

is unsupported by the evidence. The Appellant followed his supervisors' orders to send these students to the principal's office. The Appellant was disciplining students and, furthermore, he was disciplining them in accordance with the school directives. There is no evidence that the Appellant refused to follow these directives, nor was it contended that the Appellant willfully refused to carry out suggestions to improve his classroom teacher-student rapport.

Appellant's counsel raises the procedural issue that Appellant's due process rights were violated by the alleged dual role of the school board's solicitors as advisors to and prosecutors of the school board. We find this contention to be without merit. The solicitors for the school board did, in fact, act as prosecutors throughout the hearings, but we find no evidence that they advised the school board on their rulings on the admission of evidence (this job was performed by Mr. Lawrence DeBlasio, vice-president of the school board).

Therefore, it is our opinion that the decision of the school board to dismiss the Appellant on the charges of incompetency and persistent negligence is not supported by substantial evidence in the record.

Accordingly, we make the following:

### ORDER

AND NOW, this 23rd day of February, 1976, it is Ordered and Decreed that the Appeal of Thomas F. Bair from his dismissal by the Board of School Directors of the New Castle Area School District be and is hereby sustained and the Board of School Directors is directed to reinstate Thomas F. Bair forthwith without loss of pay.

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UMBERTO TUCCI, Appellant

v.

The Board of School Directors  
of the Oley Valley School District

Teacher Tenure Appeal No. 265

### OPINION

John C. Pittenger  
*Secretary of Education*

Umberto Tucci, Appellant herein, has appealed from the decision of the board of school directors of the Oley Valley School District dismissing him as a professional employe on the grounds of persistent negligence and persistent and willful violation of the School Laws.

### FINDINGS OF FACT

1. Umberto Tucci, Appellant, is a professional employe. He has worked as a teacher since 1962. He began his employment in the Oley Valley School District in September 1968, teaching chemistry, physics and general science at the secondary level. During the 1974-75 school year he taught one seventh grade class, one eighth grade class, and four ninth grade classes of general science.

2. At its meeting of May 21, 1975, the school board approved a statement of charges against Mr. Tucci proposing his dismissal on the grounds of cruelty, persistent negligence, and persistent and willful violation of the School Laws. A hearing was scheduled for June 4, 1975. The statement of charges listed eight incidents in which Mr. Tucci was alleged to have used physical force on students in violation of the school district's policy on corporal punishment. These incidents are as follows:

Pulling a student's hair; slapping a student in the face; grabbing a student by the neck and shaking her; grabbing a student's hand and bending it back; shoving a student into a chair; kicking a student in the leg; shoving a student; and, grabbing a student by the wrist with such force that a bone was fractured.

All the above incidents involved ninth grade students.

3. By stipulation, Mr. Tucci admitted to having committed the acts charged against him concerning the use of force on students.

4. Because Mr. Tucci's counsel was unable to attend the hearing held June 4, 1975, the hearing was rescheduled for June 26, 1975. For all hearings in this matter, the school board employed the services of special counsel to prosecute the case on behalf of the administrative staff of the school district.

5. At a special meeting held July 2, 1975, the school board found as facts that Mr. Tucci committed each of the acts charged against him in the statement of charges concerning the use of force on students and, in addition, found that he had failed to heed and obey the school district's corporal punishment policy even though warned repeatedly that he was not to use corporal punishment in disciplining his students. The school board voted 6-2 to dismiss Mr. Tucci on the grounds of persistent negligence and persistent and willful violation of the School Laws.

6. Mr. Tucci was aware of the school district's policies on student discipline and corporal punishment effective during the 1974-75 school year. Those policies provided that corporal punishment was not to be used as a disciplinary technique by teachers. If corporal punishment was necessary, it could only be administered by a duly authorized official, namely the principal or his designee.

7. As a result of an incident occurring in the fall, 1974, in which he had grabbed a female student by the neck, Mr. Tucci was told by his high school principal, Mr. Lewis T. Elvin, that teachers were not to discipline any student by physical means unless there were no other options open to the teacher. Mr. Elvin stated he would much rather have a student sent to the office than have a teacher resort to corporal punishment. Mr. Tucci agreed that he would not again resort to corporal punishment. Mr. Elvin confirmed this understanding and his warning in a letter to Mr. Tucci dated November 6, 1974.

