ORDER

AND NOW, to wit, this 23rd day of August, 1974, the Appeal of B. Franklin Shue from the action of the Board of School Directors of the Cornell School District refusing him a hearing is sustained, and the Board of School Directors is hereby ordered to set a date for a hearing before it on the demotion as alleged by the Appellant.

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Appeal of Paul D. Landi, Professional Employee, from a decision of the Board of School Directors of the West Chester Area School District, Chester County, Pennsylvania

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

No. 246

OPINION

John C. Pittenger
Secretary of Education

Paul D. Landi, Appellant herein, has appealed from the decision of the Board of School Directors of the West Chester Area School District, dismissing him as a professional employee on the grounds of cruelty.

FINDINGS OF FACT

1. The Appellant is a professional employee. He has been employed in the West Chester School District since 1963. During the 1972-73 school year he taught sixth grade at the Fernhill Elementary School in the district. During the 1973-74 school year he taught sixth grade at Paoli Pike Elementary School.
2. On the afternoon of Monday, May 6, 1974, the Appellant's sixth grade students were restless and edgy in anticipation of dismissal which would be occurring within the next 15 minutes; it was a study period and the students were free to work as they wished. The Appellant noticed that one student, Donald F., was talking with his classmates instead of studying. The Appellant called Donald to the front of the room and asked him to be quiet and work on his lessons. When Donald returned to his chair, someone said: "The elephant is angry." This remark the Appellant understood to be a reference to himself -- the Appellant is a large, heavyset man, weighing approximately two hundred thirty pounds and standing six feet, one inch tall.
3. Believing that Donald had made the remark, the Appellant called him back to the front of the room. The Appellant grabbed Donald by the shoulders, shook him, then pushed him into the blackboard causing Donald to hit his head. Donald fell to the floor. The Appellant grabbed Donald by his hair and arm and lifted him to his feet. The Appellant then pushed Donald into the bookcase. Donald hit his head again and fell to the floor. He was crying. The Appellant exclaimed: "Look at him. He is crying like a baby."
4. Shortly after the incident, Appellant dismissed the class but kept Donald in the room. Donald continued to cry until he was released to board the school bus. When the school bus arrived at his home he had to be helped to his home by fellow students. Donald by this time was dizzy and nauseous, he had pain in his head and was vomiting. The Appellant called Donald's mother after school, ostensibly to inform her of her son's bad behavior. Donald's mother told the Appellant that Donald was in a very distressed state and that she was taking him immediately to the hospital to determine if he had sustained any injuries. The Appellant then attempted to contact the principal of the elementary school, Mr. Donald Pitt, and inform him of the details of the incident.
5. Donald was taken to the hospital that evening. No injury was discovered, except for reddish

area on his forehead. Donald's parents were given standard instructions to follow for patients with possible head injuries. One instruction was to awaken Donald every two hours and see if he could coherently answer questions. Donald's head was sore and he had headaches for two weeks after the incident.

6. On the following day the principal investigated the incident and questioned students in the Appellant's class who had a reputation for honesty. Based on that investigation, the Appellant was suspended with pay.

7. At the regularly scheduled school board meeting of May 28, 1974, Dr. Donald E. Langlois, district superintendent, recommend to the board that it consider a dismissal hearing. The board asked Dr. Langlois to prepare a report about the incident.

8. Dr. Langlois's report was submitted at a special board meeting held on June 3, 1974. The report summarized both Donald's and the Appellant's version of the incident; the Appellant claimed he had merely shaken the boy and the boy fell to the floor, that he was picked up, shaken lightly again and told to return to his seat. The report further stated that, according to the principal, Donald's version was corroborated by several classmates. Dr. Langlois did not recommend that the Appellant be dismissed; he made it clear to the board that it would have to determine whether the incident was sufficiently serious to justify scheduling a formal hearing on the matter. The school board unanimously voted to hold a hearing on the charges of cruelty.

