

The Attorney General's interpretation of Section 1154(a) is the interpretation this office gives to that section.

Two basic presumptions of statutory construction when attempting to ascertain the intention of the General Assembly in the enactment of a statute are:

(1) That the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable.

(2) That the General Assembly intends to favor the public interest as against any private interest. (See 1 Pa. S. §1922).

It was observed in *Teacher's Association v. Board of Education*, 34 A. D. 2d 351, 312 N.Y.S. 2d 252 (1970), that sick leave as a condition of employment

" . . . offers an inducement to competent and efficient workers to enter public service; and the right to accumulate unused sick leave encourages the employee to stay in public service and at the same time deters absenteeism for trifling ailments."

34 A. D. 2d 351, 354. Emphasis added.

The accumulation of sick leave days without limitation serves the public interest by encouraging employes to enter public service; it avoids an unreasonable result by discouraging the taking of leave for minor ailments.

We find that Mr. Marra was entitled to accumulate unused sick leave days without limitation prior to the 1968 amendment. Based upon the stipulation of counsel, we hold that Mr. Marra is entitled to be credited with a total of one hundred thirty (130) unused sick leave days, accumulated as of the end of the 1972-73 school year.

For the above reasons, we make the following

ORDER

AND NOW, to wit, this 7th day of December, 1973, it is hereby ordered and decreed that the Board of School Directors of the Mid-Valley School District credit Mr. Frank W. Marra with one hundred thirty (130) days of unused, accumulated sick leave as of the end of the 1972-73 school year.

* * * *

Appeal of John L. Caffas, a Professional Employee, from a decision of the Board of School Directors of the Upper Dauphin Area School District, Dauphin County, Pennsylvania

In the Office of the Secretary of Education, Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania

No. 239

OPINION

John C. Pittenger
Secretary of Education

John L. Caffas, Appellant herein, has appealed from the decision of the Board of School Directors of the Upper Dauphin Area School District dismissing him as a professional employee on the grounds of cruelty, persistent and wilful violation of the school laws, and intemperance.

FINDINGS OF FACT

1. John L. Caffas, Appellant, is a professional employee. He began his employment with the

Upper Dauphin Area School District in September, 1969, and served for two years as a temporary professional employee teaching English in the Junior High School. On October 26, 1971 he was issued a professional employee's contract.

2. Some time after he was appointed, the junior high school was converted to a middle school. At the time of his dismissal, Mr. Caffas was teaching seventh grade English. He was also president of the district's teachers association.

3. At its January 29, 1974 meeting, the Board of School Directors of the Upper Dauphin Area School District voted to initiate dismissal proceedings against Mr. Caffas.

4. A list of charges in the areas of cruelty, persistent and wilful violation of the school laws, and intemperance was sent to Mr. Caffas by letter dated February 5, 1974 from Mr. Charles R. Phillips, president of the School Board.

5. A hearing on the charges was held before the School Board on March 2, 1974. Thirty-seven witnesses testified for the school district, twenty-seven for Mr. Caffas.

6. At the conclusion of the hearing, the Board voted seven to nothing to dismiss Mr. Caffas. Two Board members abstained; one because he was related to a person testifying against Mr. Caffas, the other because he was present for only a portion of the hearing.

7. Mr. Caffas received official notice of the Board's decision by letter dated March 4, 1974 from Evelyn S. Hartman, Secretary to the Board of School Directors of the Upper Dauphin Area School District. The letter informed him that his employment would terminate on March 5, 1974.

8. Mr. Caffas filed his petition of appeal in the Office of the Secretary of Education on March 4, 1974. He contended that the decision of the school board to dismiss him was arbitrary, capricious, contrary to the evidence and law, and without foundation. Due to delays in transcribing the proceedings before the school board, the hearing before the Secretary of Education was not held until May 23, 1974.

CRUELTY

There were sixteen incidents cited in the charges under the charge of cruelty. The facts relating to these incidents are as follows:

Incident No. 1: Douglas D.