8. As a result of another incident between Mr. Tucci and a student, the middle school principal, Mr. Robert J. Klucharich, had a conference with Mr. Tucci on February 11, 1975, at which time Mr. Tucci was again warned that he was not to discipline any student by physical means unless there were no other options. Because he had been previously warned by Mr. Elvin, Mr. Klucharich made it clear that any further incidents by Mr. Tucci involving the use of physical punishment either to middle school students or to high school students would result in a request by the principals that Mr. Tucci be dismissed as a teacher for direct insubordination.

9. On July 29, 1975, the petition of appeal on behalf of Mr. Tucci was filed in the office of the Secretary of Education. Due to requests for continuances, a hearing was not held on the appeal until October 30, 1975.

## DISCUSSION

Because of his demonstrated inability and refusal to comply with the school district's policy on corporal punishment, Mr. Umberto Tucci was dismissed by the board of school directors of the Oley Valley School District for persistent negligence and persistent and willful violation of the School Laws. We find that the dismissal is supported by substantial evidence. Accordingly, we must sustain the school board's action and dismiss Mr. Tucci's appeal.

During the 1974-75 school year, teachers were not permitted to administer corporal punishment to students. The school board expressly prohibited corporal punishment as a disciplinary technique. This policy was published in the Faculty Handbook, distributed to all professional employes in early September, 1974. In December 1974 the school board amended

this policy to permit the principal or his designee to administer corporal punishment. The prohibition against teachers administering corporal punishment remained in effect.

Mr. Tucci persistently violated the school district's policies on corporal punishment. During the 1974-75 school year, there were at least eight incidents in which Mr. Tucci used physical force to discipline or punish students. Mr. Tucci admits to having pulled the hair of one student, slapping another in the face, grabbing a student by the neck and shaking her, grabbing a student's hand and bending it back, shoving a student into a chair, kicking a student in the leg, shoving another student, and grabbing a student by the wrist with such force that a bone was broken in the student's wrist as a result.

Mr. Tucci contends his dismissal is improper because there is no evidence he intended to inflict injury or physical discomfort to any of the students. This contention is without merit. Intent may be inferred from the facts, and denials of intent to inflict injury may be rejected, if belied by the actor's demonstrated conduct, *Caffas v. Upper Dauphin Area School District*, Pa. Cmwlth. \_\_\_\_\_, 353 A.2d 898 (1976). While intent is not a necessary element to justify dismissal for persistent negligence, it is important with respect to the charge of persistent and willful violation of the School Laws. In our opinion, Mr. Tucci intended to inflict physical discomfort on the students as a means of discipline and in so doing, intentionally violated the school district's policies on corporal punishment. We note that Mr. Tucci was warned at least twice during the 1974-75 school year by his supervisors that he was not to use physical force in controlling his students since that constituted corporal punishment. Mr. Tucci ignored each warning, even though, in the second, he was advised that further violations would result in a recommendation for his dismissal.

Mr. Tucci's repeated failure to comply with the school district's policies on corporal punishment constitutes persistent negligence. His repeated refusal to comply with those policies, and with the directives of his superiors, constitutes persistent and willful violation of the School Laws.

Accordingly, we make the following:

#### ORDER

AND NOW, this 19th day of August, 1976, it is hereby Ordered and Decreed that the decision of the Board of School Directors of the Oley Valley School District dismissing Mr. Umberto Tucci as a professional employe on the grounds of persistent negligence and persistent and willful violation of the School Laws be sustained;

AND, IT IS FURTHER ORDERED that the appeal of Umberto Tucci be dismissed.

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Kenneth L. Brendlinger, Jr.

v.

Board of Education of the  
Philadelphia School District

Teacher Tenure Appeal No. 266

#### OPINION

Robert N. Hendershot  
*Acting Secretary of Education*

Kenneth L. Brendlinger, Jr., Appellant herein, has appealed from the decision of the Board of Education of the Philadelphia School District dismissing him as a professional employe on the grounds of cruelty, intemperance and incompetency.