222-18

CECELIA MULLANAPHY,	:	
PETITIONER,	:	
V.	:	COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE TOWNSHIP OF MARLBORO MONMOUTH COUNTY,	:	DECISION
	:	
RESPONDENT.	:	

SYNOPSIS

Petitioner – a tenured school nurse employed in respondent's school district – asserted that the respondent Board acted in an arbitrary, capricious and unreasonable manner when it withheld her salary increment for the 2015-2016 school year. The Board contended that petitioner's increment was withheld for good cause – specifically for failure to follow required nursing protocols during an incident on February 5, 2015, wherein an elementary student fainted during a school concert.

The ALJ found, *inter alia*, that: in February 2015, a fifth-grade student, C.D., felt light-headed and briefly fainted while singing in a school choral concert; petitioner was called to that location and found C.D. seated in a chair, having been attended to by teachers who had given her water and taken her vitals; petitioner determined that the situation was not urgent and escorted C.D. to the nurse's office, where she had C.D. put her legs up and drink more water before releasing her back to class unsupervised; petitioner contacted C.D.'s mother and generally described that C.D. had become dizzy during a concert and was brought to the nurse's office, where she fully recovered; nursing protocols utilized by the District are self-described as guidelines, and care is to be based on clinical presentation. The ALJ concluded, *inter alia,* that: tenured teachers may not be dismissed or reduced in compensation except for inefficiency or other just cause; the standard for overturning a Board decision is high; however, in this case there is no qualified opinion in the record to contravene petitioner's course of action, as the superintendent's testimony in this matter is outside his scope of expertise; and the protocols set forth in the District's Health Services Manual are recommendations rather than requirements, as medical care must be based on clinical presentation. Accordingly, the ALJ determined that the Board's action was arbitrary, capricious and unreasonable, and ordered the reinstatement of petitioner's increment for the 2015-2016 school year.

Upon comprehensive review, the Commissioner rejected the Initial Decision, finding, *inter alia,* that the Board's decision to withhold petitioner's increment was reasonable based on her performance in connection with the February 4, 2015 incident, and that petitioner failed to meet her burden to prove otherwise. In so determining, the Commissioner noted that the ALJ's analysis here ignores a critical distinction between respective burdens of proof in tenure matters and increment withholdings. The Commissioner found the Board's decision to be reasonable based on petitioner's failure to follow several protocols outlined in the Health Services Manual; petitioner's failure to accurately document the incident and communicate it to C.D.'s mother; and petitioner's unwise decision to send C.D. back to class unsupervised.

This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

July 26, 2018

OAL DKT. NO. EDU 12092-16
AGENCY DKT. NO. 187-7/16

CECELIA MULLANAPHY,	:	
PETITIONER,	:	
V.	:	COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE TOWNSHIP OF MARLBORO	:	DECISION
MONMOUTH COUNTY,	:	
RESPONDENT.	:	

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C.* 1:1-18.4 by the Marlboro Board of Education (Board) and Petitioner Cecelia Mullanaphy's reply thereto. This matter involves a claim by the petitioner, a school nurse, that the Board's decision to withhold her increment for the 2015-16 school year was arbitrary, capricious and unreasonable. The Board's decision to withhold the petitioner's increment was based upon the petitioner's failure to follow required nursing protocols during an incident on February 5, 2015, where a student fainted at a school concert. Following a hearing at the OAL, the ALJ found that the Board's decision to withhold the petitioner's increment was arbitrary, capricious and unreasonable. As a result, the ALJ ordered the Board to restore the petitioner's increment.

