummings administered the PARCC test in that the classes were not set up in time because Cummings was late. Henderson also stated that Cummings showed a lack of professionalism by hanging up on him saying she was very busy. He expects that she returns email the same day or next morning. He generally saw a change in her. Also, although she was to attend all Board meetings, she did not always show up and did not explain her failure to attend. Cummings did not timely respond after the evaluation, nor she change her behavior.

All students were to be tested on the Northwest Evaluation Association (NWEA). In November 2016, the kindergarten grade was not tested. Cummings explained that the kindergarten teachers did not want to their students to be tested. However, it is a district decision to test and teachers cannot decline. The students at GJM had already been tested. Cummings was responsible for the testing at FPE.

Another responsibility of Cummings' is to assist teachers with technology. She was to make herself available before and after school at one of the computer labs. Henderson received word that after asking her to stay to help, Cummings would stay only ten minutes then leave. She said she left because nobody showed up. Contractually, teachers may leave at 2:50 p.m. He explained that ten minutes was not enough time. He then gave her specific instructions detailing his expectations. (R-11.) Henderson became concerned about the significant change in her job performance and work ethic from years past. It affected her relationships with staff and her ability to do her job. His main concern was for the safety and security of the teachers and students.

Henderson went on to testify that Cummings called the Municipal Utilities Authority (MUA) for plumbing issues at FPE without telling the superintendent. The policy was to tell the facilities manager not to contact the MUA directly. The superintendent should be aware of all building issues.

On cross-examination, Henderson testified that the building and district coordinators are trained to implement the PARCC. He did not hear the testimony that Cummings was not trained. Regarding the student who ransacked Cummings' office, she was trained on passive restraint with Nazarok, special education teachers and him last year. The student was not injured. Cummings went to the doctor because something was wrong with her wrist. He does not know exactly what time the incident occurred because he had left the building between 2:00 and 3:00 that day. He did not ask if Cummings was injured. He just wanted to make sure the child was safe. He remembers Cummings going out on workers' compensation and wearing a brace when she returned.

Regarding the incident with DCPD, he has been told that it is not the school district's responsibility to investigate such incidents. It is the responsibility of staff to report suspected abuse or neglect to DCPD. However, he is concerned about Cummings taking the word of an employee in whom they did not have confidence. The secretary was eliminated as a part-time position. He was contacted by Dr. McCooley, not the parent.

The walk-throughs would not be known to him if Cummings did not record them even if she did them. Cummings was placed on administrative leave three weeks after he complained of her not completing the walk-throughs. (R-8.) Administrators are required to document the walk-throughs. He did not meet with her after that email, but she understood his concerns. Regarding the weekly meetings, he recalled her missing more than one.

### **Melissa McCooley**

Dr. Melissa McCooley became Superintendent of the District on July 1, 2015. She received a Doctorate in Educational Leadership in May 2017. She has two master's degrees in Educational Leadership and Curriculum and Instruction. She met Cummings on her first day and they worked together until Cummings was placed on administrative leave in December 2016.

Henderson was Cummings' direct supervisor. Dr. McCooley was over Henderson. Cummings' job was elementary supervisor which made her coordinator of PARCC testing and the supervisor with a focus on technology. Henderson expressed his concern that Cummings was not doing her walk-throughs as often as she should in fall 2015 and May 2016. Dr. McCooley said she tries to do walk-throughs every day. The technology team also expressed concern about Cummings. Then at meetings in March 2016 and July 2016, a staff member expressed concern about her demeanor during the administrative team meeting. In March 2016, Cummings was detached, not participating and nodding off.

At that meeting, Dr. McCooley was directly horizontal to Cummings and saw her head slouching over and her hand was on her forehead. She was seen sleeping a few times. Dr. McCooley went to the office and sent Cummings an email to ask if she was okay. She did not want to embarrass her, but she had not seen her do that before. She did not receive a response from Cummings until three days later. Cummings then emailed her saying everything was fine. The meeting lasted approximately an hour and a half.

In her March 26, 2016, response, Cummings said that her wrist was throbbing, and she had been sent to a Worker's Compensation doctor. Dr. McCooley told her that there was no need for them to meet. Cummings did not ask for any accommodations. Her Worker's Compensation doctor sent her to urgent care, but the report that came back said she had no restrictions. In July 2016, she fell asleep again and was told to bring a representative to a meeting. They told her that she would be sent for a fitness for duty exam based on her demeanor at the meeting. Her eyes were shut and she was falling asleep and slouching over. They really did not have any other discussions between March and July 2016. Dr. McCooley followed up with written notification to her. (R-37.) The meeting was held on July 19, 2016. (R-34.)

