

STATE OF NEW JERSEY - DEPARTMENT OF EDUCATION  
BUREAU OF CONTROVERSIES AND DISPUTES

In the Matter of Tenure Hearing of John Costello:

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SCHOOL DISTRICT OF THE CITY OF NORTHFIELD

Case No. 150-7/15

and

OPINION  
and AWARD

JOHN COSTELLO

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Before:

Edmund Gerber, Arbitrator

Appearances:

For the School District of the City of Northfield

John G. Geppert, Jr., Esq.

Syrion A. Jack, Esq., on the Brief

Schwartz, Simon, Edelstein & Celso

For the Respondent:

Michael B. Berman, Esq.

The Northfield Board of Education filed tenure charges against Respondent John Costello on July 1, 2015. On July 20, 2015, the State of New Jersey Department of Education deemed the tenure charges sufficient, if true, to warrant dismissal or reduction in salary and the charges were referred to me, Edmund Gerber, as arbitrator. Hearings were conducted by telephone on August 17, 2015 in the offices of the Northfield Board of Education in Northfield, New Jersey on September 11, 18, 28 and October 5, 2015 and by telephone on October 8, 2015. Both parties examined and cross-examined witnesses and introduced evidence. Both parties submitted briefs which were received by November 4, 2015.

## CHARGES

The charges filed by the Board of Education consisted of the following:

### Charge 1

The charges allege unbecoming conduct and/or other just cause for dismissal including but not necessarily limited to insubordination and incompetence related to failure to discharge responsibilities in caring for students who have suffered injury or illness.

#### Count 1

Specifically, Count 1 alleges that Costello violated the School's standing order concerning the protocol for administering to students suffering seizures on or about November 5, 2014.

#### Count 2

Count two alleges that the Respondent violated standing orders on November 10, 2014 when he was summoned to attend to a third grade student who he was informed had passed out by failing to promptly respond to a student and taking less than thirty seconds to assess the student's health status and failed to evaluate the child or ask her questions before escorting her to the nurse's office.

#### Count 3

On or about January 16, 2015, Respondent failed to follow standing orders when he called the School's Principals to the nurse's office where they found a third grade student crying by the Respondent's desk. The student stated she did not feel well and was going to throw up. The Respondent failed to care for the student and was visibly upset, stating that he was upset because the student was sent to his office by the teacher without a nurse's pass. The Respondent continued to state he was upset with how he was being treated. The Principals directed the Respondent to call the student's parent and sent the child back to her classroom.

### Charge 2

Charge 2, Conduct unbecoming and/or other just cause for dismissal, including not necessarily limited to insubordination and incompetence related to failure to perform duties. The foregoing counts facts alleged are incorporated by reference into this charge.

### Count 1

Board Policy No. 5141, *Health*, requires that the nurse assist with physical examinations; conduct biannual scoliosis screenings, and conduct audiometric screening. On or about May 7, 2015, Mr. Costello failed to update the referral forms needed to be sent home regarding students who failed their annual health screening performed in the nurse's office.

### Count 2

Pursuant to N.J.A.C. 6A:16-2.2(H)(1)(ii)(1), prior to participation in a school sponsored athletic or intramural athletic team or squad for students enrolled in any grades from 6 to 12, the report of health findings or medical examination for participation shall be documented on forms approved by the Commissioner of Education. Respondent was required to update the newly approved sport physical forms. Despite the foregoing, during the period prior to May 7, 2015, Respondent failed to update the newly approved sport physical forms.

### Count 3

Pursuant to Board policy, all medications prescribed by a physician for particular students as well as all over the counter medications shall be securely stored and kept in their original labeled container. On or about May 7, 2015, the Respondent's personal prescription medication was discovered in an unlocked drawer within the health office together with a number of unlabeled prescription medicines.

### Count 4

Board Policy 5141.21 also requires that "all medications brought to school by the parent or guardian shall be picked up at the end of the school year or at the end of the period of medication." However, on or about May 7, 2015, expired, unmarked medications were discovered in the closet of the nurse's office and in the active medication cabinets.

### Count 5

Pursuant to N.J.A.C. 6A:16-2.3(b)(3), the responsibilities of the certified school nurse shall include the maintenance of student health records as well as, based upon a parent's failure to provide evidence of a child's immunizations, recommendations to the school principal students who shall not be admitted or retained in the school building. Further, the nurse shall annually review student immunization records that any exemption from immunization continues to be applicable to any student. On or about May 7, 2015, student vaccination records maintained by the Respondent were discovered in the health office in an unmarked folder.

#### Count 6

The Respondent also failed to enter vaccination records into the electronic computer system.

#### Count 7

Pursuant to Board of Education Policy No. 5141.21, *Administering Medication*, Mr. Costello is required to maintain a copy of physicians' standing orders in the nurse's office and record the name of the student to whom medications may be administered, the prescribing physician, the dosage and timing of medication and a record of each instance of administration. On or about May 8, 2015, Respondent failed to maintain the physicians' standing orders for medication administration and emergency medication administration.

#### Count 8

Pursuant to Board Policy, the Respondent was charged with the responsibility of maintaining the District's Automated External Defibrillators (AED), on or about May 7, 2015, Respondent had failed to connect an AED box to the alarm, failed to update the pads and batteries and failed to maintain the log in both the AED box and in a binder in the health office.

#### Count 9

Pursuant to N.J.A.C. 6A:16-2.3(b) (3) (iii), it is the responsibility of the nurse to maintain student health records. Access to and disclosure of information in the student health records shall meet the requirements of the Family Education Rights and Privacy Act (FERPA). On or about May 8, 2015, bills for an AED and a letter dated back to 2004 regarding a student's health issue were kept in a box used to store feminine products which is located by the reception desk in the nurse's office.

#### Count 10

Pursuant to N.J.S.A. 6A:32-7.4(b), school districts may store all documents either electronically or in paper format. Prior to May 8, 2015, the Respondent failed to complete the electronic version of each student's health history and appraisal form and failed to merge the information with the student's current electronic vaccination records. The lack of continuity between the paper and electronic form of each student's health history cause the District to be incompliant when running a Vaccination Compliance Report.

#### Count 11

Pursuant to N.J.A.C. 6A:16-2.1(a), each school district shall ensure immunization records shall be reviewed and updated annually. Moreover, pursuant to Board Regulation 5141.3, *Health Examinations and Immunization Procedures*, every school shall maintain

in its health office a State of New Jersey immunization record for every student. The record shall include the date of each immunization and shall be separated from the child's other medical records for purposes of immunization record audit. The nurse is responsible for annually reviewing student immunization records. On May 8, 2015, Respondent failed to maintain up to date student vaccination records as it was discovered that the student vaccination records and student vaccination certifications were not entered into the electronic form of a student's health and history appraisal.

#### Count 12

Despite the fact that Board Policy 5141.3 requires every school to maintain official State of New Jersey immunization records for every student and that this record shall be separated from the child's other medical records for the purpose of immunization record audits, on or about November 24, 2014, Respondent's actions were deficient on approximately 37 occasions due to the Respondent's failure to collect and record sixth grade immunizations as required by the Atlantic County Department of Human Services following an immunization audit of the Northfield Community School.

#### Count 13

Board Policy 5141, *Health*, provides that the school nurse shall have the primary responsibility for the administration of glucagon to a student with diabetes who is experiencing severe hypoglycemia. Despite the foregoing, on or about May 8, 2015, Respondent failed to maintain a glucometer in accordance with the aforementioned policy and regulation in the nurse's office in order to evaluate for hypoglycemia of students or staff.

#### Count 14

Board Policy 1541.21, *Administering Medication*, provides that the Board shall permit the school nurse or school physician to administer epinephrine via epi-pen or other prefilled auto-injector mechanism in emergency situations. On or about May 8, 2015, it was discovered that the Respondent allowed the epi-pen and epi-pen juniors located in the nurse's office to expire. Accordingly, no emergency epi-pens would have been available in the event of an anaphylaxis reaction of a student or staff member.

#### Count 15

Pursuant to N.J.S.A. 18A:40-12.7, each public school in the State shall have and maintain for the use of pupils at least one nebulizer in the office of the school nurse or other accessible location. Moreover, pursuant to N.J.S.A. 6A:16-2.1(a)(5)(i), the treatment of asthma in the school setting shall include but shall not be limited to the requirement that each school nurse shall be authorized to administer asthma medication

through the use of a nebulizer. Despite the foregoing, on or about May 8, 2015, Respondent failed to maintain nebulizer tubing, stock albuterol, and/or masks or wands in the nurse's office.

#### Count 16

Pursuant to the District's Nursing Services Plan for the 2014-2015 school year, 12 students were identified as "Level II: Medically Fragile"; that is, students with complicated healthcare needs that each day face a possibility of a life-threatening emergency requiring the skill and judgment of a professional nurse. Examples may include but are not limited to severe seizure disorder requiring medication. Yet, on or about May 8, 2015, Respondent had no initialized healthcare plan available for a student who experienced a seizure in school and no seizure log where pertinent information regarding all seizure students could be readily identified and treated in the event of an emergency.

#### Count 17

On or about May 6, 2015, the Respondent failed to update a student's electronic medical record with a neurologist note detailing the treatment protocol of a student with a history of seizures when the student presents with a headache, despite the fact that the documents had been sent into the nurse's office on January 2015, stamped and marked received on January 9, 2015 and stored within the student's paper file.

#### Count 18

Although pursuant to N.J.A.C. 6A:16-2.3(b)(3)(i), the nurse is required to carry out written orders of the medical home and standing orders of the school physician, on or about May 8, 2015, the Respondent maintained written protocols in the nurse's office. No standing orders were available, nor were there any signed copies in the nurse's office. The binder marked standing orders located within the nurse's office only included protocols for care.