9. On Friday, December 14, 1973, at the beginning of the last period of the day, Mr. Caffas entered the fifth grade classroom of Mr. Shomper, who was not present at the time. For no apparent reason, Mr. Caffas approached Douglas D., aged ten, who was making Christmas decorations, grabbed him at the back of the neck and, holding him in this manner, forceably removed the boy from the classroom and took him upstairs to Mr. Caffas's seventh grade homeroom, ostensibly, according to Mr. Caffas, to have Douglas demonstrate how to make Christmas decorations. (The last period on Fridays is used for chorus practice for the seventh and eighth grade students; those not in chorus remain in their homerooms for a study period).

10. Upon entering the homeroom, Mr. Caffas, still holding Douglas by the neck, said approximately the following to his students: "This boy says there are not enough kids in the whole wide world to give him a red belly." Mr. Caffas then indicated to his students that they could give Douglas a red belly. Douglas had not done anything to provoke this remark by Mr. Caffas. (A red belly is a form of horseplay among students, it consists of rubbing one's hand over the exposed flesh of another's belly until the friction causes a red irritation - ergo, red belly. Variations on this technique include hitting or slapping the stomach area to produce the same effect).

11. After making this statement, Mr. Caffas's students reacted as he expected - they proceeded to administer a red belly to Douglas. Approximately eight to ten students seized Douglas, grabbed his arms and legs, and lowered him to the floor. Some started slapping and rubbing Douglas's belly area; his clothes were not removed, however. Douglas became extremely upset and cried.

Mr. Caffas, who was standing by watching, then told his students to stop. Douglas was allowed to leave and return to his classroom.

12. Some time prior to this incident, Douglas had abdominal surgery that resulted in the removal of his spleen, and which left a couple of noticeable scars in his abdominal area. Douglas's mother had been informed by his doctors that he was not to have any physical contact at all in this area and, accordingly, Douglas had been excluded from gym. Mr. Caffas was not aware of Douglas's physical condition; the school nurse had not mentioned it in the list of disabled students circulated to the teaching staff. Had Douglas been included on the list, Mr. Caffas claims he would have recognized the boy on sight, even though Douglas was not, and never had been, one of his students.

13. Douglas was visibly upset when he returned to his classroom; he was white faced and crying. He was still upset and crying when he arrived at home. He testified that his stomach hurt that night. His mother did not see any red marks, however. Douglas has not suffered any lasting physical injury as a result of this incident. Mr. Caffas claimed that he was merely teasing the boy.

Incident No. 2: Terry M.

14. On May 11, 1972, Mr. Caffas grabbed Terry M., a student in the junior high school, by the neck and started choking him. Mr. Caffas believing Terry had said something improper in the hall, followed the boy into homeroom and grabbed him by the shoulders. According to Mr. Caffas, the boy's struggles caused Mr. Caffas's hands to slip up to the boy's neck. Terry's homeroom teacher, Mr. Steve Klinger, arrived and had to pull Mr. Caffas off of the boy; Terry was by then close to being flat on the floor with Mr. Caffas holding him down by the neck. Terry testified he had trouble catching his breath after being released.

Incident No. 3: A child near the cafeteria

15. In January, 1973, Mrs. Mildred Rummel, Manager of Middle School cafeteria, observed a small child standing in a corner in the corridor, apparently being disciplined. The child looked around, whereupon Mr. Caffas, in Mrs. Rummel's words, ". . . comes along and socks his head up against the cinder block wall." "He [Mr. Caffas] gave him a sock that, if anyone understands the human anatomy, was harder than anyone should have been socked." Mrs. Rummel, however, did not report this incident to the school authorities.

Incident No. 4: Mrs. Rummel

16. In October, 1973, Mr. Caffas berated and embarrassed Mrs. Rummel because she allowed children waiting in the lunch line to enter the cafeteria and be served before Mr. Caffas, who was on line duty, was ready to release them. The school has three lunch periods of 25 minutes each during which Mrs. Rummel has to feed approximately 600 children. If the children are not served quickly, they might not have enough time to eat. Mr. Caffas did not allow the children to enter at the appointed time. Mrs. Rummel, after waiting a couple of minutes, exclaimed, "Is he holding them up again?", and then motioned the children to enter; as cafeteria manager, she had authority to do this. Mr. Caffas approached her and yelled that she may have brought her children up like cattle, but he was not doing that. His outburst so upset one cafeteria worker that she retreated to the kitchen in tears. The children were visibly upset as a result of the incident; two small girls asked one worker how old they had to be to quit school. Mr. Caffas had been in an angry mood prior to this incident; during the first feeding he was described as screaming and shouting and banging children into their chairs. His behavior was bad enough to cause one worker, Mrs. Jean Z. to warn her daughter Kim to be good; Kim, for reasons made clear in the following incidents, was afraid of Mr. Caffas.