Falling asleep during the administrative team meeting made Dr. McCooley question her ability to serve in the capacity of an administrator. It was a safety concern. On July 20, 2016, she told Cummings that if it happened again she would be sending her for a fitness for duty examination. Cummings was very defensive and asked if she was being accused of doing drugs. That meeting lasted only 10 minutes.

On July 14, 2016, Cummings' new role was to serve as supervisor with an emphasis on assisting teachers with technology in the classroom. This was in addition to her other responsibilities as a PARCC coordinator, ensuring day-to-day operations in the building and the teacher evaluations.

NWEA was an online assessment taken by students in fall and spring. Henderson told her all students should take it. He told her he was upset to find out that

the kindergartners did not test. Dr. McCooley told Henderson to document it and put it in Cummings' evaluation.

Cummings was also responsible for discipline until she mishandled the situation with the student on March 21, 2016. Dr. McCooley's concern was that the student could have been injured. Cummings received training in crisis prevention intervention (CPI). It is given annually. The purpose of the training is to show how to de-escalate a situation. One is to use words to de-escalate and remove a child from the situation. If one is unable to calm the child, restrain until no longer a threat to themselves or others. The student destroyed Cummings' office. He never should have had that opportunity. The office is not a sensory or quiet room where the child should have been taken. The next day, Cummings went to the nurse. On March 25, 2016, Cummings went to urgent care. Cummings' decision-making, not her physical ability to perform the job, was a concern.

Regarding the DCPD call, on November 30, 2016, Dr. McCooley received an irate message from a parent because someone from the District had called DCPD on her and DCPD showed up when her children were getting off the bus. Cummings had left for the day. The parent explained that her phone was garbled and cutting in and out. Dr. McCooley sent a formal letter to Cummings expressing concern with how she handled the situation. She asked Henderson if he knew about it and he did not. She met with Cummings and her secretary separately. There is a policy that staff must report neglected or abused children. Cummings' secretary explained that she thought the parent was hungover. Cummings called DCPD without notifying the principal, which is against District policy. As an experienced administrator, Cummings should have known that she did not have enough information to call DCPD. A hungover parent did not fit the definition of neglect or abuse. In the meeting with Cummings, she was defensive. Cummings received a reprimand in the form of a letter in her file expressing disappointment at the way she handled the situation and her failure to follow up with the principal. (R-9.) Dr. McCooley had a meeting with the parent and the board president. The parent was upset that she would not disclose the name of the administrator who had called DCPD.

On December 8, 2016, Cummings was placed on leave and sent out for drug testing because of falling asleep again. She saw a photograph of Cummings sleeping. Cummings agreed to take the test. Prior to the leave, she was given notice she would be discussed at an upcoming board meeting. The purpose of drug testing is to provide evidence as to why a staff member is deviating from normal behavior. She got the test that day. The results were received in January. She did not return.

Cummings was placed on administrative leave pending a fitness for duty examination. (R-22.) The Board recommended this action based on her sleeping, poor decisions and work performance. However, at the Board meeting, the Board had Dr. McCooley's December 13, 2016, letter to Cummings requesting the fitness for duty examination, (R-22), but no other documents. Dr. McCooley was concerned that she was not able to do her job. She was not convinced that if an emergency arose, Cummings would be able to use good judgment. Cummings stated in correspondence that she refused to take the mental examination, but had the physical examination done by her doctor. (R-23.) The Board's policy is to recommend the doctor she was to go to and the Board recommended Dr. Glass. (R-24.) Cummings allowed release of the drug test results that were positive for a prescription drug. She also allowed release of results from her doctor that she was examined and found fit to perform. There was no indication of tests performed. They would not let her back because more information was needed on whether she could perform all the job duties of her position.

In addition to the above, the District invested in training for her on Enhancing Missouri Instructional Technology Specialization (EMITS) and Cummings was to train others. The summer before the 2016-2017 school year, she did not perform the training because she did not want to do it anymore. They were disappointed because the staff values it.

Last was the MUA issue. The policy is that if there is an issue with facilities, she puts a request in the system. The facilities manager gets it and deals with it. In this instance, the facilities manager was not made aware until the MUA showed up.



On cross-examination, Dr. McCooley denied socializing with the parent on whom DCPD was called but agreed that they had a mutual friend. She would not call DCPD if she suspected a parent being under the influence and driving children; she would call the police. She is aware that under the statute, there is immunity for a person calling child services upon suspicion of child abuse or neglect. Dr. McCooley understands that Cummings made the call and then gave the phone to the secretary to provide the details. Cummings was reprimanded due to not wanting to rectify the relationship with the parent. The secretary is no longer employed by the board due to a reduction in force at the end of the school year.

