

Appeal of Richard Stholer, a Professional Employee, from a decision of the Board of School Directors of Berks County Intermediate Unit #14

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

No. 260

OPINION

John C. Pittenger
Secretary of Education

Richard Stholer, Appellant herein, has appealed from the decision of the Board of Directors of the Berks County Intermediate Unit #14, terminating his contract and dismissing him as a professional employee.

FINDINGS OF FACT

1. Appellant is a professional employee. He began his employment with the Berks County Intermediate Unit #14, or its predecessor, in 1959, and has taught there until April 17, 1975. The Berks County Intermediate Unit #14 offers programs only for the special education student.
2. Appellant was a teacher of special education; he taught science to socially maladjusted or emotionally disturbed students.
3. On September 4, 1974, the Berks County Intermediate Unit #14, by resolution duly adopted, instituted proceedings for the dismissal of the Appellant on the grounds of incompetency and persistent negligence. Appellant was given notice of these charges and had an opportunity to be heard.
4. Appellant on May 21, 1974 was rated unsatisfactory for the 1973-74 school year on the approved Department of Education rating form (DEBE-333). Appellant received no other formal rating.
5. Hearings were held before the school board on these charges on the following dates: October 24, 1974; November 7, 1974; November 25, 1974; December 12, 1974; January 11, 1975; January 25, 1975; February 8, 1975; February 18, 1975; March 3, 1975; March 13, 1975; and April 9, 1975. By resolution of the school board dated April 17, 1975, the Appellant was dismissed and his contract terminated.
6. On May 16, 1975, the Appellant filed his appeal with the Secretary of Education.
7. Pursuant to notice, a hearing on the appeal was held on July 3, 1975.

DISCUSSION

The proceedings in this matter before the board of school directors to dismiss the Appellant as a professional employee were brought on the grounds of incompetency and persistent negligence. Eleven hearings were held beginning on October 24, 1974 and ending on April 9, 1975, which are recorded in one thousand three hundred and nine pages of transcript along with numerous exhibits. The Appellant did not present any testimony on his own behalf; his defense consisted entirely of extensive and belabored cross-examination of the administrations' witnesses.

The Appellant received only one formal unsatisfactory rating prior to his dismissal on form DEBE-333 (the standardized Department of Education form). As is clear from the anecdotal record accompanying it, this unsatisfactory rating is intended to cover the entire period of Appellant's service, 1959 to 1974.

The Appellant was rated unsatisfactory on two other occasions, February, 1971 and May, 1973; however, neither rating was recorded on the standardized rating form. As is clear from Section 1125(a) of the Public School Code of 1949, Act of March 10, 1949, P.L. 30, as amended, 24 P.S. Section 11-1125(a), a professional employee cannot be dismissed for incompetency unless

rated unsatisfactory in accordance with procedures approved by the Department of Education. Section 1123 of the School Code, 24 P.S. Section 11-1123, provides that an unsatisfactory rating will not be valid unless approved by the district superintendent or, if applicable, the executive director. The February, 1971 and the May, 1973 ratings do not comply with the first requirement; accordingly, neither rating can be used to support a dismissal for incompetency.

Before a professional employee can be dismissed because of incompetency, there must be two unsatisfactory ratings -- the first serving as a warning that improvement is essential, *Thall v. Sullivan County Joint School Board*, 410 Pa. 222, 189 A.2d 249 (1963). That first unsatisfactory rating can be an annual rating from the preceding school year, or it can be a preliminary rating made within the current school year. An anecdotal record, substantiating the rating, must be sent to the professional employee as soon as possible. The purpose of this rating scheme is designed to formulate concrete standards to judge competence and to improve the general level of teaching by drawing attention to existing deficiencies. (See *Mulhollen Appeal*, 155 Pa. Super. 587, 39 A.2d 283 (1949).

There is only one, valid unsatisfactory rating in the record, which the Appellant received during his last year of employment. Because two unsatisfactory ratings are required, the charge of incompetency must be dismissed.

The school board has also charged the Appellant with persistent negligence. For the following reasons, we uphold this charge: During the period of 1970 to 1975, the Appellant taught at three different schools within the Berks County Intermediate Unit -- the Daniel Boone School, the Twin Valley School, and finally the South Mountain School. At each successive teaching placement, Appellant was given fewer students to teach. The Appellant's supervisors notified him that his work was not satisfactory and gave him suggestions and directives to make his teaching more effective. The Appellant consistently failed to follow these directives.