In its exceptions, the Board maintains that the ALJ improperly applied a heightened standard of review and wrongfully substituted her own judgment for that of the Board. The ALJ incorrectly cited and blurred the line between the standard for dismissal of tenured teachers and the standard for withholding an increment. In the Initial Decision, the ALJ states "tenured teachers may not be dismissed or reduced in compensation except for inefficiency or other just cause,

N.J.S.A. 18A:29-14." Initial Decision at 5. The ALJ actually quoted from *N.J.S.A.* 18A:6-10 while citing *N.J.S.A.* 18A:29-14. *N.J.S.A.* 18A:6-10, titled "Dismissal and reduction of persons under tenure in public school systems," states:

> No person shall be dismissed or reduced in compensation if he is or shall be under tenure of office, position or employment during good behavior and efficiency in the public school system of the state … except for inefficiency, incapacity, unbecoming conduct, or other just cause, and then only after a hearing held pursuant to this subarticle.

On the other hand, *N.J.S.A.* 18A:29-14, titled "Withholding increments; causes; notice of appeals," provides:

> Any board of education may withhold, for inefficiency or other good cause, the employment increment, or the adjusted increment, or both, of any member in any year by a recorded roll call majority vote of the full membership of the board of education.

The Board emphasizes that it is well settled that to withhold an increment, "it is not necessary to show shortcomings on the part of a teacher sufficient to justify dismissal." *Brunilda Bauer v. State-Operated School District of the City of Jersey City, Hudson County*, Commissioner Decision No. 179-98, decided April 30, 1998. Further, the scope of review in increment withholding matters is "not to substitute h[er] judgment for that of those who made the evaluation but to determine whether they had a reasonable basis for their conclusions." *Kopera v. Board of Education of West Orange*, 60 *N.J. Super.* 288, 296 (App. Div. 1960). The Board asserts that when the Commissioner applies the correct legal standard, it will be clear that the Board's decision should be affirmed.

The Board also argues that the ALJ misapplied the Heath Services Manual, and failed to consider substantial testimony and evidence that the petitioner failed to follow required protocols for fainting students. Specifically, the ALJ erroneously found as fact that the "[n]ursing

protocols utilized by the District are self-described as guidelines and care is to be based on clinical presentation." Initial Decision at 5. The only section of the Heath Services Manual that contains "guidance" language is found in the *Standing Operating Protocols and Standing Orders* section, which applies to how a student should be triaged as either emergent, urgent or non-urgent based on the severity of the incident. The testimony revealed that the *Standing Operating Procedures for School Nurses* contains mandatory requirements, and that section is distinct from the *Standing Operating Protocols and Standing Orders* section. The *Standard Operating Procedures for School Nurses* outlines what must be followed when a pupil faints. Joint Exhibit 21 at 59. The petitioner did not have the discretion to ignore those procedures regardless of whether she felt that the matter was non-urgent. The distinction between *Standing Operating Protocols and Standing Orders* and *Standing Operating Procedures for School Nurses* was reflected in the testimony of Dr. Hibbs, the Superintendent of the District, who conducted an extensive and thorough investigation into this matter.

The Board argues that the Commissioner cannot find that the Board lacked a rational basis to withhold the petitioner's increment for the failure to follow the *Standing Operating Procedures for School Nurses*. After C.D. fainted: the petitioner did not apply a cold compress to her head; the petitioner did not review C.D.'s health history with her or her parents; the petitioner did not loosen C.D.'s clothes; the petitioner did not monitor C.D.'s vital signs; the petitioner did not assess C.D.'s breathing and pulse; the petitioner did not call 911 or activate the Medical Emergency Response Team (M.E.R.T.); and the petitioner did not inform C.D.'s parent that C.D. had fainted. *See*, Joint Exhibit 21 at 59. Seven of the required procedures were not followed by the petitioner; therefore, Dr. Hibbs appropriately found that the petitioner was derelict in her duties, and the ALJ's finding to the contrary is simply incorrect.

The Board further argues that the ALJ improperly concluded that "the decision to withhold the petitioner's increment rests solely on perceived errors in her management of the February 4, 2015 incident." Initial Decision at 6. Petitioner's increment was withheld based on objective – not "perceived"– errors in petitioner's handling of the incident in which C.D. fainted. Moreover, the Board had a rational reason to withhold the petitioner's increment based on the failures detailed in Dr. Hibbs' letter that was the result of an extensive investigation into the incident. The petitioner failed to follow the mandatory procedures for administering aid to a fainting student as prescribed in the *Standing Operating Procedures for School Nurses*; she failed to properly investigate whether C.D. lost consciousness; and she failed to relay complete and accurate information to C.D.'s parents. Regardless of whether the ALJ subjectively believes the Board is being hypercritical, petitioner's handling of the February 4, 2015 incident cannot objectively be deemed meritorious service warranting a salary increase.