Regarding the incident with the student, the teacher is the first person to deal with the student, but Dr. McCooley did not ask the teacher about the situation with the student prior to Cummings' involvement. She does not know what behaviors the student exhibited. She does not know whether another certified staff member was involved. She never had a meeting with Cummings.

The result of the MUA coming out is that a clogged toilet at FPE was cleared. Generally, if toilets are backed up and the district needs a plumber, an administrator must get one.

Regarding the July 19, 2016, meeting, Dr. McCooley suggested to another technology worker, Ms. Martucci, that she take a picture of Cummings. She did so after receiving text messages from people saying that Cummings was falling asleep. She did not suggest to Acampora that he take a picture.

Dr. McCooley never asked Cummings how her wrist was doing or if she had a prescription for pain medicine. The school nurse reported Cummings' injury. (R-43.) Urgent care recommended that Cummings be placed on light duty. She was to avoid repetitive lifting and bending. She was being referred to a hand surgeon.

When Cummings' leave was presented to the Board, no one mentioned the incident with the kindergarten student, the standardized testing, the MUA or EMITS. Only Mr. Toscano talked. He never had the opportunity to respond to anything other than what was in the letter to Cummings. The Board made its decision before Cummings' drug test results came back. Dr. McCooley did ask Cummings' doctor, Dr. Clancy, for additional information, but not in writing. He did not respond to her. The Board trusted her information and judgment. She listed only the recent issues, not all of them.

### **Paul Nazarok**

Paul Nazarok testified that he is elementary supervisor since 2003. Since 2008, he has been at FPE. He worked with Cummings as co-elementary supervisor under Principal Henderson. He and Cummings worked together in different capacities almost twenty years and have a good relationship. They communicate every day throughout the day. When he became supervisor, she was a teacher. He supervised her for two years. As co-supervisors, both have responsibility for discipline, teacher evaluations, and state testing, although one may have more responsibility than the other. Dr. McCooley asked her to have more of a focus on technology. He took more of the lead on the intervention and referral team.

For PARCC testing in 2016, Truzzolino was the lead person initially, then Cummings. In spring 2016, problems arose with the accuracy of testing rosters. Teachers are given tickets that must match the rosters. The testing locations were not prepared for students to test. There were no chairs in a designated room. Both ticketing and testing locations are Cummings' responsibility. The confusion created a hectic atmosphere. The year before, it went much smoother and there were fewer mistakes.

After an emergency preparedness meeting, Nazarok and Henderson walked into Cummings' office to update her on what was said and give her materials. Henderson handed her the documents and she threw them in the trashcan without looking at them.

She explained that she was angry and upset that she had not been invited to attend the meeting and that Henderson did not inform her that they were leaving for the meeting. It did not seem to be a big deal to him that would warrant anger.

Nazarok has had CPI training. He is aware of the kindergarten student who wrecked Cummings' office in spring 2016. He has had to restrain the student in the past because she has a history of tantrums and behavior problems. He has restrained her in the classroom when not able to remove her and he sometimes is able to do it in his office. However, she never caused damage to his office. The point of restraint is to prevent damage to herself, other students or property. There is a sensory room and a quiet room where a child could be taken to calm down and de-escalate a situation. He would not bring her to his office in the middle of a tantrum because that is the purpose of those rooms. He saw Cummings' office the day after and asked her what had happened. She said that student had a tantrum in the main office and began to damage the office and throw things. He has seen Cummings restrain students numerous times, including this student, prior to spring 2016.

He and Cummings are required to complete walkthroughs or teacher evaluations using an online program noting what they observe. They can use a computer, tablet or phone. Cummings never indicated to him that she was having trouble documenting her walkthroughs.

Regarding the call to DCPD, Cummings told him about it moments after the call was made. She wanted his opinion as to whether she made the right decision and she explained what had happened. He told her he was concerned about any information that the secretary in question would share because they collectively had concerns about her. District policy requires notification of the principal and the school resource officer if that call is made. He has contacted DCPD in the past. The person calling must then complete a standard form.

Nazarok had an informal conversation with Cummings, Dr. McCooley and a secretary in which he said that his girlfriend was having trouble sleeping. Cummings

offered to give him Xanax, so he could give it to his girlfriend to help her sleep. The comment was followed by an awkward silence.

On cross-examination, Nazarok testified that he was not in school during the incident with the kindergarten student. He is aware that she has special needs. Cummings said that she allowed the student to have the tantrum then backed off. A successful restraint would have the tantrum come to an end without hurting herself, others or damaging property.