#### Count 19

Pursuant to N.J.A.C. 6A:16-2.3(b)(3), the responsibility of the certified school nurse shall include assisting in the development of and implementing health care procedures for students in the event of an emergency and "writing and updating at least annually the individualized healthcare plans and individualized emergency plans for students' medical needs and instructing staff as appropriate." Yet, on or about May 8, 2015, Respondent failed to maintain any plans regarding health issues in the nurse's office.

### Count 20

Pursuant to N.J.A.C. 6A:16-2.3(b)(3)(xii), the nurse shall update in writing at least annually individual healthcare plans and individualized emergency healthcare plans for students' medical needs and instructing staff as appropriate. Nevertheless, on or about May 8, 2015, Respondent failed to maintain any staff instruction file or lesson in the nurse's office.

### Count 21

Board Policy 5141, *Health*, provides for the implementation of procedures for cardiopulmonary resuscitation and AED use, specifically stating that the Chief School Administrator shall oversee the development and implementation of a District emergency action plan that establishes guidelines for the use of the AED. The emergency plan shall include a list of no less than five school employees, team coaches or licensed athletic trainers who hold current certifications recognized by the Department of Health in Pulmonary Resuscitation and the use of a defibrillator. The list shall be updated as necessary at least once in each semester of the school year. Further, detailed procedures on responding to a sudden cardiac event including the identification of the persons in the school who will be responsible for: responding to the person experiencing the sudden cardiac event, calling 911, starting cardiopulmonary resuscitation, retrieving and using the defibrillator and assisting emergency responders in getting to the individual experiencing the sudden cardiac event. However, on or about May 8, 2015, Respondent has failed to maintain an AED log in the nurse's office, document monthly checks of the machine and make the emergency action plan readily available in a clearly marked binder within the nurse's office.

### Count 22

Pursuant to N.J.A.C. 6A:16-2.3(b)(3)(iii), it is the responsibility of the school nurse to maintain student health records in accordance with N.J.S.A. 18A:40-4. N.J.S.C. 6A:16-2.4(c) provides that access to and disclosure of information in the student health record shall meet the requirements of FERPA and N.J.A.C. 6A:32-7. Despite these requirements, on or about May 8, 2015, Respondent stored confidential student and staff health information in an unlocked closet located within the nurse's office. The foregoing acts and omissions by the Respondent as set forth in the above counts, individually and cumulatively, constitute unbecoming conduct and/or just cause warranting dismissal, including insubordination and incompetence.

### **Charge 3 – Incapacity**

The foregoing charges and specific counts are incorporated by reference as if fully set forth herein. During a conference held on or about November 19, 2014, Respondent indicated to interim superintendent Garguilo in the presence of union representative, Mr. Levy, that he had difficulty recalling the incidents and commented that he had trouble remembering a lot of things this year. On or about January 16, 2015, Mr. Costello was observed by Principal Robbins and Principal Vaccaro with trembling hands and was experiencing body vibrations. Mr. Costello made several loud rambling statements regarding his dissatisfaction with his current position, including that he was “tired of the abuse from staff and couldn’t take it any more” which resulted in both Principals advising respondent to go home. The Respondent was directed to admit to a psychological examination. Clinical Psychologist Dr. Chester C. Sigafoos, Ph.D., assessed respondent’s psychological functioning and his fitness for duty. Dr. Sigafoos concluded that given Respondent’s psychopathological condition, in the role of a school nurse, there are no meaningful school accommodations that can be made and Respondent is not fit for a return to duty as a nurse. As a result, Respondent has been out of work since on or about February 20, 2015. Respondent’s inability to perform his job duties with or without reasonable accommodations constitutes incapacity and/or other just cause warranting dismissal based upon unfitness for duty. To date, Mr. Costello has not returned to his position and has been determined not to be fit for duty. His inability to return to his position has had and continues to have a negative impact on the school district.

### **Charge 4**

Unbecoming conduct warranting dismissal related to a pattern of numerous and ongoing inappropriate acts and omissions. All of the foregoing background information, charges counts, and the facts set forth are therein incorporated by reference as if fully set forth herein. The Commissioner of Education and the courts recognize that the totality of a pattern of conduct may constitute unbecoming conduct, even when the individual acts comprising it may not. See e.g. Cowan v. Bernardsville Board of Ed., Tenure Hearing of Gray Young and Tenure Hearing of Donald Dudley. The course of misconduct set forth in the within charges and counts jointly and severally based upon numerous ongoing infractions over an extended period of time constitutes a pattern of inappropriate conduct which rises to the level of unbecoming conduct. This pattern in the course of unbecoming conduct during the extended period of time manifestly demonstrates the respondent’s unprofessional attitude, recalcitrance and general unfitness to continue to serve as a public school nurse warranting his immediate dismissal.



## **BACKGROUND**

John Costello has been a Certified School Nurse with the District since September 2001. The building in which Costello works contains two separate schools, a primary and elementary school and a middle school. Each school has its own principal. Prior to the 2014-2015 school year Costello was one of two full time school nurses assigned to the building and enjoyed a satisfactory work record

However, at the conclusion of the 2013-2014 school year, fellow nurse Virginia Wolf retired and the Board replaced the full time school nurse position with a part-time position and hired a part-time nurse.

## **THE BOARD'S WITNESSES**

On November 10, 2014, at approximately 12:10 p.m. students were moving to different classrooms when C., a student in a third grade class, became ill. The incident was recorded by the security cameras, and that recording was introduced into evidence Exhibit P-48. According to teacher Sadye Heenan, Student C was pale and holding her stomach. C started to stumble and Heenan grabbed her and another teacher, Ms. Morales came to help. Heenan testified that Student C was not responding to any questions and as can be seen in the recording, she became limp. Heenan sat on the ground and lowered C to her lap. A third teacher, Mrs. Levy can be seen with Heenan and C. When C. collapses Heenan asked Levy to get the school nurse. Levy can be seen leaving C and running down the hall. Another section of the recording shows Levy arriving at the nurse's office on the run and then leaving the nurses office with Costello. Levy moved swiftly back to Student C. However, Costello can be seen waiting in the hallway for a class to pass and then walking in a deliberate manner well behind Levy, all the while with a letter sized paper in his mouth. During this time Student C. remained slumped in Heenan's lap. As soon as Costello arrived at the scene he immediately reached down, held C. by the wrist with one hand and held her under the arm with the other and lifted her to her feet and, with Heenan holding C's other arm, the two walked C. back to his office. It is apparent that Costello never spoke a word to anyone since he never removed the paper from his mouth. Heenan testified that Costello was actually humming with the paper in his mouth while walking C. to the nurse's office.

When they arrived at the nurses office Costello told Heenan to put Student C into a chair. He stated that he was going to call C.'s home so that her mom can pick her up. Heenan left and got Student C's things. Heenan testified that this was not a little girl that was looking for attention. She thought that this was an urgent matter for C. She had passed out and needed a wheel chair; it was an emergency and should as such. Heenan was so upset about how Costello behaved that she cried afterward.

Lauren Morales' testimony was consistent with Heenan's. She testified that C. was unresponsive to any questions that were asked of her and thought she was unconscious. Morales was upset by the way Costello treated the matter. She was concerned about C. but Costello just walked up with a paper in his mouth and without a word picked C. up to her feet and walked her away. Morales did not expect Costello to run necessarily but to respond quickly. Rather, he just walked up and seemed unconcerned

Laura Levy's testimony was also consistent. She testified that Student C was beginning to gag as if she were going to vomit and Levy said that she would get Costello. She ran to the nurse's office and told Costello to come quickly. Costello called to another adult in the office and said he'd be right back. He followed Levy out of the office asking where C. was. When Levy and Costello were at the double doors to the atrium, a class was coming through in the opposite direction. Levy said excuse me and made her way through the passing students. Costello waited for the students to pass before following Levy. Costello made no attempt to catch up to Levy. When Levy returned to Mrs. Henan and Student C, she could see the student appeared incoherent. The student did not appear to be conscious and her hands were making unnatural jerking movements. Levy was appalled at Costello's behavior. He made no attempt to move quickly and said nothing at all to C. or ask the teacher's attending her what happened.

The School's standing orders for fainting [Exhibit P-3, NF118] directs that if a student faints have her lie flat for at least fifteen minutes, keep her warm and take her temperature.

On November 5, 2014, at 2:55 p.m., Costello was summoned to a class to attend to a student was having a seizure.

Teacher, Fran Cusick was informed by student L's aide that L was having a seizure. Cusick could see that the student was having a seizure and called the nurse's office but only received a message service. Upon hanging up the phone another teacher, Ms. Martin, called about an unrelated matter. Cusick asked Martin to go to the nurse's office and have the nurse come to her room. Within minutes Costello arrived and said to Cusick "he had to go to work". Costello then walked over to Student L who alert and was able to get up from his desk on his own. Costello and the student's aide, Ms. Gitto escorted Student L from the room. Several days later, Costello delivered a flyer about seizures to Cusick but did had no discussion with Cusick about seizures in general or student L in particular. The flyer described how to treat different types of seizures. For a mild or absence seizure (formerly known as a *petit mal* seizure) apparently suffered by Student L, no particular treatment is necessary. Mrs. Cusick tried to call Costello to discuss the proper procedures for handling Student L if he has another such seizure but Costello was out of the building. Cusick called again but was unable to reach him.

Costello never discussed the proper procedure for handling such absence seizures with Cusick.