Incident No. 5: Kim Z.

17. In August, 1972, a group of students enrolled in Summer Happening went to visit the Cyclorama in Gettysburg. On the day prior to the visit, Kim Z., who was ten or eleven, and another student were trying a math problem. Mr. Caffas, observing them, called them stupid because they could not solve it. The other student said Mr. Caffas should try the problem, and if he could not do it, then he would be as dumb as they were. At Gettysburg, Kim asked Mr. Caffas if he had solved the problem. When he said no, Kim and the other student said he was dumb, too. Whereupon Mr. Caffas grabbed Kim by the neck and started shaking her, pressing her up against a railing. Only after she cried and yelled did he release her.

18. Prior to the visit to Gettysburg, Kim was diagnosed as having a severe form of epilepsy. Mrs. Z. informed the school authorities of Kim's condition in the application for Summer Happening.

19. Kim was very upset after the incident. She has been terrified of Mr. Caffas ever since. Prior to the 1973-74 school year, she would pray that she not have him as a teacher -- she got Mrs. Caffas, the Appellant's wife, instead. In January, 1974, Kim became very reluctant to go to school; on two or three days each week she would have headaches and feel that she was going to throw up. According to her mother, Kim's doctor diagnosed her condition to be a bad case of nerves.

Incident No. 6: Mrs. Jean Z.

20. In November, 1973, Kim Z. was to give an oral book report in Mrs. Caffas's eighth grade English class. On the designated day, Kim was at the doctor's office -- she had been sick for a week. For some reason, Kim did not give the report the following week. Mrs. Caffas stated that Kim would get an E on the report; at the time, Kim was an A- student in English. Mrs. Z spoke to Mrs. Caffas and indicated her belief that Mrs. Caffas was being unreasonable. Mrs. Z. then spoke to the principal. Mr. Caffas insisted on meeting with Mrs. Z. When he did, he told her: "If you weren't a woman, I would punch you right in the nose."

Incident No. 7: Robert W.

21. In October, 1973, Mr. Caffas and Robert W., a fifth grade student, bumped into one another in the hall. Mr. Caffas grabbed Robert by the neck and lifted him up so that his feet left the floor; Robert weights only 75 pounds. Robert had a sore neck for a couple of days after the incident and had pain when swallowing food. His mother noticed red marks on his neck after the incident when he came home. Robert is afraid of Mr. Caffas.

Incident No. 8: Todd R.

22. In December, 1973, Todd R. received two "red bellies" from students in Mr. Caffas's class. In one incident, while students were holding his arms and legs, Todd had his shirt pulled up and his trousers opened. Mr. Caffas was present during both incidents, permitted the students to administer the "red bellies", and decided when they should stop.

23. The second incident was especially painful to Todd; his belly was red and looked as though it had blisters on it. His belly was still red the day after the incident; he was sore for two days. Todd had not done anything to warrant the administration of the "red belly" on his person. He did not participate when other students were given "red bellies". The only place he saw "red bellies" being administered was in Mr. Caffas's class.

24. On another occasion, Mr. Caffas called Todd homely and said he looked like Howdy Doody. There were 25 to 30 students in the class when he said this.

Incident No. 9: Robert F.

25. In December, 1973, Robert F., 13 years of age, received a "red belly" in Mr. Caffas's

classroom apparently right after Todd R. received one of his "red bellies". Robert had participated when other students were given "red bellies". The only place these incidents occurred that he knew of was in Mr. Caffas's room.

Incident No. 10: Jerry S.