Regarding the PARCC testing, he became aware that a student was not tested who should have been tested in 2016. Over 400 students were tested in 2016. The principal oversees the school.

### **Petitioner's Witness**

#### **Christine Cummings**

Christine Cummings testified that she has been employed by the Board since 1992. She began as a teacher. In 2006, she became the technology coordinator and in 2009, she was promoted to Technology Supervisor. She became Elementary Supervisor in February 2011.

Regarding the incident with the kindergarten student, she recalled an instructional aide calling her to a classroom at 2:15 on March 21, 2016 because the student refused to go to aftercare. She found the student lying in the hallway with no shoes. She was able to de-escalate the situation in the hallway and she brought her to the office. There were no other administrators present. Henderson left to change his clothes earlier and did not return. Nazarok was in professional development out of the building. Cummings had dealt with the student before. The quiet room was available but not necessary since the student had calmed. She was going to keep her in the office until all the other students were dismissed and then take her to aftercare. However, she did not want to go to aftercare after the students were dismissed. She became agitated and she took her to the quiet room. She was in there with the student.

When she de-escalated, she tried again to take her to aftercare. She asked the counselor where she should be but before the counselor could say where to take her, the student ran out of aftercare. She had to run after her and catch her in the main office. She first ran into Henderson's office and pulled his computer cords so she removed her from there. A teacher came to assist her and removed her to her office. They could not return to the quiet room. She tried to engage the student and de-escalate her. She let her throw things because she was not a danger to herself. When the student picked up a pair of scissors and threw them, she took the student out of her office and held her for her safety. The secretary was present, and she asked her if Henderson had returned. They were in the main office approximately an hour. The secretary called the student's grandmother. The student was not injured, but she was.

Cummings was the first administrator to be trained in CPI. She also took the refresher course. The training teaches that if the student is not a danger to herself, let her continue the behavior. The hold is to be used as a last resort. The purpose of CPI is to keep the student safe.

Henderson had arrived by the time the student was picked up. She saw the school nurse the next morning and she told her she should see a doctor. She then went to Urgent Care where the school sends employees for workers' compensation. Her arm was immobilized around the elbow.

Regarding the PARCC testing, when she arrived no one else was there. Henderson arrived about 7:20 a.m. There were changes made to the process since the year before. They had to begin right after spring break. There were several transfer students, one of whom did not take the test. She had asked teachers to place names of students who needed to make up the test on the makeup roster. His name was not on the list. She missed that the student did not take the test. No one in the administrator brought this up in connection with her fitness for duty exam.

Regarding EMITS, which stands for Enhancing Missouri Instructional Technology Specialization, she was trained and did receive a stipend. She did not wish to continue. No one brought this up in connection with the fitness for duty exam.

Regarding the call she made to the MUA in October 2016, there was a severe odor in several bathrooms and classrooms. A maintenance worker said that he would have to call a plumber, but said that the school district would have to pay a plumber but the MUA would come for free. There was no facilities manager to call because the District was between facilities managers. Someone else she spoke to said that he would tell the business office that the MUA was coming. The Board did not raise this issue when discussing reasons for the fitness for duty examination.

The NWEA was a computerized standardized test that five kindergarten classes did not wish to participate in taking. One did attempt to take it but did not finish. The teachers collectively approached her and expressed their concern about the kindergartners' ability to take it. She addressed the issue with Ms. Truzzolino who said it would be up to the kindergarten teachers whether they took it or not. At the board meeting, no one brought up the NWEA test. The only things that the Board discussed at the meeting and that were included in the letter from Dr. McCoolley were the falling asleep and the call to DCPD.

On November 30, 2016, a secretary told Cummings that a parent sounded incoherent and she could not understand her. She thought she heard the parent say that she was hung over. The parent called back and relayed the information. The secretary was concerned about the parent, so Cummings told her that if she has a concern, she should call DCPD. Cummings dialed the number for her and said she had a secretary with a concern and put the secretary on the phone. She did not know where Henderson was at the time and Nazarok was not in his office. The policy says that the principal or designee should be notified. She thought of herself as the designee.

An issue that was presented to the Board was the three incidents of falling asleep at work. The first time, March 24, 2016, was after the incident with the kindergarten student. The injury had not healed. She received an email from the superintendent about it and she apologized. She was in pain and did not realize that she seemed detached from the meeting. The superintendent said she was just concerned. The next time, July 19, 2016, there were a lot of agenda items in the hour-long meeting. She took four pages of notes. The superintendent never made it known to her that she was falling asleep. The first time she heard about it was when she told her to bring a representative with her to a meeting later that day. She told her she had closed her eyes but was not asleep. Cummings offered to take a drug test.