#### November 19, 2014 meeting

Acting Superintendent Garguilo testified that he had a meeting with Costello on November 19 concerning the events that occurred on November 10. At Garguilo's request Mr. Levy, an Association Representative, was present at the meeting. Garguilo asked Costello about a third grade girl who passed out in the hallway. According to Garguilo, Costello responded "I don't know what you're talking about. Someone passed out in the hallway? And this was on Tuesday? I was out two days last week and I was here on Tuesday? I don't know if I'm coming or going to be honest with you. Was it at a particular time?" Garguilo responded, "It was coming out of Ms. Burnet's gym class. You don't recall any of this?" Costello stated "I got called to fourth grade for a student who was having a seizure. I don't know even if I knew the information right now. I would have to get my notes. Was a JIF report generated by a teacher? I will be honest with you, I don't remember a lot of things this year." The Superintendent said it was Monday, approximately 12:00 p.m. According to the teacher she was wobbly and then went down. According to Garguilo, Costello responded, "it's starting to make a little more sense but I would still have to see my notes." The Superintendent then gave the name of the student then Costello asked, "can I ask what you heard happened?" Garguilo responded a child passed out. You came down, picked up the child and brought her to the office. Check your notes and get back to us. Write a document report."

#### Immunization Records

Garguilo testified that on November 24, 2014, the Atlantic County Department of Human Services conducted an immunization audit to ensure that the students at the middle school were properly vaccinated or received exemptions. The immunization records were kept by the school nurse. The Atlantic County investigators found that 37 students did not have proof of proper immunizations. According to Garguilo, the 37 deficiencies were all in the sixth grade and the deficiencies were due to the Respondent's failure to collect or record said sixth grade immunizations.

Garguilo also noted that when the County first notified Costello of its intention to County to review the Board's immunization records, the Respondent scheduled them for a day that the school was to be closed for the Jewish holiday, Rosh Hashanah, so when the County officials came to the school they found it was closed. According to Garguilo, the district schools have traditionally been closed for the holiday.

January 16, 2015 meeting

On January 16, 2015, Maureen Vaccaro, the Principal of the primary and elementary school was told by a staff member at approximately 8:30 a.m. that Costello needed her immediately. She arrived at the nurse's office at the same time as the Principal of the middle school, Glenn Robbins. According to Vaccaro, when the two Principals entered the nurse's office, a third grade girl was crying while seated by Costello's desk and Costello was sitting at his desk. Costello immediately got up and went to the back of the office and sat down in another chair. He started to shake. His hands were trembling and his entire body seemed to be vibrating. Vaccaro said, "John, just sit, take a breath, relax, breathe." Costello responded loudly, "I am tired of this. I can't take this anymore. I have asked for help from the administration and I don't get it. When I call you and ask for help and you never get back to me. You never answer me." He yelled and repeated at Robbins that Robbins never gets back to him. Vaccaro asked where the student came from and Costello stated that "she was sent to me by Mrs. Heenan. This is what I mean. She was sent because the teacher said she might be getting sick. That she didn't feel well. That she said she was going to throw up and this is what I mean. She sent her to me without a nurse's pass. What am I supposed to do about that? I get no respect from the teachers, and I'm tired of how they speak to me."

Glen Robbins' testimony was similar. He also witnessed Costello's entire body begin to shake and he stated that "he was sick and tired of being disrespected by faculty, as one teacher proceeded to send a student to him, the student was crying at the time, because she didn't feel well." According to Robbins, Costello rambled on making several statements in regards to staff and not getting support from the administration. Also that he was "tired of the abuse from staff and couldn't take it anymore." Both Vaccaro and Robbins commented that these statements were made in the presence of the young student sitting in the office.

Vaccaro said that Costello needed to go home and was asked if he would be able to drive or would he need a ride. The Principals then arranged for a substitute. Costello called up the student's home, then took the student back to class and Costello was still visibly upset but said he would leave on his own once he was settled. Costello left the building at approximately 9:50 a.m. Vaccaro called Costello on Saturday, the 17<sup>th</sup>, to see if he felt any better. Costello said he was feeling better. He had visited his doctor on Friday and that he was prescribed medicine to help calm him and that on Friday he had been coming off of steroids. He said that he felt much better.

On February 19, 2015, Costello was placed on administrative leave by Garguilo and has not returned to work.

### Preliminary Discipline

On February 24, 2015, Garguilo notified Costello that upon his recommendation the Northfield Board of Education passed a resolution pursuant to N.J.S.A. 18A:29-14 withholding his increment for the 2015-2016 school year. The increment was being withheld specifically because of his response to the two medical emergencies of November 10 and November 11 because of his failure to assess either of the students' medical condition before "swiftly and carelessly moving the students to your office. Moreover, on November 24, 2014 the District was cited by the Department of Human Services for its failure to collect and record sixth grade immunizations."

Also on February 24, 2015, the Respondent was directed to submit to physical and mental examinations. The stated reasons for the direction of such examinations were because of: a) the manner in which he responded to ill students, particularly so on November 10, 2014' b) the manner in which he provided Cusick a leaflet on first aid for seizures without ever discussing the nature of this folder or the appropriate way for her to treat a student having a seizure, c) because of his memory loss at the conference with Garguilo on November 19, 2014, and d) because of the occasion on January 15, 2015 wherein Costello beckoned principals Vaccaro and Robbins to his office and acted inappropriately before a student in his office. He was shaking and visibly upset because the student was sent to the nurse's office without a note.

As directed by the District, the Respondent underwent an evaluation by Chester A. Sigafoos. PhD. Sigafoos conducted a preliminary interview with Costello and initially believed that Costello did not have any serious psychological problems. However, he then administered a battery of tests to Costello, including Paulhus Deception Scales, Bender-Gestalt Perceptual Motor Examination, Rorschach Ink Blot Test, State-Trait Anger Expression Inventory, Million Clinical Multiaxial Inventory and Minnesota Multiphasic Personality Inventory. After interpreting the results of the test and examining those results in light of Costello's work record, Sigafoos issued a 46 page report which concluded that Costello had formed a maladaptive way to manage complex situations and found in part:

In summary this is a very complex and distraught man. He is able to accurately perceive his world and his functioning in it. This presents as a double edge sword because just as much as he sees positive aspects he will also accurately see negative aspects. As the present time he is seeing negative aspects in himself which would account for why he tried to fake good in his presentation during the evaluation. He lacks a consistent and well defined coping style and will alternate ineffectively between expressive and ideational ways of dealing with his situations. He is likely to conduct himself in an unpredictable way. Recognizing that he does not have

adequate coping styles to deal with his current levels of stress only heightens his anxiety and depression. He may have been effective in managing his stress in the past but current testing shows that he cannot do that now.

Sigafoos concluded that, given Respondent's psychopathological condition and the role of a school nurse, there are no meaningful workplace accommodations that can be made and Respondent is not fit for return to duty as a nurse. "[t]he role of the school nurse requires clarity of thought, good decision making, rational thought processes, being responsive, good moral judgement and freedom from clinical or characterological pathologies that will interfere with performance and execution of his duties".

Sigafoos testified that that providing an accommodation of another school nurse to address a workload problem, doesn't address the central issue that being able to perform one's duties first and foremost requires him to be an independent health practitioner free of mental disease, defect and/or limitations

Sigafoos' made the following diagnosis: Generalized anxiety disorder, major depression, obsessive compulsive personality disorder, avoidant personality traits and schizoid personality traits. His recommendations were that the prognosis for is poor. He is not fit for duty.

Denise Petro was hired as a substitute nurse on April 28, 2015. She is a registered nurse and has a substitute certification but is not a licensed school nurse. She testified as to how she found the nurse's office in disarray. On May 7, 2015, she provided Garguilo with an itemized list of those areas where she believed the nurse's office was deficient. [Exhibit P-10].

As per your request, I would like to document the following finding from the health office:

1. Referral forms needed to send home for students who failed their annual health screening performed in the health office were not located. The IT department was able to find a decade old form that I updated.
2. All of the Sport physical forms that were available in the health office were not the new approved forms.
3. Prescription medication was found in an unlocked desk drawer. The medication was both personal medication and unlabeled prescriptions. (noted early via e-mail to you)
4. Outdated medication were located in a bag in the closet and also in the active medication cabinets. Within the bag were unlabeled and unmarked medication that was identified as Excedrin. (Children should not take Excedrin due to the Aspirin component and caffeine.)