26. In October, 1973, Mr. Caffas removed Jerry S., age 12, from his wife's classroom, where Jerry was a student, and brought the boy to his own classroom where a "red belly" was administered by students acting under Mr. Caffas's supervision.

Incident No. 11: Guy H.

27. In December, 1973, at Mr. Caffas's suggestion, students gave Guy H., aged 13, a "red belly". Guy had his shirt pulled up and his trousers unzipped and opened. Girls were present at the time and saw the boy's underpants.

28. On many occasions, Mr. Caffas would bring to the attention of the class the fact that Guy had failed the previous year, thereby causing Guy some embarrassment. Guy is afraid of Mr. Caffas.

Incident No. 12: Dennis U.

29. Early in the Fall semester of the 1973-74 school year, Mr. Caffas slapped Dennis U., aged 13, in the face. Dennis and another boy had been running in the hall. Mr. Caffas called Dennis and asked him to come over. When Dennis did so, Mr. Caffas slapped him and told him to sit in a corner. Dennis is afraid of Mr. Caffas.

Incident No. 13: Ricky L.

30. During the 1972-73 school year, Ricky L. had Mr. Caffas as a teacher. On six or seven occasions, apparently when Ricky failed to do his homework, Mr. Caffas, using his knuckles, would strike Ricky on the chest until it became sore. Sometimes Mr. Caffas would throw Ricky up against a wall, causing pain.

31. Another time, because Ricky did not have his shirttail tucked in, Mr. Caffas hit him in the stomach with an open hand, knocking the wind out of the boy.

Incident No. 14: John S.

32. John S. was a seventh grade student who had Mr. Caffas for English during the Fall semester of the 1973-74 school year. During that period, Mr. Caffas would make sarcastic remarks to the boy, needling him. Referring to a mark on John's head that John had since age three, Mr. Caffas asked John, in front of other students, if he had tripped on the wall to wall carpeting in his bedroom and injured his head by falling against his television.

33. During the Fall semester, John came home crying on many occasions. He became reluctant to go to school. He developed a nervous condition for which he was receiving treatment. John was afraid of Mr. Caffas; he was afraid Mr. Caffas would paddle him should he make a mistake in his work or fail to get it done.

Incident No. 15: Rodney and Randy B.

34. During the 1972-73 school year Rodney and Randy B., twin brothers, had Mr. Caffas as a teacher. The boys lost all of their clothes due to the flood and had to use borrowed clothes. Mr. Caffas, knowing this, nevertheless would make jokes in class about the boys' clothes being four sizes too big for them, thereby causing the boys considerable embarrassment.

35. Mr. Caffas would call Randy a "cutz" (sic), a term used in a derogatory sense. Randy did not do as well in school as his brother and tended to be undisciplined. Mr. Caffas would emphasize to Randy that his brother was a better student. According to his mother - Randy missed the hearing due to flu - Randy said he would get sick in his stomach when Mr. Caffas came near, wondering what Mr. Caffas would accuse him of next. On one occasion, someone put a firecracker in Mr. Caffas's car. Mr. Caffas accused Randy and claimed to have a dozen witnesses to support the accusation. Randy's mother and father immediately went to the school, however, none of the witnesses identified Randy as the one responsible.
36. Randy apparently has the beginnings of a stomach ulcer, for which he is taking medication.

Incident No. 16: Reverend Hauck

37. Reverend Hauck had been a faithful substitute for a number of years in the Upper Dauphin School District. On October 8, 1973, Rev. Hauck was on cafeteria duty for the first time, working with Mr. Caffas. Rev. Hauck allowed the children to proceed through the serving line before Mr. Caffas was ready. Mr. Caffas then berated him in an abusive manner in front of students and cafeteria workers, causing Rev. Hauck to become visibly shaken. In explaining the incident to Dr. Kitzmiller, the principal, Mr. Caffas asked, "Why must we get this clown in here?"

