

**IN THE OFFICE OF THE SECRETARY OF EDUCATION
COMMONWEALTH OF PENNSYLVANIA**

JAMES R. SLATER	:	
Appellant	:	
	:	
v.	:	Teacher Tenure Appeal
	:	No. 01-19
	:	
SCHOOL DISTRICT OF PHILADELPHIA	:	
	:	
Appellee	:	

OPINION AND ORDER

James R. Slater (Mr. Slater) has appealed to the Secretary of Education (Secretary) the decision of the School District of Philadelphia (District) to terminate his employment as a professional employee.

FINDINGS OF FACT

1. The District employed Mr. Slater for approximately fourteen (14) years as a tenured professional employee at a final rate of pay of \$86,000.00 a year. (Notes of Testimony from the Hearing before the District (N.T.) 25, 312, 315)
2. The District assigned Mr. Slater to the Lowell Elementary School for approximately thirteen (13) years. (N.T. 25, 312)
3. Mr. Slater was assigned as an English as a second language teacher. (N.T. 61, 201)
4. Mr. Slater was assigned to teach second grade. (N.T. 79, 201)
5. Mr. Slater's evaluations through those years were either satisfactory or distinguished. (N.T. 313)
6. The District administrator stated at the hearing that the District's policy does not

tolerate physically aggressive behavior towards students. (N.T. 210-211)

7. The District records student disciplinary infractions but did not provide testimony or documentary evidence at the hearing indicating what type of behavior would constitute a disciplinary infraction. (N.T. 222-223)

8. The District did not provide testimony or documentary evidence at the hearing to indicate that there existed a student discipline policy applicable to elementary school students. (N.T., generally)

9. The school to which Mr. Slater was assigned had no behavioral specialist to assist the teachers in the handling of students who experienced behavior challenges. (N.T. 226-227)

10. If a student became disorderly in a classroom, the District allows the teacher to send the student to a “buddy” teacher in another classroom. (N.T. 227, 280)

11. The teacher has a phone in the classroom and could also call the main office and/or a guidance counselor for assistance. (N.T. 227, 282)

12. If a teacher calls the main office and requests student support staff, the main office is to send requested staff to assist the teacher pursuant to established protocol. Often, the main office is unable to respond to such calls. (N.T. 227, 362)

The November 21, 2014 incident

13. On November 21, 2014, Mr. Slater received a disciplinary warning for physically grabbing a student and for making students stand outside of proximity from the other students although remaining in the room. (N.T. 25, 75-76; School District Exhibit from the Hearing before the District (S.D. Ex.) 1)

14. Mr. Slater appeared at an investigatory conference and stated that he did remove students from proximity with the other students by making students stand against a wall, but he

did not have the students face the wall. (N.T. 68, 69, 489; S.D. Ex. 1)

15. At the investigatory conference, Mr. Slater also admitted that he touched students' hands and/or touched students in the "earlobe area" to get their attention. (N.T. 68; S.D. Ex. 1)

16. Mr. Slater did not admit to physically grabbing any students. (S.D. Ex. 1)

The November 24, 2014 incident

17. On November 24, 2014, Mr. Slater was told to report to the cafeteria/gymnasium to supervise students. (N.T. 180)

18. A behavioral support specialist in the cafeteria/gymnasium with Mr. Slater accused him of shoving a student. (N.T. 26, 27; S.D. Ex. 3).

19. During the incident in the cafeteria/gymnasium, a student had danced towards Mr. Slater. (S.D. Ex. 3)

20. The District charged Mr. Slater with "pushing [a student] to the floor." (S.D. Ex. 3)

21. The District did not charge Mr. Slater with deliberately pushing the student to the floor. (S.D. Ex. 3)

22. The District further charged Mr. Slater with inappropriately commenting on the student by telling the behavioral specialist that she "had better watch" the student and "had better keep an eye on" the student. (N.T. 26, 27, 93; S.D. Ex. 3). Mr. Slater admitted that he had made these comments to the behavioral specialist. (N.T. 26, 27, 93; S.D. Ex. 3).

23. As a result of the above-referenced incidents on November 21 and 24, 2014, the District suspended Mr. Slater for three days without pay. (N.T. 27, 421; S.D. Ex. 3) Mr. Slater was instructed to attend professional development for classroom management. (N.T. 189; S.D. Ex. 1) Mr. Slater was warned that similar conduct could lead to more severe discipline. (N.T.