5. Some screening were completed and documented in the computer and not on the student's A-85 and vice versa.
6. Student with doctor's treatment protocol from their neurologist was not entered in the computer. After searching for the students file, the letter was located and mark rec 1/29/2015. See attached. (date 5/5/2015)
7. Vaccine records found in an unmarked folder. Crossed reference and they were not completely entered into the computer.
8. Unable to find signed physician order standing orders for school medication administration. Emergency medication standing orders not located. Examples: epi-pens, albuterol, oxygen.
9. No documentation of AED's monthly checks. AED boxes not connected to alarm, outdated pads and batteries. Log should be maintained both in the AED box and a binder in the health office. May 8, 2015.
10. While cleaning out the feminine product box by the students I found the bills for the AED and a letter form the school nurse regarding a student and a health issue dated 2004
11. Electronic A-45 for each student has not been filled out or merged with the current electronic vaccination records. When running a vaccination compliance report all students are incompliant due to this lack of continuity.  
N.J.S.A. 6A:16-2.1
- 12.(a)1. As stated earlier, the vaccination records on the paper A-45 and vaccination certificates from the student's and the electronic medical record do not reflect the same information. NJSA 18A:40-4 and NJAC 6A:16-2.4
- 13.(a) 4. There is no glucometer in the health office to evaluate for hypoglycemia of students or staff.
- 14.(a) 4. The stock epi-pen and epi-pen Jr are expired and therefore no emergency epi-pens are available in the event of an anaphylaxis reaction to a student or staff member.
- 15.(a) 5. There is no stock albuterol, nebulizer tubing and or masks or wands in school.
- 16.(a) 10. There was no initialized healthcare plan available for a student who experienced seizure in school. Furthermore, there was no Seizure log available where all pertinent information regarding all seizure students could be readily identified and treated in the event of an emergency.
- 17.6A:16-2.2(h) 1. ii Information received via written correspondence from parent and physician in regard to a student's care upon arrival in the Health Office with complaints of a headache were not available in the

- electronic medical record. Upon searching through the paper file the note was discovered marked, dated and signed received.
- 18.6A:16-2.3(A)vi. Only written protocols were available not "standing orders" and there was no sign copy in the Health Office.
  - 19.3. V As stated earlier, the vaccination records on the paper A-45 and vaccination certificates from the student's and the electronic medical record do not reflect the same information.
  - 20.3. X no lesson plans regarding health issue found in Health Office
  - 21.3 X ii No staff instruction file or lesson were found in Health Office  
Janet's Law
  - 22.No AED log in Health Office. NO monthly check of machine documented.
  - 23.Emergency Action Plan not readily available in a clearly marked binder.
  - 24.According to the Emergency Action Plan page, 20 monthly checklist not maintained to available

In general, the Health Office was in complete disarray. There is no order to the files, student's documentation and records can be found in various places. The binder marked standing orders supply only protocols for care and not standing orders from the school physician. Emergency information is not readily available to a substitute or other healthcare professional in the time of an emergency, for example seizure, anaphylaxis, or diabetic crisis.

Also attached is a list of expired medication and medication from students who no longer attend the Northfield Community School either due to transfer or graduation.

I will report any other issues I feel need to be brought to your attention.

Petro testified as to her findings in Exhibit P-10. Most of the AEDs batteries were expired, batteries and pads that were in stock were also expired. A log for the AEDs was taped on a cabinet door but the entries were not up to date. She "panicked" because she could not rely on the units being functional. Petro found that the records for seizure patients were in files in the office but were not in the electronic files. She expected to find logs in the office in terms of how to use the office nebulizer but never found any such information. There were binders of information that were unmarked. Some were found in a desk drawer. A letter from the school nurse regarding a student and a health issue dated 2004 was found in a feminine product box. The nursing servicing plan for the current year was in the back of the cabinet.

In all, there were over 200 expired medicines of one type or another, including over fifty epi-pens, some of which had expiration dates as old as 2008. Such medications



should have been disposed of through contacting parents to take them or through the use of a service which would pick up such expired medications and destroy them.

There were papers that were left in various places in the office, some of which were student medical records and some were in unlocked cabinets in the waiting room. Student records in general were in unlocked closets. Nursing passes were unsecured on the desk. Similarly, child study team information was left unsecured in piles of papers. The sport physical exam forms that were in the office were an older type that were not to be used and she could not find the proper forms. Petro noticed that there was no glucometer even though nurses were expected to treat students and faculty that might be hypoglycemic. Similarly the nebulizer lacked wands and other essential parts

On the basis of reviewing the documents and records in the office Petro also found among other deficiencies that the referral forms for students who failed their annual health screening had not been updated, vaccination records were in an unmarked folder, the school physician's standing orders for medical administration and emergency medication administration were not up to date, there was no log identifying all seizure students and their proper treatments, etc.

Carol Murphy became a Nurse's Aide in the district in March of 2015. She testified that the nurse's office was disorganized- just stacks of papers. They were not in any particular order. There were old outdated materials. Student files with medical information were in unlocked drawers. It appeared that nothing was ever recycled or thrown out. Whatever that came into the office was still there. Murphy testified that a support staff employee came into the nurse's office with symptoms that may have been attributable to low blood sugar but a glucometer was not available and she was forced to call 911 for an ambulance.

Murphy acknowledged the nurse's office was always locked whenever it was unoccupied.

Kim Geria worked as a part-time nurse from October or November 2014 to the end of the school year. She testified that the nurse's office was disorganized; records and medications were not secured. Forms with student's names and medication were not secured. She believed this was a HIPPA violation. She testified that in May of 2015 Geria had to order AED pads and batteries because they had expired.

### **RESPONDENT'S DEFENSE**

John Costello testified on his own behalf. He was first employed as a registered nurse in the District in 2001. Up until the 2014-2015 school year, he had received satisfactory evaluations. Other than two letters of reprimand in 2007, he has consistently received satisfactory evaluations and commendations. Costello acknowledged that he

does not use the school computer system. Although the school uses electronic files, he does not believe he was obligated to keep electronic records since paper or hard copies are more secure as they can be kept under lock and key whereas electronic records can be inappropriately accessed in the school's computer system.

Prior to the 2014-2015 school year, Virginia Wolf was the full-time nurse for the middle school and he served he was full-time nurse for the primary and elementary grades. When Wolf retired in the spring of 2014, the District replaced her with a part-time nurse. According to Costello, the part-time nurse was not interested in doing her job but was busy looking for another full-time position. He felt overwhelmed by the increase in his workload. Accordingly, when he was called in to the meeting on November 19, 2014, and stated he does not know whether he is coming or going, he was referring to being administratively overworked and was not referring to dealing with patients.

Costello had no prior notice of the reason for the November 19, 2014 meeting with Garguilo. The meeting was set up by a secretary. Similarly, Mr. Levy was asked to attend the meeting as a union representative was called to attend the meeting but was not given any indication of the substance of the meeting.

Costello did not view the November 9, 2014 incident with student C, as a significant event. Specifically, in regards to his not rushing to the aid of C when first notified, he noted that it was noontime and classes were passing in the hallway. When he entered the hallway, he waited for a special needs class to pass by before he proceeded, since he did not to disrupt such a class. As he approached C. he assumed that from her posture she was vomiting. He testified that people who vomit get dystonia, get wobbly. <sup>1</sup>He realizes now that putting a piece of paper in his mouth proved to be very disturbing to other people but he did so to keep his hands free. When he approached Student C, it appeared from her posture that she was leaning over a garbage can vomiting. Costello does not believe you bring a wheelchair to an ill child as opposed to an injured one. Putting an ill child in a wheelchair would not be a good thing to do whereas an injured child should lie down. He claimed that he could evaluate the child's condition by observing her posture.

When the County school board called to say they were going to do an immunization audit, they were the ones who picked the date which turned out to be a Jewish holiday. Costello was not aware that schools would be closed on that date. Further, according to Costello, of the 36 students for which the County claimed there was no immunization record, Costello claimed it was the fault of the old forms and that, in fact, 30 of these students did have proper immunization but the old forms did not reflect this. The district

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<sup>1</sup> It is noted however the recording from the security camera shows C. in a recumbent position in Heenan's lap. She does not appear leaned forward.

had 30 days to correct this deficiency and he did so. The District did not suffer a penalty because it failed the initial audit.

Costello claimed he treated the child in Ms. Cusick's class who had a seizure properly. The child had a mild or absence seizure, where the child blanks out for perhaps ten seconds. There is no treatment necessary for such a seizure. The school policy for treating seizures does not mention such absence seizures; it is clearly designed for grand mal seizures where it directs people not to restrain or insert object into the mouth, turn head to the side, loosen clothing gently, etc. He did not pass off the child with absent seizures on November 11, 2014. He waited for the mother who picked him up and she left the building with her child.

Costello claimed that he appeared anxious at his meetings with the two principals on January 16, 2015 because he was under stress. His mother was ill and he blamed his appearance on the medications he was taking; Prednisone and Gabapentin, which is used for neurologic pain in the feet. He commented without a question being asked that he was being urged to settle the tenure charge but he did not want to settle; he loved to take care of children and wanted his job back. Under cross-examination he was asked about a gap in his curriculum vitae. He had worked between 1993 through July 1996 at Camden County Vocational School and he apparently next worked from January 1997 through August of 2000, in the School District of Philadelphia. When asked what he was doing between July 1996 and January 1997, his response was "I don't know."

He also testified that the prior full time nurse, Mrs. Wolf, was "amazing" but the part-time nurse's inattentiveness to her job was extremely stressful for Costello. He also testified that parents are notified to pick up medications and epi-pens at the end of the school year. Those that were not picked up could be used for training. Costello also maintained that there was no policy enacted concerning disposition of expired drugs so Costello put the expired drugs in the locked closet. He also claimed that the AED pads were not expired when he stopped working and it was the part-time nurse's duty to check the pads every week.

Virginia Wolf also testified on behalf of Respondent. She worked from 1988 to 2013 as a nurse in the District. She testified that both she and Costello maintained the AEDs. They were never told to create a log but she made her own chart in the storeroom about the AED pads. She testified that if the parents that who were called did not pick up the medications, a medical waste person would come every year in October to pick up expired medications but the nurse's office would keep some epi-pens for training. She also claimed that diabetics have their own glucometers and they did not stockpile medications. When asked about proper policy to treat children who have absence seizures, Wolf would abide by the parent's request rather than by any protocol and she would normally walk the student to the office and call the parent.