PRESISTENT AND WILFUL VIOLATION OF THE SCHOOL LAWS

There were four incidents cited in the charges under the charge of persistent and wilful violation of the school laws. The facts relating to these incidents are as follows:

Incident No. 1: Chorus

38. It was the custom of the middle school where Mr. Caffas taught that children in chorus or band would be excused from their classes on a rotating basis for practice so that they would not miss the same class in succession - apparently, this meant chorus or band would be held during a different period of the day each week. On December 10, 1971, Mr. Caffas refused to excuse the chorus students in his English class, even though they told him they were scheduled for chorus. He refused to release them when the chorus teacher called. The principal, Mr. Raymond Donley, sent him a note directing that the students be excused immediately. Mr. Caffas did not excuse them. Mr. Donley had to go to the class and personally excuse the students.

39. Mr. Caffas said that if the students were excused, he would leave the building. After the students were excused, Mr. Donley discovered that Mr. Caffas was not in his room and that students were unattended. Mr. Donley made arrangements for a substitute and had another teacher cover the class until the substitute arrived. Mr. Caffas later returned and was told the substitute would handle his classes that day.

40. Mr. Caffas claims he did not excuse his students because he was giving a test that period; however, he failed to inform Mr. Donley of that fact when Mr. Donley confronted him. It was school policy that tests should not be given during chorus or band periods. As a rule, Mr. Caffas was reluctant to excuse his students for chorus, regardless of whether or not a test was being given.

Incident No. 2: Faculty Meeting

41. On January 21, 1974, at a required faculty meeting, Mr. Caffas lost his temper when a proposal he supported was rejected by the faculty. He spoke in an abusive manner to those who voted to reject the proposal, calling them lazy sons of bitches. He then left the meeting without permission.

Incident No. 3: Corporal punishment and foul language

42. It has been the long standing, written policy of the Upper Dauphin Area School District that a teacher should *never* strike a child in the head when administering corporal punishment. On numerous occasions, Mr. Caffas has struck children in the head or neck. It has also been the District's policy that only reasonable force should be used in administering corporal punishment. On numerous occasions, Mr. Caffas has used excessive force in punishing children.

43. Mr. Caffas had been told on many occasions by his principal, Mr. Donley, to refrain from using force on the students. Mr. Caffas disregarded these instructions.

44. Mr. Donley had received many complaints from teachers about the type of language Mr. Caffas used within the building. On occasion he would say "hell" or "damn" in the presence of students.

Incident No. 4:

45. Mr. Caffas repeatedly violated the oral and written instructions of the building principal and the superintendent with respect to physical punishment.

INTEMPERANCE

46. In the early part of January, 1972, at a bar in the Washington Hotel in Elizabethville, Pennsylvania, Mr. Caffas used abusive language to describe the students, school board and community in general. At that time, the District was in the midst of collective bargaining negotiations with the Upper Dauphin Area Education Association. Mr. Caffas was president of that association and was one of its negotiators.

DISCUSSION

The only question to be decided in this appeal is whether or not the charges against the Appellant are supported by substantial evidence. We find that the charges of cruelty and persistent and wilful violation of the school laws are adequately supported by substantial evidence present on the record. Accordingly, we must sustain the Appellant's dismissal and must deny his appeal.

The charge of intemperance against the Appellant is dismissed. This charge was brought too long after the alleged incident of intemperance for the charge to be acceptable; the incident occurred January, 1972, the charge was brought February, 1974 -- two years later. The evidence supporting the charge is not adequate; all that it establishes is that the Appellant was observed in a bar consuming alcoholic beverages, a logical place for such an activity. There is no evidence that the Appellant has a drinking problem or that he was drunk and disorderly on this particular occasion.

The charge of intemperance was obviously brought against the Appellant not for what he did -- his drinking - but for what he said - namely, his criticisms of the school district. The school board's bringing of this charge, in our opinion infringes upon the Appellant's freedom of speech, for which reason the charge is unacceptable. In *Pickering v. Board of Education*, 391 U.S. 563, 88 S.Ct. 1731, 20 L.Ed. 2d 811 (1968) the United States Supreme Court upheld the appeal of a teacher who had been dismissed for writing a letter to the editor of a local newspaper criticizing certain school board policies and actions. The Court said:

"What we do have before us is a case in which a teacher has made erroneous public statements upon issues then currently the subject of public attention, which are critical of his ultimate employer but which are neither shown nor can be presumed to have in any way either impeded the teacher's proper performance of his daily duties in the classroom or to have interfered with the regular operation of the schools generally. In these circumstances we

conclude that the interest of the school administration in limiting teachers' opportunities to contribute to public debate is not significantly greater than its interest in limiting a similar contribution by any member of the public." 20 L. Ed. 2d 819-820.