In reply, the petitioner contends that the ALJ relied upon substantial factual evidence to properly conclude that the increment withholding was arbitrary and capricious, and that the petitioner's increment for the 2015-2016 school year should be restored. Contrary to the allegations in the Board's exceptions, the ALJ did not substitute her own judgment for that of the Board and, in fact, the ALJ strictly complied with the *Kopera* standards. The petitioner cited to excerpts from the Initial Decision to argue that the ALJ applied the District's *Standard Operating Procedures for School Nurses* to the actions taken by the petitioner during the incident in question. The petitioner argues that the Board did not present a scintilla of credible evidence that the petitioner failed to comply with the policies and protocols enumerated in both sections of the Health Services Manual. The petitioner also points out that the Board only cited to portions of the Heath Services Manual in its exceptions to support its position, instead of including the entirety of

the *Standard Operating Protocols and Standing Orders* – which demonstrates that it is not intended to indicate an exclusive course of treatment or to be applicable in all circumstances. The Board also failed to present any credible evidence that challenged the testimony of the petitioner, who was found to be credible by the ALJ. Therefore, the Initial Decision should be adopted as the final decision in this matter.

Pursuant to *N.J.S.A.* 18A:29-14, a local board of education may withhold an employee's salary increment for inefficiency or other good cause. *Probst v. Board of Education of the Borough of Haddonfield*, 127 *N.J.* 518 (1992). The recommendation and decision to withhold an employee's increment is "a matter of essential managerial prerogative which has been delegated by the legislature to the board." *Bernards Twp. Bd. of Educ. v. Bernards Twp. Educ. Ass'n.*, 79 *N.J.* 311, 321 (1979). Moreover, a board of education's exercise of its discretionary powers "may not be upset unless patently arbitrary, without rational basis or induced by improper motives." *Kopera*, *supra*, at 294. Therefore, when a school employee challenges a salary increment withholding, the employee bears the burden of proof "of demonstrating that the decision was unreasonable, arbitrary, without rational basis or induced by improper motives." *Kopera*, *supra*, at 297. In evaluating whether the increment withholding is reasonable, the issues to be determined are: (1) whether the underlying facts were as those who made the evaluation claimed, and (2) whether it was unreasonable for them to conclude as they did upon those facts, bearing in mind their expertise. *Kopera*, *supra*, at 296-297.

Upon a comprehensive review of the record, the Commissioner finds that the Board's decision to withhold the petitioner's increment for the 2015-16 school year was reasonable based on the petitioner's performance in connection with the February 4, 2015 incident. As a threshold matter, the ALJ's analysis appears to ignore the critical distinction between the

respective burdens of proof in tenure matters and increment withholdings. The decision to withhold an increment does not require a showing sufficient to justify suspension or the revocation of a teacher's tenure. "To do so would convert an increment withholding action into a tenure case, and accordingly shift the burden of proof to the board. Such is not the purpose of an appeal to the Commissioner under the provisions of *N.J.S.A.* 18A:29-14." *Reilly v. Parsippany-Troy Hills Twp. Bd. of Educ.*, 1989 *S.L.D.* 1830, 1843 (citations omitted). The District did not have the burden of proving that the increment withholding was reasonable; but rather it was the petitioner's burden of proving that the District's action was unreasonable. A review of the record indicates that the petitioner did not meet that burden.