The Respondent also had fitness for duty evaluations done by an independent psychiatrist, Dr. Charles Meusburger. Meusburger conducted an assessment based upon his interview of Costello. At the time, Dr. Sigafoos' had not yet issued his report. It was Meusburger's opinion that "the patient at this time does not demonstrate any axis1 psychiatric diagnosis and is not required to have any subsequent ongoing treatment prior to returning to work." There was an addendum to the report that the documents relating to Costello's work record were reviewed subsequent to his evaluation and that "as a result of the review of the documents, it is understandable that the school board, as well as the Superintendent would have concerns regarding performance, reliability and standards of care. However, the purpose of this evaluation is to ascertain to a reasonable degree of validity and with the information available at the time, whether or not there are psychiatric reasons why these concerns were present." Meusburger concluded that it is his professional psychiatric opinion that within a reasonable degree of certainty that the issues raised about Costello's performance were not due to psychiatric causes.

Costello was also evaluated by Robert L. Tanenbaum, Ph.D. Dr. Tanenbaum reviewed some of Costello's work record as well as the report of Dr. Sigafoos. Dr. Tanenbaum testified that he had Costello take some of the same tests that were administered by Sigafoos and the tests did reveal a certain level of depression and anxiety. However, Tanenbaum concluded that Costello does not demonstrate evidence of a psychological disorder or dysfunction to a degree that would substantially interfere with his ability to perform his job duties. Tanenbaum also stated in his report:

It is not clear on the basis psychological evaluation findings whether Mr. Costello's personality characteristics and style actually prevent him from doing his job according to requirements. There appears to be a high level of situational stress at work which have contributed to his feeling upset and depressed about his employment future with the school. He may be responsive at this time to psychological counseling that is structured and supportive, permitting him to resume his employment with the Northfield Board of Education. However, until a factual determination can be made as to whether Mr. Costello has substantially and repeatedly failed to perform in his role as a school nurse, a determination that he is psychologically unfit, and permanently so, would appropriately be deferred until the facts are made clear.

In his testimony, Dr. Tanenbaum said that it is a very high bar to find that someone is incapable of working because of their psychological condition and he believed Costello's psychological state should no bar him from employment as a school nurse. Costello had testified that Sigafoos had Costello complete some of the tests, including the MMPI at home. Tannenbaum expressed concern that it is not appropriate to give the

MMPI unsupervised since the test's subject would have the opportunity to cheat, to go online and to research how to answer the questions.

It came to light in Dr. Tanenbaum's testimony that he was unaware of Costello's conduct and condition at his meeting with Principals Vaccaro and Robbins on January 16 where his hands were shaking and whole body "vibrating". Tanenbaum stated that he did not know what would have caused Costello to act this way. When asked if such a response could be evidence of a panic disorder, Dr. Tanenbaum showed a reluctance to answer the question but finally stated it was not evidence of a panic disorder.

## ARGUMENT

### **The Board argues:**

The Board acknowledges that it bears the burden of establishing the truth of the charges by a preponderance of the credible evidence. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). Evidence is said to be preponderant if "it establishes the reasonable probability of the fact." Jaeger v. Elizabethtown Consol. Gas Company, 124 N.J. L. 420, 423 (Sup. Ct. 1940). The Respondent exhibited haphazard judgment, apathy and unstable behavior concerning his rendition of care to students. New Jersey tenure law establishes that repeated defiance and violations of directives and policies may warrant dismissal for insubordination. Pre-TEACHNJ cases have defined insubordination similarly. See e.g., Tenure hearing of Miguel Valladares, 2012 N.J. AGEN. LEXIS 316 60-61 (ALJ 2012) aff'd Cmm'r (August 3, 2012). Insubordination defined as the willful and intentional disregard of the lawful and reasonable directives of an employee's duly authorized supervisor. Board of Ed. Twp of Teaneck v. Wilburn, 91 N.J.A.R. 2d. (Edu 48), N.J. AGEN LEXIS 2432 Aff'd Cmm'r (October 15, 1991) Teacher's disregard for a supervisor's request to provide lesson plans was an act of insubordination warranting dismissal.

Respondent's conduct also warrants a finding of "unbecoming conduct". Unbecoming conduct is a broadly defined elastic term encompassing conduct which has a tendency to destroy public respect for public employees and confidence in the public service. Karins v. Atlantic City, 152 N.J. 532, 554 (1998). In Laba v. Newark Board of Ed., 23 N.J. 364, 384 (1975), the New Jersey Supreme Court established that the touchstone of unbecoming conduct is the employee's fitness to discharge the duties and functions of his or her office or position. Contrary to respondent's assertion that a finding of unbecoming conduct requires action equivalent to a criminal act, a finding of unbecoming conduct does not require a violation of any specific rule or regulation, but rather be based primarily on implicit standard of good behavior. Respondent's position entrusted with the care and custody of children, carries a "heavy duty requirement of self-restraint and controlled behavior rarely requisite to other types of employment." I/M/O

Tenure Hearing of Jacque L. Sammons, 1972 SLD 302. A school nurse's failure to render proper care has been found to be sufficient to sustain a determination of unbecoming conduct and the termination of employment and/or revocation of the nurse's school nurse certificate. See I/M/O Certificates of Juliette Kersaint, 2007 N.J. AGEN LEXIS 63 OAL (2007) Aff'd State Board of Examiners (June 7, 2007). In Kersaint, the Respondent school nurse failed in several instances to render appropriate care to ill or injured students. The ALJ concluded that one instance where the respondent failed to respond to a child's asthma attack alone was serious enough to constitute unbecoming conduct. In I/M/O Tenure Charges Against Kathleen Alexander, Dkt. No. 74-3/13, (June 27, 2013), the arbitrator sustained the dismissal of a school nurse for unbecoming conduct stemming from the nurse's failure to provide proper care to an injured student. The student reported to the nurse's office with an injured foot. The nurse never left her seat but told the student to sit on the bench and after observing the student's foot was swollen, the nurse told the student to retrieve an ice pack from the refrigerator. The nurse then permitted the student to leave the office without the ice pack or any other treatment. At no time did the nurse ever leave her desk. The arbitrator found that this conduct unbecoming of a school nurse and found that dismissal was warranted in light of other instances involving the nurse and other the nurses' refusal to act. See also I/M/O tenure hearing of Mary Snyder, Agency Dkt No. 190-6/88, State Board of Ed (August 2, 1989).

The actions of Respondent met or exceed the tenured employees discussed above warranting his dismissal from employment. The respondent repeatedly failed to comply with legitimate and reasonable administrative directives to provide appropriate care as a school nurse. As a result, the quality of care provided to the children of Northfield Community School has been unnecessarily compromised. As set forth in the Board's job description for school nurse, the Respondent is obligated to carry out written orders of the medical home and standing orders of the school physician. Respondent failed to comply with the appropriate procedures for seizures. On November 5, Respondent was called to assist Student L who, according to Ms. Cusick, experienced a seizure. Upon arriving the respondent merely stated that "he had to go to work" and escorted Student L to the nurse's office. Similarly, the respondent failed to comply with appropriate procedures including school standing orders for fainting. The policy set forth a protocol which includes have the student lie flat for at least 15 minutes. Miriam Webster's medical dictionary defines faint as "weak, dizzy and likely to faint." Respondent failed to follow this protocol on November 10, 2014 when he was called to assist Student C who was vomiting, potentially passing out and could not stand. Respondent showed no urgency in his response, wasting valuable time and upon arriving, performed no assessment, grabbed C by the arm and told her to stand up, in direct contravention to the standing order. Respondent's treatment of C left at least three teachers in tears. Vaccaro testimony, Henan Testimony Levy Testimony. Respondent also failed to comply with Northfield Standing orders for nausea/vomiting. The policy sets forth a specific protocol to be

followed. The protocol requires 1) check temperature; 2) allow student to rest; 3) contact parent/guardian. If temperature is above 99.6, or student is witnessed vomiting, call parent/guardian to take home. Respondent failed to follow this protocol both on November 10, 2014 and again on January 16, 2015 when a student was found in the respondent's office crying and stated she did not feel well and was going to throw up. Respondent failed to care for the student and instead became visibly upset, started shaking and trembling and said that he was upset that the teacher sent an ill student to him without a nurse's pass. Vaccaro testimony, Garguilo testimony.

Dr. Sigafos determined that the Respondent suffered a panic attack during this incident. A conclusion which was not refuted by Respondent. Both Principals stated that the Respondent was not in a condition to care for children or speak with parents.

### Charge 2

The Respondent is guilty of insubordination and unbecoming conduct for failure to perform the duties of a school nurse. Title 6A of the New Jersey Administrative code provides that the role of the certified school nurse shall include, but not be limited to, carrying out written orders of the medical home standing orders of the school physician, maintaining student health records, recommending to the school principal students who shall not be permitted to or retained in the school building based upon a parent's failure to provide evidence of the child's immunization, annually reviewing student immunization records, directing and supervising the emergency administration of epinephrine and glucagon, administering asthma medication through the use of a nebulizer, reviewing and summarizing available health and medical information and writing and updating at least annually the individualized health care plans and the individualized emergency health care plans for students' medical needs, implementing procedures for students in the event of an emergency, and providing other nursing services.