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"In sum, we hold that, in a case such as this, absent proof of false statements knowingly or recklessly made by him a teacher's exercise of his right to speak on issues of public importance may not furnish the basis for his dismissal from public employment." Ibid, at 821.

In *Lusk v. Estes*, 361 F. Supp. 653 (D.C. N.D. Texas, 1973) Federal District Court ordered a teacher reinstated because the school board violated the teacher's freedom of speech rights. The teacher had criticized the management of the school district at a city council meeting. Subsequently, he received unsatisfactory ratings and, as a result, his employment was terminated. The Court found that the termination was related, in part, to the teacher's public comments. With respect to freedom of speech, the Court said:

"It can no longer be seriously asserted that teachers have no right to criticize their employers *Pickering* made it clear that a teacher's employment may not be conditioned upon the surrender of his constitutional rights. A citizen's right to engage in protected expression is substantially unaffected by the fact that he is also a teacher and, as a general rule, he cannot be deprived of his teaching position merely because he exercises these rights. This rule has been adopted so that the threat of termination of employment may not be used to inhibit the propensity of a teacher to exercise his constitutional rights of freedom of speech and association.

Because of his position in the educational system, a teacher is able to make a significant contribution to the public debate concerning the quality of education in the school in which he teaches. . . School authorities must nurture and protect, not extinguish and inhibit, the teacher's right to express his ideas. Only if the exercise of these rights by the teacher materially and substantially impedes the teacher's proper performance of his daily duties in the classroom or disrupts the regular operation of the school will a restriction of his rights be tolerated. *Pred v. Board of Public Instruction*, 415 F. 2d 851 (5th Cir. 1969)." Ibid. p. 660

The charge of intemperance is completely without merit. There is nothing in the record to show that the Appellant's comments in the bar led to a disruption of the regular operation of the school or impeded him in the performance of his duties.

The charge does nothing to advance the district's case against the Appellant; if anything, it adversely affects that case. In *Lusk v. Estes*, supra, the Court followed *Flucker v. Alabama State Board of Education*, in which it was held ". . . that relief be afforded a teacher even if the school board's action was even partially in retaliation for [his] . . . anti-administration activities." 441 F. 2d 201, 210 (5th Cir. 1971)," *Lusk v. Estes*, supra, at p. 664. The charge of intemperance raises serious questions about the objectivity of those who evaluate the teacher's work and those who sit as the triers of fact.

We decline, however, to apply the principle enunciated in *Flucker* and followed in *Lusk*.

The credible evidence against the Appellant on the charge of cruelty is overwhelming; most of that evidence was presented by students or parents of students – people who knew nothing of the Appellant's comments in the bar. In light of their testimony, we fail to see how the school board could do anything but dismiss the Appellant. Also, considering the short period between the most serious incidents of cruelty and the filing of charges, we conclude the school board gave little, if any, importance to the charge of intemperance. It is obvious that the Appellant's conduct relating to the charge of cruelty was the board's main concern.

We are not unmindful of our duty to see that the Appellant's freedom of speech rights are protected. However, that duty must be balanced with the duty to see that children attending the public schools are protected from cruel and abusive treatment. Faced with these responsibilities, we have no reservations in sustaining the Appellant's dismissal.

The most damning charge against the Appellant is cruelty. The evidence supporting this charge is more than substantial, it is overwhelming. Faced with such evidence, it would be wrong for us to do anything other than uphold the Appellant's dismissal.

Section 1122 of the School Code lists cruelty as one of the authorized causes for dismissing a professional employee; the term is not defined, however. What constitutes cruelty must be judged, in our opinion, is the context of the public school environment by considering the ends to be achieved, the maturity of those affected and the maturity and responsibility expected of one enjoying professional employee status. Based on these considerations, we choose to apply the following definitions:

Cruelty results when a professional employee unnecessarily attempts to injure or to cause emotional distress to another without legitimate purpose or justifiable excuse.