27; S.D. Ex. 3) Mr. Slater did not challenge the suspension, and it is included in Mr. Slater's personnel file. (N.T. 27, 298)

The January 4, 2017 incident

24. On January 4, 2017, at the end of the school day, the parent of a student in Mr. Slater's class came to school with the student and asked the District why there was a small bruise on the student's face. (N.T. 190-191, 197)

25. The District administrator did agree that the student's face was bruised. (N.T. 192)

26. The parent alleged that Mr. Slater moved the student's chair and the student fell out of the chair and hit his head on the table. (N.T. 195-196)

27. The parent also alleged that Mr. Slater told the student to shut up, an allegation that Mr. Slater denies. (N.T. 383; S.D. Ex. 7)

28. On January 4, 2017, the student was in Mr. Slater's class and was misbehaving. (N.T. 193; S.D. Ex. 7)

29. This student was upset because he believed that another student had taken his dollar bill. (S.D. Ex 7, 10)

30. In his chair, this student attempted to push his way between two other students at the table. (N.T. 360)

31. Mr. Slater attempted to redirect the student with restorative discipline practices, which is a polite way of asking the student if the student was making good choices. (N.T. 360)

32. When this proved unsuccessful, Mr. Slater then pulled the student's chair back, with the student still seated in the chair, from between the two other students. (N.T. 202, 204, 361; Appellant Exhibit (A. Ex.) 11)

33. Mr. Slater did not physically touch the student. (N.T. 202, 204, 361, 376)
34. Mr. Slater moved the student in the chair away from the table to a position where he was not facing the class. (N.T. 361, 383)
35. The student started getting into the other students' school bags and throwing them around the room. (N.T. 379; S.D. Ex. 10)
36. Mr. Slater again moved the student in his chair, this time away from the other students' school bags. (N.T. 361; A. Ex. 11)
37. The student was now facing the rest of the class and could participate in class if he chose to do so. (N.T. 383, 488)
38. Mr. Slater admitted that he moved the student's chair to remove the student from the sphere of learning in response to behavioral issues. (N.T. 202-203, 204)
39. The student did not fall out of the moving chair. (N.T. 202-203, 360-361)
40. The student could not have hit his head on the table because the two other students were between him and the table. (N.T. 360)
41. Mr. Slater separated the student from the other students because separating the student from the other students had been a successful form of discipline with this student in the past. (N.T. 363)
42. The District concluded that Mr. Slater's actions in his classroom were inappropriate and threatening to the welfare of the students. (N.T. 204)
43. Effective January 6, 2017, Mr. Slater was assigned to a room in the building known as the Education Center. (N.T. 316-317; S.D. Ex. 8)
44. Mr. Slater was not given any work to do while assigned to the Education Center. (N.T. 317-318) Mr. Slater was told not to disturb anyone else in the building when he was

assigned to the Education Center. (N.T. 317)

45 Mr. Slater was not afforded the opportunity to have a hearing prior to being assigned to the Education Center. (N.T., generally)

46. On January 30, 2017, the District held an investigatory conference. (S.D. Ex. 8)

47. Before the investigatory conference, Mr. Slater was not given a document setting forth the allegations against him. (N.T. 287)

48. At the conference, Mr. Slater did tell the District's representative that the student was acting disorderly and refused to move his chair back to where he was supposed to be. (N.T. 289)

49. As a result, because of his prior disciplinary history consisting of a warning and a suspension, the District completed an unsatisfactory incident report after the investigatory conference and recommended that Mr. Slater be dismissed. (N.T. 205; S.D. Ex. 8)

50. The District provided Mr. Slater a copy of the unsatisfactory incident report. (S.D. Ex. 9)

51. On February 23, 2017, the Pennsylvania Department of Human Services investigated the January 4, 2017 incident and concluded that it was unfounded. (N.T. 240, 324; A. Ex. 6)

52. On March 13, 2017, the District held another investigatory conference. (S.D. Ex. 9)

53. Following the conference, the District again recommended that Mr. Slater be dismissed. (S.D. Ex. 9)

54. The District forwarded the documentation to the Assistant Superintendent for a second level conference. (N.T. 207; S.D. Ex. 10)