Respondent's repeated failure to carry out his legal responsibilities as a school nurse is serious enough to require his dismissal. In Kersaint supra, the Petitioner-Board similarly argued that the school nurse failed to properly fulfill her duties as a school nurse on several occasions. The ALJ found that the nurse left used needles in a common supply cabinet, failed to have a medical waste container, did not document where necessary equipment was stored, failed to make sure students were properly immunized and failed to keep proper immunization records. The ALJ concluded that although the actions of the Respondent were not intentional, the omission could have had very serious consequences. The ALJ ordered that the Respondent's school nurse certificate be revoked. In *I/M/O the Certificates of Barbara Lentine*, Dkt. No. 1011-136, State Board of Examiners (November 30, 2012), the State Board of Examiner sustained the ALJ, finding that the nurse failed to complete daily logs of student visits. The nurse only completed the log at the end of the school year which led to discrepancies in the records. The Board

noted that while such conduct may not have impacted students, such deviation from proper record keeping was dangerous and could not be disregarded. In Tenure Hearing of Jill Kubicki, supra, a teacher had been cited for her repeated failure to adhere to school policies such as: failure to check emails; failure to complete progress reports; failure to revise her substitute plans; failure to meet with parents; failure to take advantage of technology existence; and failure to produce testing protocols. The ALJ determined that the teacher should be dismissed from her position. The Respondent's actions here and inaction during the 2014-2015 school year were constant and far more systematic than those mentioned above and could have very serious consequences for the students in his care. After Respondent was placed on leave, Denise Petro discovered an abdication of duty by Respondent far more pervasive than the school nurses in Lentine and Kersaint, warranting termination. Specifically, Respondent in contravention of his job description, board policies and state statutes and regulations, failed to update annual health screening forms contrary to Board Policy 5141 which provides that certified school nurses shall among other things, assist with physical examinations, conduct biannual scoliosis screenings, conduct an audiometric screening. Garguilo testimony, Petro testimony (P-10), failed to update sport physical forms required by N.J.A.C. 6A:16-2.2(h)(1)(ii)(1), maintain student vaccination records required by N.J.A.C. 6A:16-2.3(b)(3), failed to enter vaccination records into the computer system contrary to NJAC 16-2.1A and NJAC 6A:16-2.3(b)(3)(v) (P-10), failed to properly maintain the Board physician's standing orders, improperly maintains student records in a box for feminine hygiene products in an unlocked closed contrary to NJAC 6A:16-2.3(b)(3)(iii); NJAC 6A:16-2.4(c) and NJAC 6A:32-7.4 requiring records to be secured and limited to authorized persons. Acted in a deficient manner in 37 occasion due to failure to collect and record sixth grade immunizations as noted in the Atlantic County Department of Human Services; See NJAC 8:5-4.7 (every school ... shall maintain an official State of New Jersey school immunization records for every pupil.) and Board Policy 5141.3 (P-13); failed to maintain individualized health care plans for students and staff in violation of NJAC 6A:16-2.3(b)(3) and the Board's nursing services plan for the 2014-2015 school year; failed to merge paper records into electronic records a direct threat to the health and safety to the students. Respondent also failed to properly store medications by leaving his personal prescriptions in an unlocked drawer with unlabeled prescription bottles contrary to Board Policy 5141 which states in relevant part "all medications shall be securely stored and kept in the originally labeled container." Leaving unlocked and expired medication in medication cabinets contrary to board policy 5141.21 which requires "all medications shall be brought to school by the parent or guardian for such student and shall be picked up at the end of the school year or at the end of the period of medication, whichever is earlier. Respondent further failed to properly maintain equipment necessary to treat asthmatics, diabetic and other students and faculty of urgent need of medical care. Respondent failed to maintain the school's AEDs in working order and failed to maintain an AED log in



violation of policy 5141. Respondent failed to maintain a glucometer, contrary to board policy NO. 5141. Respondent allowed the epi-pen and epi-pen juniors in the nurses' office to expire. Respondent failed to maintain nebulizer tubing, stock albuterol, masks or wands contrary to NJSA 18A:40-12.7 requiring each school to have and maintain for the use of pupils at least one nebulizer in the office of the school nurse. Respondent's failure to maintain equipment was not without consequence. Mrs. Murphy testified that because the school's glucometer was not properly maintained, she was forced to call 911 for a janitor with low blood sugar. Mrs. Geria testified that she was forced to order AED pads for children and adults because existing pads had expired during respondent's tenure. Respondent's abdication of duty placed the health and safety of the children and adults of the school in very real danger. Dismissal is the appropriate penalty for teachers who compromise the safety of students. See In IMO Paula Weckesse, 2013 N.J. AGEN LEXIS 155 (OAL 2013) Aff'd Comm'r (September 16, 2013) where a teacher failed to follow school procedure in addressing students who had fallen asleep in class. The teacher forced a student that fell asleep in class to stand up in order to stay awake. School addresses procedure requires that students who fall asleep in class and requires parents to be notified to see if there is a health concern and have students tested for drugs. The ALJ concluded that from a safety point of view, the teacher's conduct created a health hazard and ordered the teacher's tenure be terminated. See also IMO tenure hearing of Barbara Thomas, 2002 N.J. AGEN LEXIS 575 (OAL 2002) and IMO Tenure Hearing of Curtis Robinson, 2008 N.J. AGEN LEXIS 752 (OAL 2008).

Accordingly, the board has proven that Costello engaged in numerous acts of insubordination and unbecoming conduct. Therefore his dismissal from his position is warranted.

### Count 3

Respondent has demonstrated his incapacity to perform the duties of a school nurse. In addition to the unbecoming insubordinate conduct set forth above, respondent is not fit to serve as a school nurse and must be dismissed for incapacity. The Board has a right to require an employee to submit to a mental health evaluation whenever in the judgment of the Board, an employee shows evidence of deviation from normal physical or mental health. N.J.S.A. 18A:16-2. The use of a clinical psychologist to determine a teaching staff member's mental capacity to work has been repeatedly sanctioned. See e.g. Jones v. Board of Trustees of Teachers' Pension Annuity Fund, 2015 N.J. AGEN LEXIS 214 (OAL 2015). See also I/M/O/ the Tenure Hearing of Henry Allegretti, School District of the City of Trenton, Mercer County, 2000 N.J. AGEN LEXIS 1679 Comm'r (March 22, 2000). Similarly, IMO Licenses of Roseann Ravo, Dkt No. 311-06/95-112 State Board of Examiners (November 20, 1997). Accordingly, Petitioner's use of a psychologist in the instant manner is appropriate and with prior precedent. Removal of teaching staff members who are not fit for duty is appropriate. For example, I/M/O the

Tenure Hearing of Paul Varano, Board of Education Irvington, Essex County, 2002 N.J. AGEN LEXIS 360 (OAL 2002) Aff'd Comm'r (July 1, 2002) an industrial arts instructor was removed for incapacity as a result of bizarre behaviors demonstrated. Respondent isolated himself from students during class and playground duty and accused the school administration of trying to set him up. The Respondent was evaluated by a mental health professional who concluded that the Respondent's behavior was "highly abnormal and fit the criteria of a schizotypal (sic) personality trait." The doctor opined that the Respondent was not fit for his duties of a teacher and the ALA agreed sustaining the charge of incapacity. The record here similarly demonstrates that the Respondent is incapable of performing the duties of school nurse. Sigafos concluded that the Respondent was unable to function in his job as a school nurse. Most tellingly, Respondent's own doctors, Dr. Tanenbaum and Dr. Meusbarger expressed their own concerns about Respondent's conduct. Dr. Meusbarger's report stated that given the Respondent's conduct, "it is understandable that the school board as well as the Superintendent would have concerns regarding performance, reliability, and standards of care." Dr. Tanenbaum stated that Respondent may, however, demonstrate behavioral characteristics which limit his effectiveness and rub his co-workers and superiors the wrong way. Given the testimony and report produced by Dr. Sigafos and statements made by Respondent's own doctors, the Board has proven by a preponderance of the evidence that the Respondent is incapable of performing his job as a school nurse and must be dismissed.

#### Count 4

Respondent has exhibited a pattern of conduct establishing other just cause and warranting dismissal based upon the well-established body of school law, principles and precedent. Prior to the enactment of TEACHNJ, the courts and commissioner of New Jersey have developed a clear precedent that permits this tribunal to dismiss Respondent not only for each of the separate charges alleged, but also for the charges viewed in their totality when they demonstrate a pattern of misconduct over a period of time. The sworn tenure charges alleged that the acts and omissions of Respondent, jointly and severally manifest a serious of ongoing infractions over an extended period time constituting a pattern of conduct unbecoming a teaching staff member. Said pattern of conduct likewise warrants dismissal. See Tenure Hearing of N. William Cowan, 224 N.J. Super 737, 750-51 App Div. (1998) (a residuum of evidence is not needed to prove each act so long as the combined force of relevant here say and relevant competent evidence sustains ultimate findings of unbecoming conduct). Factors to be considered in assessing a penalty include the nature and gravity of the offense under all of the circumstances involved, any mitigating or aggravating factors, impact of the penalty on the teacher's career and any harm or injurious effect which a teacher's conduct may have had on the maintenance of discipline and the improper administration of the school system. Usually as series of events demonstrating a pattern of behavior is an indication of unbecoming

conduct. Tenure Hearing of Molokwu, OAL Dkt. No. Edu9650-04 (2004). See also Cowan Supra at 751 (employee may be dismissed where a pattern of conduct persists over a pattern of time even though each individual charge standing alone would not typically warrant dismissal). See Tenure Hearing of Greg Young, 1010 N.J. AGEN LEXIS 511 (September 3, 2010). In the Matter of Tenure Hearing of Michele Gibbs, Dkt. No. 45-313 (May 20, 2013). Regardless of how well intentioned a teacher might be, the issue to be decided in tenure cases and specifically cases in which a pattern of conduct exists that amount to just cause warranting termination is "whether the Respondent has a temperament and judgment necessary for a teaching staff member and, if so, should she be returned to the classroom." Just as in Gibbs, the testimony of the Board's witnesses is credible and cumulatively shows a pervasive pattern of behavior by a nurse that he either could not or would not perform his conduct to meet the legitimate and reasonable expectations of the administration. Respondent is unfit to remain a tenured school nurse based upon well-established arbitration case law, principles and precedents. It has been held that an employer should satisfy certain conditions in order to prove just cause in disciplining employees, including the employee was forewarned the consequences of his actions, the employer's rules are reasonably related to business efficiency and the performance of the employer might expect from an employee an effort was made before discipline to determine whether the employee was guilty as charges. The investigation was conducted fairly and objectively, substantial evidence of the employee's guilt was obtained, the rule was applied fairly and without discrimination, and the degree of discipline was reasonably related to the seriousness of the employee's offense and the employee's past record. See Oahu Transit Service and OBT Local 996, 2006 N.A.C. 138 (2006). In addition, it must be stressed that the inherent duties of a public employee include compliance with all reasonable rules and regulations and duties arising from a fiduciary relationship to the republic and from such duties that may arise from the nature of the position held. Hartman v. Ridgewood, 258 N.J. Super 32 App. Div. (1992). Unless a penalty is unreasonable, arbitrary or offensively excessive under all of the circumstances, it should be permitted to stand. Ducher v. Department of Civil Service, 7 N.J. Super 156 App. Div. (1950). Summary discharge in lieu of corrective discipline is appropriate for very serious offenses. Elkouri and Elkouri, How Arbitration Works, page 964 (6<sup>th</sup> Ed. 2003). Here, just cause conditions have been satisfied in the application of the foregoing precedents must result in a determination that Respondent be dismissed from his position.