Attempts to cause emotional distress include: "worry": an incessant attacking or goading with the intention or the effect of driving one to desperation; "annoy": a molestation, interference or intrusion to the point of becoming a nuisance; "harrass": persecution or petty and continued exactions that drive one to distraction; "harry": a harassing by maltreatment or oppression; "pester": the power to annoy past endurance; "tease": an attempt to break down one's resistance or to rouse one's wrath; "tantalize": the awakening of expectation and, then, its frustration. (See the synonyms of "worry", Webster's New Collegiate Dictionary, C & E, Merriam & Co., Springfield, Massachusetts, 1961). In deciding whether a professional employee has "attempted to cause injury or emotional distress, we judge the employee's actions by the standard of what a person of ordinary sensitivities would expect to be the result of such actions. An ignorant, callous or insensitive professional employee will not escape being disciplined for cruelty on the lame excuse that he or she did not *intend* to injure or cause emotional distress when such results were the logical consequences of the employee's actions.

With respect to the various incidents of cruelty charged against the Appellant, we make the following observations: The incident with Douglas D. in and of itself, is sufficient to justify the Appellant's dismissal. It is irrelevant that Douglas could have been seriously injured in the incident because of his previous medical condition; even if he were in perfect health, the Appellant's conduct would still be outrageous. A review of the incident shows that the entire affair was orchestrated by the Appellant: he removed the boy from the fifth grade classroom without the permission or knowledge of the boy's teacher; he brought the boy to the seventh grade classroom where he incited his students to seize and manhandle the boy; he stood by and watched and did nothing when they did so – nothing, that is, until the boy was crying, whereupon, he decided that it was time to stop, and, with just a word from him, the seventh grade students released the boy. Were he seventh grade students punished? No! How could they be punished, they were merely doing what their teacher, the Appellant, indicated was permissible. We do not blame the students, we blame the Appellant. The entire incident was guided by his hand and, as the record shows, proceeded step by step as he intended.

It is ironic that, in selecting a child at random, the Appellant selected the one child in the school that should never be given a "red belly". It is unfortunate that it took an incident where the potential for serious injury was great to convince the school board to take action and dismiss the Appellant. As the record shows, the Appellant gave the board many other reasons to take action.

The incident with Kim Z. is another sufficient in and of itself to justify the Appellant's dismissal. The Appellant has no excuse for putting his hands on the girl, and definitely no excuse for grabbing her at her throat.

The record includes a series of incidents, most occurring during the Fall semester of the 1973-74 school year, which reveal a consistent pattern of behavior by the Appellant that comes within the definition of cruelty. These incidents are those involving Robert W., Todd R., Robert F., Jerry S., Guy H., Dennis U., Ricky L and John S. In these incidents, the Appellant did the following: grabbed a child by the neck and lifted him from the floor; slapped a child in the face; slapped a child hard in the stomach; struck a child repeatedly on the chest until it became sore; ridiculed a child by drawing attention to the boy's well-off family environment and a mark on his head apparently similar to a birthmark; called a boy homely and described him as looking like Howdy Doody in the presence of the boy's classmates; supervised the administration of many "red bellies", often given to unwilling victims who were students of the Appellant, in one incident, "given to a student taken from his wife's classroom"; in one red belly incident, a boy had his outer pants removed in the presence of girls; after another, a boy was sore for two days.

If we were to review these incidents on an individual basis, we could not with confidence conclude that the Appellant was cruel; one such incident in the course of a career in education is not necessarily evidence that a person is cruel. But by reviewing these incidents collectively, we see behavior whereby children are regularly abused either by the Appellant or at his direction. Accordingly, we find that there is sufficient evidence related to the above incidents to justify the Appellant's dismissal on the grounds of cruelty.

