#91-16 (OAL Decision: Not yet available online)

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

SYNOPSIS

Petitioner – a tenured teacher in respondent's school district – challenged the District's decision to terminate her services and put her on unpaid leave following a psychological evaluation performed by a licensed doctor of psychology. Petitioner furnished proof of her recovery and sought reinstatement with back pay. The District found petitioner's proofs to be unsatisfactory and declined to reinstate her to the classroom. The parties filed opposing motions for summary decision.

The ALJ found, *inter alia*, that: *N.J.S.A.* 18A:16-2(a) provides that "The board may require individual psychiatric or physical examinations of any employee, whenever, in the judgment of the board, an employee shows evidence of deviation from normal physical or mental health;" the District determined that such evidence existed based on actions of the petitioner during her employment in 2012 and 2013, and that this evidence was sufficient to require an examination pursuant to *N.J.S.A.* 18A:16-2(a); such examination was conducted in 2014 by Jonathan Mack, Psy.D., who provided an expert medical report; Dr. Mack concluded that petitioner "is at unacceptable risk for inappropriate behavior with her students when under stress;" accordingly, pursuant to *N.J.S.A.* 18A:16-4, this expert medical report formed the basis for the District to deem petitioner unfit for further service until satisfactory proof of recovery was submitted; and the documents subsequently offered by petitioner – namely, one page letters from two osteopathic doctors advising that petitioner was mentally fit for duty, provided that previously requested accommodations were provided – were not deemed to be acceptable proof of recovery. The ALJ concluded that the District properly exercised its right to request a mental health examination of petitioner, and that the District's rejection of petitioner's proof of recovery was reasonable. Accordingly, the ALJ granted summary decision in favor of the respondent, and dismissed the petition.

Upon comprehensive review, the Commissioner adopted the Initial Decision of the OAL as the final decision in this matter. The petition was dismissed.

February 19, 2016

OAL DKT. NO. EDU 9343-15
AGENCY DKT. NO. 122-6/15

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

The record and Initial Decision of the Office of Administrative Law (OAL) have been reviewed, along with petitioner's exceptions – filed pursuant to *N.J.A.C.* 1:1-18.4 – and respondent's reply thereto.

Upon full consideration of the controversy and all submissions, the Commissioner concurs with the Administrative Law Judge's recommendation to dismiss the petition since petitioner failed to demonstrate that the District's determination was arbitrary, capricious or unreasonable. *Thomas v. Morris Tp. Bd. of Educ.*, 89 *N.J. Super.* 327, 332 (App. Div. 1965). Here, the record supports a finding that the District's rejection of petitioner's proof of recovery – which consisted of one-page letters from two practitioners – was reasonable. Indeed, neither letter references the multiple diagnoses made by Dr. Mack,[1] nor do the letters describe petitioner's recovery efforts and/or any treatment regimen in place to address Dr. Mack's

[1] *N.J.S.A.* 18A:16-2 specifically permits the Board to require "psychiatric or physical examinations" of its employees under certain circumstances. Because the parties failed to address whether a psychological evaluation satisfies this statutory provision, the Commissioner declines to decide that issue herein.

concerns.[2] Both letters merely provide conditional recommendations that petitioner be permitted to return to work – with certain parameters in place, *e.g.*, that she only be permitted to teach certain grade levels and student populations. Under the law, student safety must be the District's paramount concern. *See Gish v. Paramus Bd. of Educ.*, 145 *N.J. Super.* 96, 104-105 (App. Div. 1976).[3]

The Commissioner is unpersuaded by petitioner's exceptions, which do not warrant reversal of the ALJ's conclusion. Initially, the merits of this controversy were properly addressed by the ALJ[4], who did not act with partiality. The Commissioner agrees with the District that petitioner's arguments[5] and citations to irrelevant case law lack merit. To the extent that petitioner now claims disputed issues of fact exist – despite the fact that she moved for summary decision – and that certain factual findings made by the ALJ are inaccurate, any such factual discrepancies are immaterial and bear no impact upon this matter's final determination.[6]

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[2] Significantly, petitioner fails to address Dr. Mack's recommendation that she be mandated to undergo weekly psychological counseling and be evaluated for medication by a psychiatrist – and provides no proof that same has occurred.

[3] Because the District has not filed tenure charges against petitioner, this matter is not governed by *N.J.S.A.* 18A:6-8.3 or *N.J.S.A.* 18A:6-10. Until petitioner submits satisfactory proof of recovery, the District is not required to pay her during the period of ineligibility. *N.J.S.A.* 18A:16-4; *Chambers v. Board of Education of the City of Pleasantville*, EDU 8498-97, Initial Decision at 13 (May 1, 1998), adopted, Comm'r, June 18, 1998.

[4] Regarding the ALJ's finding as to the appropriateness of requiring petitioner to be evaluated, said finding – even if unnecessary, since that issue was not contested – does not detract from the ALJ's ultimate conclusion on the merits.

[5] While petitioner denies that she suffers from any mental abnormality and contests the District's interpretation of Dr. Mack's report, she failed to provide any evidence in support of her position. Instead, premised upon her redaction of the majority of the 45-page report, petitioner engages in a semantic exercise – citing certain sentences from the report out of context. The Commissioner finds petitioner's approach to be unpersuasive, and notes that the District appropriately reviewed the entire, unredacted report when rendering its determination.

[6] Petitioner is correct in asserting that the record reflects it was respondent – not petitioner – that moved for emergent relief, and that petitioner obtained her doctors' notes in March, not May. Nevertheless, errors in the Initial Decision concerning this information are immaterial. The courts have established the longstanding principle that "if the opposing party . . . offers . . . only facts which are immaterial or of an insubstantial nature, a mere scintilla, 'fanciful frivolous, gauzy or merely suspicious,' he will not be heard to complain if the court grants summary judgment." *Brill v. Guardian Life Ins. Co. of Am.*, 142 *N.J.* 520, 529 (1995) (quoting *Judson v. Peoples Bank and Trust Co.*, 17 *N.J.* 67, 75 (1954)).

Finally, the ALJ's reference to the net opinion rule[7] was harmless, as the rule was not invoked to bar consideration of petitioner's documents as inadmissible; rather, the ALJ reviewed petitioner's proof of recovery and referenced the rule when considering the proofs' content to illustrate that the two doctor's letters, in his view, lacked a sufficient factual basis to justify the conclusions offered therein.

Accordingly, for the reasons stated therein, the Initial Decision of the OAL is adopted as the final decision in this matter. The District's motion for summary decision is granted, petitioner's motion for summary decision is denied, and the petition is hereby dismissed in its entirety.

IT IS SO ORDERED.[8]

COMMISSIONER OF EDUCATION

Date of Decision: February 19, 2016

Date of Mailing: March 1, 2016

[7] The net opinion rule "requires an expert 'to give the why and wherefore' of his or her opinion, rather than a mere conclusion." *Rosenberg v. Tavorath*, 352 *N.J. Super.* 385, 401 (App. Div. 2002) (quoting *Jimenez v. GNOC Corp.*, 286 *N.J. Super.* 533, 540 (App. Div.), *certif. denied*, 145 *N.J.* 374 (1996).

[8] Final determinations of the Commissioner may be appealed to the Appellate Division of the Superior Court pursuant to *P.L.* 2008, *c.* 36 (*N.J.S.A.* 18A:6-9.1), in accordance with applicable court rules.