**The Respondent argues:**

When Costello was called to the classroom of Mrs. Cusick on November 5, 2014 because student L was having a seizure, the seizure had ended by the time Costello arrived. L was able to arise from his desk on his own and Costello walked L out of the room to the nurse's office. According to Exhibit W, the Mayo Clinic defines an absence

seizure as a brief sudden loss of consciousness. Exhibits X, Y and Z from the Epilepsy foundation explain that absent seizures cause short periods of blanking out or staring into space and when an absence seizure ends, the person usually continues doing whatever they were doing before the seizure. They are almost always wide awake and able to think clearly. No first aid is needed because of the seizure. Costello testified that when he entered the classroom and approached Student L, he told him that they would have to go to the nurse's office. Student L responded that he did not feel that was necessary but Costello responded that he knew the drill. Student L arose and walked to the nurse's office with the teacher aide and Costello. Costello acted consistent with the recommendations of the Epilepsy Foundation that once the seizure has ended, in approximately ten seconds, there is no further treatment required.

The Respondent points out that in the incident that occurred on November 10, 2014 involving Student C, Costello explained that he did not keep pace with Mrs. Levy in responding to the sick child because there was a class of quite young special needs children walking by and he did not wish to disturb or disrupt them. Costello claimed that he put the paper in his mouth in order to free his hands up. At no point does the video show Student C lying down or fainting. Costello was able to analyze the situation, realizing that Student C had not fainted and therefore, the school protocol for dealing with fainted children did not apply. Costello's reaction in a meeting with Vaccaro and Robbins, Costello claims he was being eased off Prednisone and had a very negative reaction or response to coming off that medication. According to Costello, he did not want to leave the building until a substitute nurse was in the building.

Costello challenges the report of Dr. Sigafos, noting that he had never tested a nurse before. Regardless, Sigafos felt confident to testify as to the fitness of Costello. He underlined that Costello was suffering several deficiencies in his personality which would preclude him from being an acceptable school nurse. However, he also concluded that Costello was suffering from "burnout." Costello claims that burnout often can be relieved by a couple of days off and return to work shortly thereafter. Respondent argues that a review of Sigafos' curriculum vitae demonstrates that the majority of his work is for the former Division of Youth and Family Services and for fitness for duty for police officers and correction officers. Work of that nature, particularly in the field of criminal justice does not fit one to be able to do an evaluation of a school nurse.

Costello is also critical of Dr. Sigafos for sending Costello home to complete the MMPI test. The manual for administering the test, Exhibit Q, states that it is desirable that the test be taken within line of site. Respondent argues that the MMPI materials should not have been taken home with the test taker, nor should the test be taken anywhere else where supervision is not possible. It is argued that the fact that Costello was allowed to take the test home and complete it there, brings into question his knowledge of proper test taking and scoring. Dr. Sigafos' abject failure to monitor the

MMPI environment is a clear indication that his mind had been made up as to the outcome of the examination prior to the examination ever being given. He was hired by the District knowing full well what the recommendation would be.

By contrast, the examination of Dr. Charles Meusburger, Exhibit B, concludes that Costello did not demonstrate any "axis 1 psychiatric diagnosis and is not required to have any subsequent ongoing treatment prior to returning to work." This clearly refutes and repudiates the finding of Dr. Sigafoos. Further, Dr. Tanenbaum, who has examined school nurses in the past, found that Costello did not demonstrate evidence of psychological disorder or dysfunction to a degree that would substantiate or interfere with his ability to perform his current duties with the Northfield Board of Education. Although Dr. Tanenbaum found that there is situational stress, Costello is fit for duty and can and should return to his position as school nurse.

It is further argued that N.J.S.A. 18A:16.2 physical examinations; drug testing; requirements states "the Board may require individual psychiatric or physical examinations of any employee wherever in the judgment of the Board an employee shows evidence of deviation from normal physical or mental health." It is argued that the legislature did not write psychological or mental health but specifically psychiatric. It is argued that psychiatric means the services or examination by a trained licensed professional psychiatrist and does not allow for the interpretation for the word psychiatrist to mean psychologist. In the absence of any contrary interpretations, rather than the obvious literal or true meaning of the term psychiatrist, it is respectfully requested that the report of Dr. Sigafoos be determined as improper and not be considered by the arbitrator. Whether the report is considered or not, the reports of Dr. Tanenbaum and Dr. Meusburger should carry the day on the issue of mental competence and Charge 3 of the tenure hearing complaint should be dismissed outright.

Respondent notes that although the Board was cited for Costello's failure to collect and record the sixth grade immunizations, the deficiency must be seen in light of the total student population of the building which was 921 students and essentially, out of the 13 deficiencies that represents only a deficiency rate of 4% and that all deficiencies were resolved and all records were appropriately updated and the Board did not suffer any sanctions or censures. Its records were complete as of the New Year.

The respondent also challenges the testimony of Denise Petro. Although admittedly a registered nurse, she became so in December of 2014, she is not a certified school nurse. She testified as to expired medications, absent student and staff records and messy conditions. Although Petro testified there were any number of expired medications in the closets, she acknowledged that the nurse's office is locked when there is no one in the office and that medication cabinets were independently secured as well. Kimberly Garia, the substitute nurse who is currently employed by the School District

testified that, even as of this date, there are still expired medications in the office and that, although she and others have attempted to have parents come by and pick up medications, some of them are still there.

There is testimony that the expired epi-pens are useful for training purposes. Moreover, Costello testified that he had made arrangements for leftover medications and materials to be picked up in October 2014 but on that date, the medical waste service came but he was in a training course and there was confusion in the office as to what to do. Therefore, the expired medications and epi-pens were never picked up. Although the testimony was that student health records were not kept current, nevertheless it was unrefuted by both Petro and Costello that the hard copies of these records, known as the A-45, were current. What was not current was the electronic data collection system. It is maintained that it is an optional system that does not replace the A-45 cards, it supplements it. Costello testified that the electronic records are not secure inasmuch as others have access to electronic records throughout the building. It is claimed that the lack of security is a violation of the Health Insurance Portability and Accountability Act (HIPAA) and Federal Education Rights and Privacy Act (FERPA).

Lastly, there is testimony that the room is messy and records exposed. However, Costello was out of the building by late February and Petro did not begin work until April 29, 2014. So, for two months there were numerous people had access to the office and had the ability to open cabinets and put records that otherwise had been secured in non-secured areas. Similarly, the testimony concerning the AEDs. School policy states that the Program Coordinator is to maintain the AEDs are the school nurse and/or certified athletic trainer and equipment maintenance needs to be done on a monthly basis with a monthly checking for batteries and pads for damage and expiration dates. Costello testified that the part-time school nurse, Mrs. Bagstrom, developed and maintained the AED log starting with the 2014-2015 school year. It was Costello's belief and understanding that the log was current as of his last day in the building. The last time Costello was present, the AED log was on Bagstrom's desk in a binder. Board Exhibit 12 shows that the batteries at Location A, the health office, were changed in May of 2013 and were set to expire in May of 2015 as were the pads. The upstairs pads were to expire May of 2015. The batteries upstairs seems to be less clear. Petro testified she purchased new AED equipment and machinery. The Board's Exhibit 12 does give evidence as of May 2015, the pads and batteries would have expired and that Petro simply purchased scheduled items that were due to expired in May of 2015. This would tend to show that the Petro exaggerated the facts.

It is argued that since there no crime charged against Costello the conduct unbecoming charge must be dismissed because there is nothing placed before the arbitrator that shows malevolent conduct.

The collective negotiations agreement between the Northfield Board of Education and the Northfield Education Association provides at Article 5 that no employee shall be discharged, disciplined, reduced in rank or compensation without just cause. The contract also provides that except in cases of emergency, whenever an employee is required to appear before the superintendent, board or committee thereof, concerning any matter which could adversely affect the continuation of that employment of his/her office, position or employment or salary or increment pertaining thereto, then he/she shall be given prior written notice for the reason of such meeting or interview and shall be entitled to a representative of the association to advise him/her in representing him/her during such meeting or interview. That process of fair hearing was clearly violated when the Superintendent called Mr. Costello into his office on November 19, 2014. Although the Association representative was also called into that meeting, neither the Association representative nor Costello received any advanced notice of the meeting nor did either of them know the purpose of that meeting. Costello testified that he was under the impression that the meeting with the Superintendent was to discuss the division of labor between the part-time nurse and himself. This was a clear violation of the collective negotiations agreement. It is noted that Costello has had positive evaluations since he first began to work in the District until the 2014-2015 school year.