Acampora had just been hired on July 1, 2016. She had only one to two conversations with him prior to the meeting in question. He never expressed concern about her.

The third incident occurred on December 8, 2016 in the technology meeting with Acampora, who was chairing the meeting. She was involved in the conversation during the meeting and no one indicated that she was falling asleep or nodding. They discussed the technology budget, radios and EMITS. She was contacted ten to fifteen minutes after the meeting and told that she would be placed on administrative leave and would have to get tested. She said that she has nothing to hide.

Dr. Clancey performed her physical examination and wrote a prescription saying that she was fit to return to work. The Board mentioned the drug test, but nothing else other than DCPD and falling asleep.

On cross-examination, the results of the drug test were positive for Benzodiazepine, which has the side effect of drowsiness. She began taking it on January 1, 2016. She never offered the drug to Nazarok's girlfriend. She interacts with students and supervises them daily. She agrees that alertness is required in her job because she is responsible for ensuring a safe environment for students and staff.

She chose not to receive email on her phone, but she checks it daily on the computer or home laptop. On March 26, 2017, she looked for PARCC updates, even though it was Saturday.

She admitted that she would be concerned if she saw an administrator falling asleep or having his or her head down during a meeting. To her knowledge though, she did not have her eyes closed or head down on July 19, 2016. She did not tell Dr. McCooley that her eyes were closed due to the pain in her wrist from the spring. She agreed that her eyes appear closed or in a blink on the photo shown her. (R-13.) She did not notify anyone of her pain or need to put her head down.

Regarding the kindergarten student, she did not restrain her in the main office until she got the scissors. She then wrapped her arms around her and held her arms underneath with the student facing away from her. She did not take that action before then because holding a child is the last resort. She probably exercised that restraint for forty-five minutes.

Cummings testified that she was not the lead coordinator for the NWEA test. The Director of Curriculum advised her that the kindergarten class can refuse to take a district required test. The one class that tried to complete it did not because the students had trouble using the mouse and accessing the test.

Cummings said that she had injured her wrist back in 2012. She wore a brace after the injury in March 2016. She saw Dr. McDade every three weeks. She did not have a medical impairment that prohibited her from doing her walkthroughs.

Regarding the DCPD call, when the principal is not available, the elementary supervisors are in charge. She agreed that she could have emailed the principal. Nazarok told her there was going to be an issue with her calling because the parent is a friend of the superintendent. She wrote it in the DCPD log, but not that day. She does not know how Nazarok knew.



She denied falling asleep at the December 8, 2016 meeting. She does not know if her eyes are closed in the picture of her taken at that meeting. (R-14.) She was taking Xanax at that time as well as at the July meeting. There were no comments about her sleeping in August, September, October, or November.

### **FINDINGS OF FACT**

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

For reasons set forth below, my findings of fact are limited to the two incidents set forth in the Board's statement of reasons—the three incidents of sleeping in meetings and Cummings' call to DCPD without sufficient information and without following procedures.

Cummings was not credible in her testimony that she was not sleeping, but only closing her eyes during the meetings. Her co-workers would not have been able to take pictures of her without her knowledge had she been attentive to what was going on at the meetings at that time. The pictures are not great quality, but they are sufficient to show that Cummings did more than blink or quickly close and reopen her eyes. Multiple witnesses testified to Cummings' sleeping on multiple occasions. I **FIND** as **FACT** that Cummings slept at meetings on March 24, 2016, July 19, 2016 and December 8, 2016.

In contrast, no witness was presented to refute Cummings' testimony regarding her call to DCPD. Therefore, I **FIND** as **FACT** her testimony that on November 30, 2016, a secretary advised her that she believed a parent she spoke to said that the was "hung over." Cummings dialed the number for DCPD for the secretary to report to the Division. The Division contacted the parent, who was an acquaintance of the superintendent. Henderson and Nazarek were not present at the time. There is a District policy, as well as a law that staff must report neglected or abused children. The policy also requires that the principal be notified when DCPD is called. Cummings did not notify Henderson.

The Board also presented witnesses to show that Cummings failed to complete her supervisory walk throughs, mishandled a special needs child having a tantrum, failed to follow procedures for standardized testing and failed to follow protocol when there was a need to advise the principal of actions she had taken. However, Cummings had no opportunity to address these issues before the Board because the Board did not consider them. Therefore, they are not before me.