In particular, the Appellant failed to follow the behavioral modification contract system used at the South Mountain School. Under this system, each student was assigned work to be completed by a specified date. Successful completion would be rewarded by giving the student free time; failure would be penalized by the loss of privilege or by confinement to a certain area. By reinforcing positive attitudes toward learning and discouraging negative attitudes, the contract system is intended to modify the student's behavior so that he or she can be returned to the regular classroom.

This system requires close monitoring by the teacher. Work assignments must be within the student's capabilities, or else the student will be faced with failure regardless of how hard he tries to complete his assignments. Discipline must be maintained, or else penalties and rewards will have little, if any, impact on changing the student's behavior.

The record shows that the Appellant was unwilling to make the effort necessary for the contract system to work. His lesson plans were incomplete and poorly planned, frequently requiring students to work beyond, not within their capabilities. He did not maintain discipline, students would wander in and out of his class or refuse to attend, but would not be punished. On one occasion, a student emptied an ashtray on the Appellant's desk; although present, the Appellant did nothing to punish the student.

The Berks County Intermediate Unit uses the team teaching concept. The team or the administration would often schedule team meetings after the students were excused for the day. The Appellant usually did not attend these meetings, contending that he did not have to work after classes were dismissed. Teachers who had a free period were required to offer their assistance to other teachers on the team. The Appellant would not do this; instead, he would read newspapers or books. He failed to help with other team chores, such as issuing report cards or setting up the movie projector.

Each teacher is expected to utilize the educational resources of the school to provide each student with a stimulating learning environment. The Appellant failed to utilize much of the scientific equipment and demonstration materials the school made available for his science students. By acting in this manner, the Appellant did not teach his students a full science program.

The failure or neglect to teach constitutes grounds for dismissal under the charge of persistent negligence, *West Mahanoy Township School District v. Kelly*, 41 A.2d 244, 156 Pa. Super. 601

(1945); *Appeal of Deane*, 26 Northumberland L.J. 17 (1956). Neglect to teach encompasses more than not providing instruction or a full instructional program. It includes the failure to perform those other duties of a teacher necessary if instruction is to be effective. As is clear from the above, the Appellant has failed to implement the contract system and to work as part of the teaching team. Accordingly, we conclude that the charge of persistent negligence is sustained.

Counsel for the Appellant raises a number of procedural issues that can be disposed of summarily. First, Appellant charges that the Intermediate Unit Board of Directors cannot dismiss him because, having brought the charges, it cannot serve as an impartial judge. The United States Supreme Court in *Withrow v. Larkin*, ___ U.S. ___, 43 L. Ed. 2d 712 (April 16, 1975), clearly rejected this contention. Second, Appellant's counsel contends that the same two-thirds of the school board must attend every hearing in order to be eligible to vote for the dismissal. In *Acitelli v. Westmont Hilltop School District*, 15 Cmwith. Ct. 214, 325 A.2d 490, it was held if a quorum is present at every hearing and those voting on the dismissal give full consideration to the testimony presented (i.e. by reading the transcript of any meeting he or she may have missed), there is no violation of Appellant's statutory or constitutional due process rights.

Finally, Appellant's counsel contends that irrelevant materials and hearsay testimony were permitted into the record to color the minds of the Board of School Directors so that they could not make an impartial judgment. After careful review of the record, we find this contention to be without merit. The Board had ample factual evidence, including direct testimony involving numerous incident reports on which to base its decision to dismiss the Appellant.

Thus, it is our opinion that the decision of the School Board to dismiss on the charge of incompetency must fail but that the dismissal based on the grounds of persistent negligence is supported by substantial evidence in the record.

Accordingly, we make the following:

ORDER

AND NOW, this 22nd day of December, 1975, it is ordered and decreed that the Appeal of Richard Stholer from the decision of the Board of School Directors of the Berks County Intermediate Unit #14, be and is hereby dismissed, and the action of the said Board dismissing him as a professional employee is hereby sustained on the grounds of persistent negligence.

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Appeal of Alfred B. Traub, a
Professional Employee, from a
decision of the Board of School Directors of
the Garnet Valley School District.

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

No. 261

OPINION

John C. Pittenger
Secretary of Education

Alfred B. Traub, Appellant herein, has appealed from the decision of the Board of School Directors of Garnet Valley School District dismissing him on the grounds of incompetence and intemperance.

FINDINGS OF FACT

1. The Appellant is a professional employee. He has been employed continuously by the Garnet Valley School District as a mathematics teacher since 1965.