The *Kopera* factors require an analysis as to whether the underlying facts were consistent with those outlined in Dr. Hibbs' letter notifying the petitioner of the Board's decision to withhold her increment, and whether it was reasonable for the Board to withhold the petitioner's increment based on those facts. Joint Exhibit 24. Importantly, "the scope of the Commissioner's review is … not to substitute his judgment for that of those who made the evaluation but to determine whether they had a reasonable basis for their conclusion." *Kopera*, *supra*, at 296. Dr. Hibbs conducted an investigation of the February 4, 2015 incident that included reviewing statements from other teaching staff members present at the concert prior to recommending that the Board withhold the petitioner's increment for the 2015-2016 school year. After the petitioner had an opportunity to appear before the Board, the Board voted unanimously to withhold the petitioner's increment for the 2015-2106 school year.

The video evidence clearly demonstrates that C.D. fainted at the concert. Despite the petitioner's assertion that she was initially unaware that C.D. actually fainted, it was reasonable for the Board to determine that her investigation of the incident was unacceptable, and that there

is an expectation that the school nurse would inquire as to exactly what happened from the other teachers that assisted C.D. during the concert.[1] Likewise, it was reasonable for the Board to find that petitioner did not comply with the nursing protocols that are outlined in the District's *Standard Operating Procedures for School Nurses*.[2] Regardless of whether the District's *Standard Operating Procedures for School Nurses* simply provide guidelines for certain situations, i.e. fainting or heat exhaustion, or require strict adherence in every case, the petitioner failed to follow many of the listed protocols for treatment of a student who has fainted or suffers from heat exhaustion.[3] Throughout her testimony, petitioner contends that the listed protocols to be followed when a student faints were unnecessary because by the time the petitioner had arrived at the concert location, the student was responsive and had recovered from the syncope (fainting) incident. (2T32:1-19). Therefore, petitioner determined it was not necessary to apply cold compresses; loosen C.D.'s clothes; place her in a horizontal position or elevate her feet; monitor C.D.'s vital

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[1] Petitioner contends that she only heard from the other teachers that C.D. "felt faint" during the concert. The statements submitted by the other teachers paint a much different picture. For example, one teacher noted, "[w]hile we were watching the chorus concert, there was a 5th grade girl in the top row of the risings who suddenly collapsed into the backing of the top row. She was not getting back up and seemed to pass out." Joint Exhibit 20. Another noted, "[a]s I was watching the concert I noticed that [C.D.] was starting to slump over and I realized that she was passing out. I jumped up to hold her as best I could. Her eyes were closed and she was unresponsive for about 15 seconds." Joint Exhibit 19.

[2] Under the District's Health Services Manual (Joint Exhibit 21 at 59), the following procedures for treatment should be followed when there is a fainting incident:

> a. mild symptoms (weakness, dizziness), have patient lie or sit down with head lowered between knees.
> b. Apply cold compress to head.
> c. Give Fluids. Review with student/parent health history.
> d. If patient has lost consciousness, loosen clothing, place in horizontal position and elevate feet.
> e. Monitor vital signs
> f. Assess breathing and pulse.
>> 1. Call 911. Activate Emergency Response Team or M.E.R.T.
>> 2. Notify Parents/Guardians.

[3] The Board argues that the District's *Standard Operating Procedures for School Nurses* lists protocols that must be followed when certain events occur. On the other hand, the petitioner contends that they are simply guidelines and each circumstance is evaluated differently. It is not clear from the record whether the protocols must be strictly adhered to, however, that does not change the outcome in this case or the fact that the petitioner did not prove that the Board's decision was arbitrary, capricious or unreasonable.

signs; or assess C.D.'s breathing or pulse.[4] Again, the Board's determination that the petitioner should have taken at least some of these actions was not unreasonable.