### **CONCLUSIONS OF LAW**

Under N.J.S.A. 18A:16-2(a), a school 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." Through this provision, "the legislature has delegated to boards of education the power to request a teacher who shows evidence of harmful, significant deviation from normal mental [or physical] health affecting the teacher's ability to teach, discipline or associate with children of the age of the children subject to the teacher's control in the school district to submit to a psychiatric [or physical] examination." Kochman v. Keansburg Bd. of Educ., 124 N.J. Super. 203, 212 (Ch.Div.1973).

The threshold issue in this case is whether, on appeal of a school board's decision to require a teacher to undergo a psychiatric examination, may the board

present evidence outside of the statement of reasons for the examination provided to the teacher under N.J.A.C. 6A:32-6.3(b).

Under N.J.A.C. 6A:32-6.3(b):

When a district board of education requires an employee to undergo an individual examination:

1. The district board of education shall provide the employee with a written statement of reasons for the required examination. The district board of education shall provide the employee with a hearing, if requested.

2. The determination of such a hearing shall be appealable to the Commissioner pursuant to N.J.S.A. 18A:6-9 . . . .

[bid.]

On appeal, the question is whether “the board's determination was a fair and reasonable one—a determination which . . . is one which could logically be made by reasonable and fair-minded men who have evaluated petitioner’s behavior and who are concerned with petitioner’s fitness to be a teacher in intimate contact with numbers of impressionable, adolescent pupils.” Gish v. Bd. of Educ. of Bor. of Paramus, 145 N.J. Super. 96, 105 (App.Div.1976). Thus, “[t]he issue to be determined is whether petitioner has shown by a preponderance of the credible evidence that it was unreasonable for the Board to conclude, based upon the facts before it . . . that there was ‘evidence of deviation from normal, physical or mental health.’” Mahan v. Bd. of Educ. of Bor. of Haddon Heights, 1984 S.L.D. 642, 664.

Under the facts in Cummings, the superintendent notified Cummings by letter dated December 13, 2016, that:

I recommended to the Board and the Board agreed to require you to submit to a physical and mental examination by a school physician to determine your continued fitness for duty . . . This decision is based upon our concern for the health, safety and welfare of you and the District’s students. Specifically, our concern rises from incidents wherein you fell asleep at multiple meetings . . . Another incident that is concerning occurred when you called the Division of Child

Protection and Permanency and reported a student matter without first obtaining correct information and consulting with and subsequently advising District Administration of same. Such behavior can be seen as unprofessional and inappropriate for Board employees.

[R-22.]

The superintendent testified at the hearing that the only discussion that the Board had regarding Cummings' 'fitness for duty examination' request was limited to the reasons set forth in the December 13, 2016 letter. She further testified that the Board did not have any questions for Cummings at the January hearing, but rather relied on the reasons set forth in the statement of reasons in R-22. The superintendent also testified that the Board members trusted her judgment that there was a substantial amount of information that that was her judgment call and she just listed some ones that were recent."

N.J.A.C. 6A:32-6.3 requires a school board to provide a teacher a statement of reasons for a psychiatric examination, and to provide a teacher with a hearing, if requested. N.J.A.C. 6A:32-6.3(a). That provision further states that, "[t]he determination of such a hearing shall be appealable to the Commissioner . . ." N.J.A.C. 6A:32-6.3(b)(2). Here, the Board ordered an examination based on the statement of reasons provided to Cummings. Therefore, on appeal, the question is whether the Board's decision to order an examination based on those reasons was arbitrary, capricious, or unreasonable. Therefore, I **CONCLUDE** that the Board cannot rely on evidence that it did not consider when it made its decision. The hearing before me is not de novo where the Board could cure any deficiencies in its evidence with new information that she had not opportunity to contest. My decision on the reasonableness of the Board's action is limited to the facts on which it based its decision. Notwithstanding my agreement with petitioner on that point, I **CONCLUDE** that the Board has presented enough evidence to meet its burden of proof by a preponderance of the credible evidence.

The propriety of a school board's decision to order a physical or psychiatric examination under N.J.S.A. 18A:16-2 has been the subject of several administrative

decisions. For example, in Bd. of Educ. of the Twp. of Irvington v. Varano, EDU 5203-00, Initial Decision (December 22, 2000), adopted, Comm'r (February 16, 2001) <<https://njlaw.rutgers.edu/collections/oal>>, a school board properly exercised its judgment to order an industrial arts teacher, Paul Varano, to undergo a psychiatric examination pursuant to N.J.S.A. 18A:16-2 because "the evidence presented in the certification and evaluations of the Board demonstrated the deterioration of Mr. Varano's classroom performance and his defiant or non-responsive attitude and behavior represented a serious deviation from the norm." One of the evaluations included a classroom observation that revealed that "[t]he students were eating potato chips, the blackboard had no objective, all machines were covered with plastic, Mr. Varano sat at his desk the entire period and did not have his plan book." And, in the letter requesting that Mr. Varano undergo a psychiatric examination, the superintendent noted that Mr. Varano had shown a "passive or non-responsive attitude when addressed by supervisors on a regular basis."