The record includes three incidents of cruelty toward adults, namely, the incidents involving Mrs. Jean Z., Mrs. Rummel and Reverend Hauck. Dealing with parents and faculty is an integral part of a professional employee's duties. Cruelty towards such people obviously hurts the effectiveness of the educational program and is, accordingly, just as valid a cause for dismissal as cruelty towards children. In each incident, the Appellant was unduly harsh and belligerent. Each incident could have been handled in a manner that would have avoided causing emotional distress to those present. The Appellant, however, was deliberately abusive and threatening, causing the children present as spectators to become upset, also.

There are three other incidents which support the conclusion that throughout the course of his employment, the Appellant has behaved in a cruel manner towards children; these are the incident with Terry M., a child near the cafeteria and Rodney and Randy B. The Appellant's actions in these incidents clearly come within the definition of cruelty. However, were it not for the fact that these incidents demonstrate a continuing pattern of behavior, we would have rejected them because of the length of time which elapsed between the incidents and the bringing of charges.

There is considerable testimony in the record by parents of students who have come in contact with the Appellant about various medical disorders their children have developed. Because there is no medical testimony linking those disorders to actions by the Appellant, the parents' testimony on this subject is given no weight in this decision.

The Appellant was charged with four incidents of wilful violation of the school laws. We find that there is substantial evidence to support the charge. The Appellant has clearly violated the district's corporal punishment policy. He was guilty of insubordination in refusing to release his students for chorus. As a professional employee, he is expected to faithfully attend faculty meetings; just because the majority of the faculty disagree with him on educational policy is no reason for verbally abusing them and storming out of the meeting before it was adjourned. He has used improper language in the presence of students. Although the incident concerning chorus occurred well before the bringing of charges, the evidence related to it is accepted to the degree it demonstrates persistency.

Dr. Lynn H. Kitzmiller, Superintendent of Schools, testified that the Appellant was very competent as far as teaching the mechanics of English and the interpretation of literature are concerned. However, he also testified he received more complaints about the Appellant than the total for the rest of the district's teaching staff combined. These complaints, as the record shows, concerned the Appellant's behavior, not his teaching ability. How the teacher behaves is just as important as the teacher's ability to present a subject; children can develop improper or antisocial behavior from their teacher just as easily as they can learn a subject. This is a point the Appellant apparently fails to understand; because he is competent in presenting his subject, he thinks he is a good teacher. In our opinion, a person who makes children afraid to attend school, who teaches them to be bullies, to be cruel to one another, is not a good teacher. From the record, there is ample evidence that the Appellant has had these effects on his students.

Accordingly, we make the following

ORDER

AND NOW, this 25th day of June, 1975, it is hereby Ordered and Decreed that the decision of the Board of School Directors of the Upper Dauphin Area School District dismissing John L. Caffas as a professional employee be sustained on the grounds of cruelty and persistent and wilful violation of the school laws. The charge against him of intemperance is hereby dismissed.

* * * *

Appeal of Byron Bakewell, a Professional Employee, from a decision of the Board of School Directors of the New Castle Area School District, Lawrence County, Pennsylvania

In the Office of the Secretary of Education, Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania

No. 240

OPINION

John C. Pittenger
Secretary of Education

Byron Bakewell, Appellant herein, has appealed from the decision of the Board of School Directors of New Castle Area School District assigning him to the duties of a teacher of mechanical drawing, which action he feels constitutes an improper demotion.

FINDINGS OF FACT

1. The Appellant is currently a professional employee. He began his employment in the New Castle Area School District in 1963 as a social studies teacher. He served in that capacity until August, 1966, when he assumed the duties of assistant principal of George Washington Junior High School.
2. In April, 1969, the Appellant was appointed to the position of Administrative Assistant to the Superintendent. The job description for this position provides that the Administrative Assistant would collect data and do research on certain projects assigned by the superintendent, (such as hot lunch programs, development of the administrative policy booklet, and the twelve month school year); supervise the cafeteria program; supervise all operations related to custodial and maintenance departments; be in charge of all security measures related to school property; supervise and direct the pupil transportation program of the district; participate in negotiations with certain employee groups; develop, direct and preside at in-service programs for cafeteria, custodial, maintenance and transportation employees; and perform any other duties, where time permits, required by the superintendent for which the Administrative Assistant is qualified.
3. By January, 1971, the position in which the Appellant served became known as Administrative