The ALJ stated that Dr. Hibbs is not a medical doctor and thus "his testimony gives no indication that by experience or training he is qualified to assess whether this was an emergency." Initial Decision at 6. Dr. Hibbs was not required to have a medical background to find that the procedures outlined in the Heath Services Manual were not remotely followed by the petitioner.[5] Although the ALJ determined that the petitioner "credibly related that placing C.D. in a supine position and loosening her clothing were unnecessary," the petitioner did not demonstrate that Dr. Hibbs' overall assessment of the incident was unreasonable. Other factors were identified as problematic by Dr. Hibbs, including the petitioner's failure to accurately document the incident in the District's student information system; the petitioner's unwise decision to send C.D. back to class unsupervised; and the petitioner's failure to relay accurate information to C.D.'s parents. Therefore, the Commissioner rejects the ALJ's determination that "the decision to withhold the petitioner's increment rests solely on perceived errors in her management of the February 4, 2015 incident." Initial Decision at 6. Further, a review of the transcript indicates that even after viewing the video of the student fainting and losing consciousness, the petitioner still does not appear to grasp the seriousness of the situation.[6] Therefore, it was reasonable for the District to assess a

[4] The petitioner did provide C.D. with fluids and she monitored her at the nurse's office for approximately 30 minutes.

[5] The ALJ determined that it was "worth noting that neither Ms. Attanasio, the nursing supervisor, nor Dr. Lee, the District's physician, were called as witnesses." Initial Decision at 6. It is not clear what weight the ALJ afforded to the lack of testimony, if any, but a negative inference against the Board cannot be drawn from the decision not to call the nursing supervisor or the District's physician.

[6] As Dr. Hibbs stated in his letter, "(Petitioner's) lack of proper treatment, judgment, and investigation could have resulted in a serious medical emergency if an underlying medical issue existed. The fact that one (did) not exist is irrelevant."

degree of accountability to the petitioner in the form of an increment withholding[7], which is not a matter of right but rather "a reward for meritorious service to the school district." *North Plainfield Educ. Ass'n v. North Plainfield Bd. of Educ.*, 96 *N.J.* 587, 593-594 (1984).

Accordingly the Initial Decision is rejected. The Board's decision to withhold the petitioner's increment for the 2015-16 school year was not arbitrary, capricious or unreasonable based on the petitioner's handling of the February 4, 2015 incident.

IT IS SO ORDERED.[8]

COMMISSIONER OF EDUCATION

Date of Decision: ____________________

Date of Mailing: ____________________

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[7] The Commissioner is mindful that the petitioner has received positive evaluations in the past; however, the Board's decision to withhold the petitioner's increment for 2015-2016 was based exclusively on her handling of the February 4, 2015 incident.

[8] Pursuant to *P.L.* 2008, *c.* 36 (*N.J.S.A.* 18A:6-9.1), Commissioner decisions are appealable to the Superior Court, Appellate Division.

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 12092-16

AGENCY DKT. NO. 187-7/16

CECELIA MULLANAPHY,

Petitioner,

v.

TOWNSHIP OF MARLBORO
BOARD OF EDUCATION,

Respondent.

____

Stephen B. Hunter, Esq., for petitioner (Detzky, Hunter & DeFillippo, LLC, attorney)

Mark H. Zitomer, Esq., for respondent (Schenck, Price, Smith & King LLP, attorneys)

Record Closed: October 4, 2017 Decided: June 18, 2018

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

STATEMENT OF THE CASE

Petitioner Cecelia Mullanaphy appeals a decision of the Marlboro Board of Education, denying her salary and adjustment increments for the 2015-2016 school

year. Petitioner alleges that the Board's action was arbitrary, capricious and unreasonable and must be reversed.

PROCEDURAL HISTORY

On May 5, 2015, the Board voted to withhold petitioner's salary and adjustment increments for the 2015-2016 school year. The Board advised petitioner by Letter of Reprimand/Notice of Board Action signed by the Superintendent and dated May 11, 2015. It sets forth the Superintendent's concerns over petitioner's performance, judgment and overall handling of an incident on February 4, 2015. (J-24.) Petitioner first sought relief from the Public Employee Relations Commission (PERC) by filing a Scope of Negotiations petition, but PERC dismissed the matter holding that it was more properly before the Commissioner of Education. Petitioner filed an appeal with the Bureau of Controversies and Disputes on July 12, 2016. The Commissioner transmitted the matter to the Office of Administrative Law (OAL) as a contested case pursuant to N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

I held a hearing on May 22, and 23, 2017. The record was left open for counsel to submit written summations, which they did. I received replies on October 4, 2017, and on that date, the record closed.