In Bd. of Educ. of the Twp. of Lyndhurst v. Bleviss, EDU 1711-07, Initial Decision (August 7, 2007), adopted, Comm'r (December 5, 2007) <<https://njlaw.rutgers.edu/collections/oal>>, the Commissioner held that a school board properly ordered a psychiatric examination of a teacher who, on several occasions, "spoke to himself, claimed there were conspiracies against him, turned red and physically shook with anger" and "was demeaning to [female colleagues], smirking and leering into their classrooms when he had hall duty." According to the Commissioner, "[t]here is no explicit mandate for the board to prove that the employee's aberrant behavior has been specifically directed toward students" and that, under N.J.S.A. 18A:16-2, a school board could determine that "hostile and abnormal behavior directed by one teacher towards several others, and outbursts of temper displayed on multiple occasions warrant a psychiatric evaluation, including an assessment of the likelihood . . . that his negative behavior could be visited upon students."

Finally, in Diaz v. Bd. of Educ. of the Twp. of Mahwah, EDU 1751-09, Initial Decision (March 2, 2010), adopted, Comm'r (August 27, 2010) <<https://njlaw.rutgers.edu/collections/oal>>, a school board reasonably directed a teacher

to undergo a psychiatric evaluation before granting her request for a transfer from a middle school to a high school because, in support of her request, she included a note from her doctor, who opined that the transfer was a “medical necessity” due to “extreme duress at her present job description.” However, in Stewart v. Bd. of Educ. of the City of New Brunswick, EDU 1186-16, Initial Decision (July 14, 2016), adopted, Comm’r (August 26, 2016) <<https://njlaw.rutgers.edu/collections/oal>>, the Commissioner concluded that a school board had improperly exercised its discretion under N.J.S.A. 18A:16-2 because, on appeal, “the evidence presented by the Board did not demonstrate a decline in petitioner’s work performance or prove that she posed a health or safety threat to her students or co-workers.” In that case, several of the reasons cited by the school board for ordering a psychiatric examination, including extreme and rapid weight loss, mood swings, hiding under a desk, and inappropriate physical contact with colleagues, were either reasonably explained by the teacher as misunderstandings or based on uncorroborated hearsay.

In the present case, the Board presented as reasons for requiring the fitness for duty evaluation that Cummings has fallen asleep at three different staff meetings and Cummings called DCPD and reported a student matter without first obtaining correct information and consulting with and subsequently advising District Administration of same. The Board goes on to note that such behavior can be viewed as unprofessional and inappropriate for Board employees. As set forth by the Appellate Division in Gish, supra, the obligation of school boards to determine the fitness of teachers reflects their duties to protect the students from a significant danger of harm, whether it be physical or otherwise. Gish, 145 N.J. Super. at 104-105. The Court goes on to note that the Board need not wait until the harm occurs to determine that a reasonable possibility of its occurrence warrants such action.

Cummings agreed that alertness is necessary for her job. Although the incidences of sleep were spread out over nine months, the incidents were no less concerning. Dr. McCooley was within her rights as chief school administrator to not accept Cummings’ reasoning that she was closing her eyes due to pain, especially since she continued to refuse to admit that she was asleep in the last meeting.

Cummings admitted that she would be concerned if she saw someone sleeping in meetings on three different occasions. Therefore, I **CONCLUDE** that Cummings' sleeping in meetings on three different occasions was a legitimate reason for requesting the mental examination.

Cummings argues in closing that her call to DCPD cannot be a reason to support the Board's decision to request a fitness for duty exam because those who report suspected child neglect or abuse are immune from civil or criminal liability. The immunity of reporters of suspected child neglect or abuse has nothing to do with the present case. Cummings is not being tried civilly or criminally. The present case is an administrative hearing to determine whether Cummings' decision to call DCPD based on the scant facts she had available coupled with her failure to follow procedures to notify her superior administrators that she did so can be part of the basis to require Cummings to undergo a mental examination. I **CONCLUDE** that Cummings' decision to call DCPD was a legitimate reason for requesting the mental examination. Therefore, I **CONCLUDE** that respondent has met its burden of proving by a preponderance of the credible evidence in the record that Cummings' behavior deviated from normal mental health.

### **ORDER**

I **ORDER** that the decision of the Little Egg Harbor Board of Education be **AFFIRMED** and Cummings' appeal **DISMISSED**.

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.