9. Notice of a hearing to consider dismissal, dated June 5, 1974, was sent to the Appellant from Raymond McCarthy, President of the West Chester Area School Board, attested to by the school board secretary. The letter stated that a hearing was scheduled for June 17, 1974 at which time the board would look into the incident of May 6, 1974 involving Donald F. to determine whether the incident would justify the Appellant's dismissal on the grounds of cruelty. The letter included the Appellant's statement as given in his incident report and a brief statement summarizing Donald F.'s version of the incident. The letter also included the names of students who corroborated Donald's version.

10. The hearing was postponed and was held on June 25, 1974. At that hearing the school board heard testimony from Donald F. and from a number of students present when the incident occurred. Seven board members were present for the hearing. After the hearing a special board meeting was held on June 28, 1974. At that meeting the school board voted 6-1 to dismiss the Appellant.

11. The Appellant was informed of the board's decision in a letter dated July 1, 1974 from Mr. Amos E. Bassett, Jr., secretary to the school board.

12. The Appellant's petition of appeal was received in the Office of the Secretary of Education on July 22, 1974. A hearing was scheduled for August 21, 1974 but was postponed because the notes of testimony of the hearing before the school board had not been prepared. The hearing was not held until December 18, 1974.

DISCUSSION

In his petition of appeal, the Appellant contends that the facts presented to the school board did not sustain the charge of cruelty. He further contends that the decision of the board is against the weight of the evidence and that the chargy of cruelty is not sustainable as a matter of law. We find that the charge of cruelty is justified and that there is substantial evidence present on the record to support the school board's decision. Accordingly, the school board's decision dismissing the Appellant is sustained and his appeal is denied.

In the teacher tenure appeal of John L. Caffas, we defined cruelty as follows:

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

We further stated to that opinion that:

> "In deciding whether a professional employee has 'attempted to cause injury or emotional distress,' we judge the employee's action by the standard of what a person of ordinary sensitivities would expect to be the result of such action. 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." **Appeal of John Caffas,** Teacher Tenure Appeal No. 239.

The Appellant claims he never intended to injure Donald. The Appellant's intentions are irrelevant; he behaved in a manner which was likely to cause injury to the boy; he had complete control of the situation and could have selected any one of a number of different ways to discipline Donald in a permissible manner, assuming discipline was warranted. Instead, the Appellant decided to intimidate Donald by throwing him into the wall, a method of discipline which directly violates the school district's corporal punishment policy and which no reasonable person would accept as proper.

The Appellant claims that Donald did not hit the blackboard or the bookcase. His testimony is directly contradicted by Donald and students who were eyewitnesses to the incident.

The Appellant contends that a single incident does not justify dismissal on the grounds of cruelty. Section 1122 of the School Code states the reasons for the dismissal of a professional employee; although it qualifies dismissals for negligence or wilfull violation of the school laws by requiring that such offenses be persistent, no such qualification is required for a dismissal for cruelty. In our opinion, a dismissal for cruelty can be based upon a series of incidents, each of which is minor in nature but which collectively indicate a behavior or attitude of cruelty, or it can be based upon a single incident of a serious nature.

We believe that this incident was sufficiently serious for the school board to consider dismissal action. The school board was aware of the Appellant's past teaching record, that he did not have a reputation for cruelty and that this was apparently an isolated incident in his fourteen years of teaching experience. Nevertheless, the school board decided by a 6-1 vote that the Appellant should be dismissed because of cruelty. We find that there is sufficient evidence on the record to support that decision.

The Appellant complains that the school district did not call all of the students who were present in the room as witnesses. It was not necessary for the school distirct to do this. The testimony of the witnesses that were produced supported Donald's version of the incident. If there were any students who had a different version that supported the Appellant, the Appellant should have called them; it was not the responsibility of the school board to do this.

Accordingly, we make the following

ORDER

AND NOW, this 16th day of July, 1975, it is hereby Ordered and Decreed that the Appeal of Paul D. Landi be and hereby is dismissed.

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Appeal of Ruth Lesley, a Professional employee, from a decision of the Board of School Directors of the Oxford Area School District, Chester County, Pennsylvania

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

No. 247