FACTUAL DISCUSSION

Certain facts are undisputed. Petitioner was hired by the District as a school nurse in 1994 and has served continuously in that role. Petitioner was assigned to the Asher Holmes Elementary School, which includes first through fifth grade. Petitioner's evaluations throughout her career have been excellent. Her year-end evaluation in 2015 was also positive, though the school principal makes opaque reference to the incident at bar, suggesting petitioner might in the future want to develop the record of an episode more completely. (J-3).

On February 4, 2015, the school was holding its winter choral concert in the cafetorium. The room was full with students and faculty. C.D., a 5th grader, was in the

bleachers singing when she felt light-headed and briefly fainted. She was helped down to floor level by two teachers, given a bottle of cold water, and seated in a chair. Phillip Lozada, a teacher also certified as an Emergency Medical Technician, hurried over to assist. He took C.D.'s pulse and assessed her breathing, which he reported as normal. When petitioner arrived Mr. Lozada informed her that C.D. had been standing in the bleachers for approximately one hour and may have fainted, but was recovering (J-18). After speaking to C.D, petitioner determined that emergency services were not required and that the child could walk with her to the nurse's office. Petitioner had C.D. sit on a cot with her legs elevated and drink water. After observing her for twenty to thirty minutes, petitioner allowed C.D. to return to class. There was a second child in the office who had also suffered a dizzy spell during the concert.

Petitioner testified that when she first arrived in the cafetorium C.D. was pale, her skin was clammy and she was lethargic. Her head had been placed in a downward position. Petitioner asked C.D. whether she was hurt and she said no. As C.D. began to revive, petitioner assessed that the situation was not an emergency, and that C.D. was suffering from heat exhaustion. The concert continued and in her experience it is preferable in such situations to proceed calmly and avert commotion. As a precaution she escorted C.D. to the nurse's office. The cafetorium was stuffy owing to the number of students and staff present in close proximity. Petitioner testified that a student feeling faint in that setting is not all that uncommon. C.D. has no medical history of concern and when she returned to the office petitioner checked her computer to make sure. She did not place C.D. in a supine position, loosen her clothing, or take vital signs as these measures were unnecessary. She continued to speak to and observe C.D.; her color had returned to normal and her skin was dry to the touch. C.D. and the other student in her office were speaking to each other. Before releasing C.D., petitioner asked how she was feeling and C.D. answered that she felt fine.

Petitioner then called C.D.'s mother and informed her of the incident. She said that C.D. had become faint during the concert, but that she had recovered and returned to class. The mother called back and asked to speak with her daughter; petitioner brought C.D. back to the nurse's office to speak with mom and thereafter C.D. again

resumed her class schedule. That same day petitioner went home sick and was out of work the next two days.

Dr. Eric Hibbs is the Superintendent of Schools in Marlboro. He was not present at the concert, but began to hear of the C.D. incident that same day. The school principal as well as C.D.'s mother contacted him. He eventually also met with Mrs. D. She was "furious" and felt that petitioner had endangered her daughter's health and then failed to accurately communicate the seriousness of her condition. She thought emergency services should have been called. Mrs. D. also shared her dissatisfaction with the members of the school board. Dr. Hibbs testified that he generally agreed with Mrs. D. that petitioner performed ineptly during this incident. Dr. Hibbs felt that the incident should have been treated as an emergency because C.D. had fallen unconscious and was not merely faint. He would have expected emergency services to be called. Even adopting petitioner's mischaracterization of the event as non-urgent, school nursing protocols for non-urgent care were not followed. In such circumstances the child is to be maneuvered into a supine position, given a cold compress for the head, clothing is loosened, and vital signs are monitored. Further, petitioner allowed C.D. to walk to her office and then allowed her to walk back to class unattended. These decisions reflect a failure to apprehend the seriousness of the situation. Moreover, petitioner's explanation to Mrs. D. that day was inaccurate and incomplete. Dr. Hibbs testified that he also reviewed this issue with the nursing supervisor, Ms. Linda Attanasio, and with Dr. May Yee, the school physician. For these reasons he recommended withholding petitioner's increment.