September 10, 2018  
\_\_\_\_\_  
DATE



\_\_\_\_\_  
**LISA JAMES-BEAVERS**  
Acting Director and Chief  
Administrative Law Judge

Date Received at Agency: \_\_\_\_\_

Date Mailed to Parties: \_\_\_\_\_

caa



**APPENDIX**  
**WITNESSES**

**For Petitioner:**

Christine Cummings

**For Respondent:**

Jacqueline Truzzolino

John Acampora

Teresa Martucci

Troy Henderson

Dr. Melissa McCooley

Paul Nazarok

**EXHIBITS**

**For Petitioner:**

P-1 Picture of E's office

P-2 Picture of C's office

**For Respondent:**

R-1 March 2016 email correspondence between Dr. Melissa McCooley, Superintendent and Petitioner

R-2 Evaluation of Petitioner by Principal Troy Henderson dated April 6, 2016

R-3 Letter dated May 18, 2016 from Director Curriculum and Instructions, Jacqueline Truzzolino to Petitioner

R-4 Memorandum regarding Acknowledgement of Letter dated May 18, 2016

R-5 Notes from July 20, 2018 Meeting

R-6 Email dated July 20, 2106 from Dr. Melissa McCooley, Superintendent and Petitioner

- R-7 November 4, 2016 email correspondence between Principal Troy Henderson and Petitioner
- R-8 November 16, 2016 through November 18, 2016 email correspondence between Principal Troy Henderson and Petitioner
- R-9 Letter dated December 6, 2016 from Dr. Melissa McCooley, Superintendent to Petitioner
- R-10 Letter dated December 13, 2016 from Dr. Melissa McCooley, Superintendent to parent
- R-11 December 2016 email correspondence between Principal Troy Henderson and Petitioner
- R-12 Letter dated December 8, 2016 from Dr. Melissa McCooley, Superintendent to Petitioner
- R-13 Picture of Petitioner
- R-14 Picture of Petitioner
- R-15 Statement by Teresa Martucci, dated December 8, 2016
- R-16 Statement by Dominick Martucci, dated December 8, 2016
- R-17 Statement of John P. Acampora, dated December 8, 2016
- R-18 District Policy 3161 (Examination for Cause)
- R-19 District Policy 3218 (Substance Abuse)
- R-20 December 8, 2016 drug test results from Southern Ocean Medical Center
- R-21 Release executed by Petitioner, dated January 12, 2017
- R-22 Letter dated December 13, 2016 from Dr. Melissa McCooley, Superintendent to Petitioner
- R-23 Letter dated December 20, 2016 from Petitioner to Dr. Melissa McCooley, Superintendent
- R-24 Letter dated January 10, 2017 from Dr. Melissa McCooley, Superintendent to Petitioner
- R-25 Letter dated January 12, 2017 from Petitioner to Dr. Melissa McCooley, Superintendent
- R-26 Letter from Petitioner to Dr. Melissa McCooley, Superintendent, dated January 18, 2017, enclosing State of New Jersey Prescription Blank from J. Patrick Clancy, M.D., dated January 18, 2017
- R-27 Evaluation of Petitioner by Principal Troy Henderson, dated January 19, 2017

- R-28 List of Concerns by Dr. Melissa McCooley, dated January 30, 2017
- R-29 Curriculum Vitae of Gary M. Glass, M.D.
- R-30 February 24, 2016 PARCC Testing Meeting Sign-in Log and Agenda
- R-31 March 15, 2016 PARCC Testing Meeting Sign-in Log and Agenda
- R-32 April 16, 2016 email correspondence from Jacqueline Truzzolino to Petitioner, et al.
- R-33 May 16, 2016 email correspondence between Jacqueline Truzzolino and Petitioner
- R-34 Minutes of July 19, 2016 Little Egg Leadership Meeting
- R-35 Job Description for Elementary Supervisor
- R-36 July 14, 2016 email correspondence from Petitioner to Dr. Melissa McCooley, Superintendent
- R-37 July 20, 2016 email correspondence between Dr. Melissa McCooley, Superintendent and Petitioner
- R-38 December 1, 2016 email correspondence between Dr. Melissa McCooley, Superintendent and Petitioner
- R-39 Invitation to December 1, 2016 from Dr. Melissa McCooley, Superintendent to Petitioner, Principal Troy Henderson, et al.
- R-40 Frog Pond Elementary School—Record of DCPD Open Case Log Sheet (Blank Form)
- R-41 Absent Report
- R-42 July 20, 2016 Email from Dr. Melissa McCooley, Superintendent
- R-43 Workers' Comp Case, dated March 22, 2016 (for identification only)