### DISCUSSION

It is not surprising that when the District eliminated one of the two fulltime school nurse positions and replaced it with a part-time nurse Costello was confronted with increased duties and the stress level of his position increased. Unfortunately, Costello could not handle that stress. He could not properly function at a level necessary to perform his duties as a school nurse in a satisfactory manner.

As to the specific acts the Respondent was charged with:

Although the school has a protocol for the proper handling of seizures, the procedures only addresses *grand mal* seizures and do not address absence seizures such as the one experienced by student L. It is apparent that Costello acted in a medically appropriate manner on November 5, 2014 with Student L. However, part of a school nurse's duties is to interact professionally with teaching staff and educate them as how to handle the health problems of the children in their classes. However, Costello's simply gave Cusick a leaflet on seizures without any explanation. Costello's conduct was consistent with the analysis of Dr. Sigafos that in that he inappropriately avoided interaction with Cusick.

I do not credit Costello's testimony about his response when called to attend Student C, who became sick in the hallway on November 10, 2014. The video recording shows that Costello could not have said one word during the entire incident; he placed a

letter sized paper in his mouth just as he first left the nurse's office with Levy and never removed it during the entire episode. He could not have asked anyone, including C the ill student, about what happened or how C felt. Rather, he immediately assisted her to her feet and walked her back to his office. Moreover, Costello's testimony that he could ascertain how C felt because of her posture does not hold. C was not as he testified leaned forward as if to vomit. Rather she was recumbent in the lap of her teacher who in turn was sitting on the floor. Costello's made no attempt to ask C how she felt or ask any of the three teachers present what happened. Costello's conduct left the teachers quite upset and his conduct was totally inappropriate and consistent with Sigafos's evaluation.

When Respondent was called into Garguilo's office on November 19, 2014, he could not recall the incident with C, nine days earlier. It is understandable that Costello did not immediately recall the incident since Garguilo said a girl fainted, whereas C was conscious when Costello saw her. But upon further explanation Costello still could not recall the event and said that he "doesn't know whether he is coming or going" and "doesn't recall a lot of things this year." Costello's response was a legitimate cause of concern for Garguilo. I am not impressed by Costello's contention that his remarks was specifically referring to his extra workload since he was specifically being asked about the treatment of C. While it is not unreasonable for Costello to feel the pressure of the extra work involved, his failure to even recall an incident nine days before, where a teacher came running to him for assistance and two other teachers were waiting for him to respond, is cause for concern. As a school nurse he must be able to function effectively even though he was dealing with the situational stress of an increased work load.

The Respondent argues that by the terms of the collective negotiations agreement between the Northfield Education Association and the district he was entitled to advanced written notice of the reasons for the meeting but neither Costello nor his Association representative were given such notice. However, there is no indication that a grievance about the lack of notice was ever filed or that the Education Association representative sought to adjourn the meeting in order to give Costello a chance to prepare. Also, the Board has not sought to introduce evidence about the November 10 incident which was gathered at the investigatory interview *per se*. Rather, at issue is Costello's mental state at the meeting, his inability to recall an event nine days earlier and his emotional response in particular. I will consider such evidence.

The third incident was on January 16, 2015, when Costello called the two building Principals, Vaccaro and Robbins into the nurse's office. A young female student was crying in the office and, in front of the student, Costello complained about the girl's teacher sending her to the nurse's office without a note. His complaining of the teacher in the presence of the student showed a serious lack of judgment. It was at this point that Costello's hands began to shake and his body began to vibrate. It was apparent that Costello could not properly function and was sent home. Costello blamed his emotional



state on the medications he was taking but he introduced no independent medical evidence to corroborate his claim.

After Costello was sent home, it was discovered that the nurse's office was in disarray. The amount of expired medications must have taken years to accumulate. According to Wolf, a company that disposed of drugs came every October to pick up expired medications but according to Costello there was a mix-up in October 2014 and no drugs were picked up. But as Petro testified there were scores of expired drugs of all kinds in the office with expiration dates dating back as far as 2008. Although these drugs must have remained in the office for years Costello bears some responsibility for never disposing of them since he shared this office with Wolf for many years.

Papers and records in the nurse's office were not kept in any coherent order and student medical records were not secured. Although Respondent points out he stopped work in January and Petro, who documented the state of the nurse's office, did not start work until late April, both Murphy and Geria testified that the nurse's office was a mess when they were first hired. Although it is possible that some of the disorder, .e.g., the blank student passes on the nurse's desk, were not the fault of Costello, I am satisfied that Costello bears a good deal of responsibility for the disarray in the Nurses office.

The pads and batteries for the ADP machines were expired in May of 2015. Although Costello testified that the machines were in working order when he left in January, Gerta testified that the replacement pads in stock were already expired. While Costello cannot be held accountable for pads or batteries which expired in May of 2015 he is accountable for having replacement parts in stock and up to date. Similarly, the office failed to have a glucometer or the ancillary parts for the nebulizer in stock.

The respondent has not provided a good reason as to why books concerning proper medical procedures were not out in plain sight.

Costello readily admitted that he never inputted medical information into the schools computer system, arguing that the pertinent regulations did not require that records be kept on computer. Nevertheless it was school policy to input student medical information into the system. The respondent's failure to follow this school policy would almost certainly lead to confusion and delay, for the complete health records for any given student were kept in two places, some of the records in hard copies in the nurse's office and the balance in the computer system.

There was a significant breakdown in Costello's health record keeping as witnessed by County's immunization audit where 35 students, apparently the entire sixth grade, did not have proper records for immunization.

In general, Costello failed to keep up with his ministerial duties in maintaining the nurse's office and again this failure is consistent with Dr. Sigafos' evaluation of Costello.

The Respondent had two psychiatric/psychological evaluations on his own. One by Dr. Meusburger, a Psychiatrist, who did not testify but his report was admitted into evidence. Meusburger concluded that Costello's performance was not due to any psychiatric causes. However, the report also noted that Meusburger did not have an opportunity to review Board documents about Costello's conduct before he reached his conclusion and he acknowledged that it is understandable that the school board had concerns about Costello's conduct.

Dr. Tanenbaum, a psychologist who did testify also issued a report. In his report Tanenbaum noted that testing revealed that Costello did suffer from some measure of depression and anxiety although not to the degree indicated in Sigafos' report. The report concluded, "[I]t is not clear on the basis of psychological findings whether Mr. Costello's personality characteristics and style actually prevent him from doing his job according to requirements." He noted that there was a high degree of situational stress at work and recommended counseling. Tannenbaum testified that he did not find that Costello was psychologically unfit for there is a high bar for such a finding. Tannenbaum was not aware of the incident of January 15, 2015 when Costello shook to the point he was vibrating and was sent home. When asked if this were an anxiety attack, Tanenbaum said he didn't know what it was. It is not clear that, if Tanenbaum had been able to identify this as an anxiety attack, he would have reached a different opinion about Costello's fitness.

The Respondent has not supplied any case law in support of its argument that N.J.S.A. 18A:16.2 requires examinations for incapacity to be performed by a psychiatrist. The District has cited several cases where a psychologist's evaluation was relied upon for such a finding. e.g. Jones v. Board of Trustees of Teachers' Pension Annuity Fund, (*Supra*) I/M/O/ the Tenure Hearing of Henry Allegretto, School District of the City of Trenton, Mercer County (*Supra*) and IMO Licenses of Roseann Rave (*Supra.*) Accordingly, I conclude that I may rely upon Sigafos' report.

The Respondent has also challenged the reliability of Sigafos' testing practice since he had Costello take the MMPI test at home. According to Tanenbaum this is bad practice since the test should be taken under supervision to avoid cheating. When taking the test at home the subject could search the internet to find out how to take the test to avoid any negative findings. While I have no doubt that the test should be taken under supervision, here the test results negatively reflect on Costello so I see no reason to conclude that Costello cheated on the test or otherwise conclude that the test should not be relied upon.


Costello was not a reliable witness. When questioned why he left a position with one school district in July of 1990 after being employed there for three years, he replied, to take a position in another district. It was pointed out that there was a six month gap in his resume between the two positions, the new one began in January 1997. When asked what happened and what he did for six months Costello replied that he did not remember. Costello took no responsibility for his mistakes but was self-righteous<sup>2</sup> and tried to explain away every charge against him. Under these circumstances I cannot fully credit Costello's claim that his conduct on January 16, 2015 was due to a bad reaction to his medication, It is noted that he also acted inappropriately several times in November of 2014.

Given Costello's long record of satisfactory service with the district, his removal cannot be taken lightly. However, it is apparent that Costello was unable to competently perform his duties during the fall and winter of 2014-2015. He showed no self-awareness of his anxiety level and of how he was perceived by others. His own psychological expert, Dr. Tanenbaum recommended that Costello undergo counseling to help him cope with his stress, but there is no evidence that he ever did so. Unfortunately, there is no reason to think that if Costello were returned to the same work situation somehow he would behave any differently.

Accordingly, in light of the entire record, including but not limited to the evaluation and recommendation of Chester E. Sigafos, PhD. I find the Board of Education has met its burden of proof and will sustain the tenure charges against John J. Costello due to Incapacity.

#### **AWARD**

The Northfield Board of Education has met its burden of establishing the incapacity of John J. Costello. The tenure charges are sustained

  
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Edmund Gerber, Arbitrator  
November 21, 2015

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<sup>2</sup> Witness Costello's *sua sponte* and inappropriate remark that although he was urged to settle this tenure charge he refuses to settle.