Craig Vaughn was the Human Resources Director in the District when this incident occurred. He interviewed petitioner concerning the event and had her fill out an accident report. He testified that during their conversation petitioner allowed that she wasn't feeling well on February 4, 2015 and might have asked more questions of those around her to fill in details of the event.

FINDINGS OF FACT

Based on the evidence admitted at the hearing, as well as the opportunity to observe the witnesses and assess their credibility I **FIND** the following:

1. On the morning of February 4, 2015 C.D., briefly fainted during a school concert and was brought down from bleachers and seated in a chair.
2. C.D. was given cold water, her head was placed in a downward position, and her vital signs were assessed as normal by a teacher who is also credentialed as an EMT.
3. On petitioner's arrival in the cafetorium, she spoke with and evaluated C.D., determining that the situation was not urgent.
4. The concert had been in progress for some time and the room was hot.
5. Petitioner correctly understood that C.D. was suffering from heat exhaustion and required rest and hydration.
6. Petitioner escorted C.D. to her office and there seated her, had her put her legs up, and drink more water.
7. Petitioner spoke with and observed C.D. in the office for twenty to thirty minutes before releasing her back to class.
8. Nursing protocols utilized by the District are self-described as guidelines and care is to be based on clinical presentation.
9. Petitioner contacted Mrs. D. and generally described events to the effect that her daughter had become dizzy during a school concert, and was brought to the nurse's office, where she fully recovered.

CONCLUSIONS OF LAW

The case is close because the standard for overturning a Board decision is high, Kopera v. West Orange Bd. of Educ., 60 N.J. Super. 288 (App. Div. 1960). Even so, I am hard pressed to sustain this action. Tenured teachers may not be dismissed or reduced in compensation except for inefficiency or other just cause, N.J.S.A. 18A:29-14. Petitioner is a school nurse of long experience who has received laudatory evaluations

throughout her career. These refer to her variously as attentive, kind, diligent and knowledgeable. Her evaluations in 2015 were also positive, but for a reference to this incident. Increments are based on annual performance, Probst v. Bd. of Educ., Borough of Haddonfield, 127 N.J. 518 (1992); Bd. of Educ. V. Bernards Twp. Educ. Assoc., 79 N.J. 311 (1979). In the absence of other concerns, the decision to withhold petitioner's increment rests solely on perceived errors in her management of the February 4, 2015 incident.

From this record it appears petitioner accurately evaluated C.D. and then took precautions to assure she was not in danger. C.D. was suffering from heat exhaustion and was taken from the bleachers, seated with head down, and given cold water. Mr. Lozada, took her pulse, assessed her breathing, and found these vital signs to be normal. He reported this to petitioner and that he thought C.D. was recovering. Mr. Lozada felt no need to call for emergency services. C.D. was then escorted by petitioner to her office, seated on a cot with legs up, given more water, and watched for twenty to thirty minutes before being released back to class. There is no qualified opinion in the record that contravenes petitioner's course of action. Dr. Hibbs felt that petitioner had badly mishandled the situation, beginning with her failure to treat the incident as an emergency. Yet, Dr. Hibbs is an educator, not a medical doctor. His testimony gives no indication that by experience or training he is qualified to assess whether this was or was not an emergency. Thus, the central tenet of his criticism is without foundation. It is worth noting that neither Ms. Attanasio, the nursing supervisor, nor Dr. Lee, the District's physician, were called as witnesses.

The Board correctly argues that its decision is presumptively valid and must be sustained unless arbitrary. It searches therefore within the health services manual for a degree of confirmation. Initially, these protocols are guidance. They enumerate many potential illnesses that might present in school and list steps to be taken. Understanding that a manual of this type cannot possibly anticipate the subtleties that each case poses, the authors state plainly that care must be based on clinical presentation, that the "recommendations" in the document are not an exclusive course of treatment, nor are they applicable in all circumstances. (J-21). Dr. Hibbs was unable to square this statement with his insistence on strict adherence to each protocol item.

Petitioner credibly related that placing C.D. in a supine position and loosening her clothing were unnecessary. These are recommended when a student is unconscious; C.D. had already begun to recover when she first observed her. Again the Superintendent opined on a matter outside his scope of expertise.

Dr. Hibbs maintained also that petitioner inaccurately described the incident to Mrs. D. Petitioner testified that as this was not an emergency there was no reason to alarm the parent and she emphasized that C.D. was fine. It strains to refer to this as false, or misleading. The communication was inexact, but perfect pitch in a telephone conversation of this kind is challenging. Much depends on the parent's disposition. Moreover, petitioner's acknowledgement to Mr. Vaughn that she might have asked additional questions is not, as the District suggests, an admission of error, but rather her effort to replay the event to see if more might have done. An unreasonable decision is not cured by being hyper-critical.

ORDER

Based on the foregoing, it is **ORDERED** that petitioner's increment for the 2015-2016 school year be reinstated and any necessary adjustments be made for subsequent years.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION,** who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500,** marked “Attention: Exceptions.” A copy of any exceptions must be sent to the judge and to the other parties.

June 18, 2018
DATE

LISA JAMES-BEAVERS
Acting Director and Chief
Administrative Law Judge

Date Received at Agency: ______________________

Date Mailed to Parties: ______________________

/caa

APPENDIX

WITNESSES

For Petitioner:

Cecelia Mullanaphy

For Respondent:

Eric Hibbs

Craig Vaughn

Angelina Zarko Marino

EXHIBITS

Joint Exhibits:

J-1 Petitioner Cecilia Mullanaphy's Certification dated March 9, 2016

J-2 Marlboro Township Public Schools Job Description for Certified School Nurse

J-3 Petitioner Cecilia Mullanaphy's Year End Evaluation dated June 4, 2015

J-4 Petitioner Cecilia Mullanaphy's Year End Evaluation dated June 7, 2013

J-5 Marlboro Township Public Schools School Nurse Observation Report dated May 13, 2013

J-6 Petitioner Cecilia Mullanaphy's Year End Evaluation dated June 4, 2014

J-7 Traditional Classroom Observation Report dated November 22, 2013

J-8 Traditional Classroom Observation Report dated February 14, 2014

J-9 Traditional Classroom Observation Report dated June 4, 2014

J-10 Year End Evaluation dated June 4, 2015

J-11 Traditional Classroom Observation Report dated March 15, 2015

J-12 Visit Report for C.D., Asher Holmes Elementary School dated February 4, 2015

J-13 Email from Cecilia Mullanaphy to Marc Edery dated February 6, 2015

J-14 Email from Marc Edery to Cecilia Mullanaphy dated February 6, 2015

J-15 Email to Cecilia Mullanaphy dated February 5, 2015 from C.D.'s mother

J-16 Email from Cecilia Mullanaphy to C.D.'s mother

J-17 Marlboro Township Public Schools Accident Report dated February 13, 2015

J-18 Email from Philip Lozada to Marc Edery dated February 6, 2015

J-19 Email from Courtney Carrig to Marc Edery dated February 6, 2015

J-20 Email from Angelina Zarko to Marc Edery dated February 6, 2015

J-21 Health Services Manual for 2015-2015 School Year

J-22 Email dated March 9, 2015 from C.D.'s mother to Board Members

J-23 Email dated June 26, 2015 from C.D.'s mother to Michael Lilonsky

J-24 Letter from Superintendent Eric Hibbs to Cecilia Mullanaphy dated May 11, 2015

J-25 Craig's Notes

For Petitioner:

None.

For Respondent:

R-1 Interrogatory Number—Questions Number 7

R-2 Video