55. On May 11, 2017, the District conducted a second level conference. (S.D. Ex. 10)
56. On May 16, 2017, the Assistant Superintendent recommended that Mr. Slater be dismissed. (S.D. Ex. 10)
57. On September 14, 2017, the School Reform Commission (SRC) resolved to “terminate the employment” of Mr. Slater by a recorded roll call vote. (A. Ex. 2, 3)
58. Mr. Slater did not receive a statement of charges or a notice of right to a hearing at the time of this termination. (A. Ex. 2, 3)
59. The record does not reflect that the SRC held an executive session prior to terminating Mr. Slater. (N.T. 479; A. Ex. 2, 3)
60. On October 2, 2017, the District ceased paying Mr. Slater and indicated that work was no longer available to him. (N.T. 39, 41-42, 43, 314; A. Ex. 8, 9)
61. Mr. Slater applied for unemployment benefits and, following a hearing, received unemployment benefits. (N.T. 31; A. Ex. 7)
62. On or about October 11, 2017, the School District of Philadelphia Chair of the SRC and the Superintendent sent Mr. Slater a statement of charges and a notice of right to a hearing. (N.T. 254; S.D. Ex. 11)
63. The statement of charges listed persistent negligence as the cause for dismissal as required by the Public School Code. (S.D. Ex. 11)
64. The statement of charges and notice of a right to a hearing did not detail the January 4, 2017 incident that led to the recommendation to dismiss Mr. Slater. (N.T. 254; S.D. Ex. 11)
65. The statement of charges did not indicate that the charges had been reviewed by the SRC in executive session. (N.T. 479)

66. The secretary of the SRC did not attest that the SRC had approved the statement of charges and the notice of hearing or that it was signed by the president of the SRC in the secretary's presence. (S.D. Ex. 11)

67. The secretary of the school board did not attest that as secretary he/she was authorized to make the attestation. (S.D. Ex. 11)

68. The October 11, 2017, statement of charges and notice of right to hearing indicated that Mr. Slater was suspended without pay. (N.T. 277; S.D. Ex. 11)

69. Mr. Slater had already been "terminated" on September 14, 2017, and taken off the payroll on October 2, 2017, prior to receiving the statement of charges and the notice of right to a hearing. (N.T. 39, 41-42, 43, 316)

70. On October 17, 2017, Mr. Slater requested a hearing to be conducted by the SRC. (S.D. Ex. 13)

71. The hearing was held before the SRC hearing officer on December 11, 2017, April 6, 2018, and August 30, 2018. (N.T., generally)

72. At the hearing, a District administrator and one student who was in the classroom on January 4, 2017 appeared and testified for the District. (N.T., generally)

73. Mr. Slater and numerous character witnesses appeared and testified for Mr. Slater. (N.T., generally)

74. Mr. Slater's character witnesses all testified that he was not physically aggressive towards the students. (N.T. 104-105, 130-131, 136-137, 142, 165-166, 167)

75. Mr. Slater has interviewed for employment. (N.T. 315, 417)

76. Prior to the conclusion of the hearing which extended over the course of several days, the SRC was dissolved pursuant to law, and the governance returned to the School District

of Philadelphia. (N.T. 448-449)

77. On November 14, 2018, the SRC's appointed hearing officer recommended that Mr. Slater be dismissed effective immediately upon the adoption of a resolution to that effect for the reasons set forth in the Hearing Officer's Findings of Fact and Conclusions of Law. (Hearing Officer's Recommendation and Report)

78. On November 14, 2018, the hearing officer also issued a proposed adjudication to the Board of Education for adoption as a resolution that Mr. Slater be dismissed. (Proposed Adjudication of the Board of Education)

79. On December 13, 2018, by resolution, the District dismissed Mr. Slater from his employment. (The School District of Philadelphia Board of Education Public Meeting Agenda December 13, 2018, Action Item Number 5, Approval of Personnel Terminations)

80. The resolution indicated that there was an independent review of the record by individual members of the Board of Education. (The School District of Philadelphia Board of Education Public Meeting Agenda December 13, 2018, Action Item Number 5, Approval of Personnel Terminations)

81. The resolution does not indicate that there was a two-thirds vote recorded by roll call. (The School District of Philadelphia Board of Education Public Meeting Agenda December 13, 2018, Action Item Number 5, Approval of Personnel Terminations)

82. On December 26, 2018, the Chief Talent Officer of the District sent Mr. Slater a letter indicating that he had been dismissed from employment effective December 13, 2018, based upon the proposed adjudication of the hearing officer. (The School District of Philadelphia Education Center letter dated December 26, 2018, Louis Bellardine, Chief Talent Officer)

LEGAL STANDARDS

Mr. Slater was dismissed pursuant to Section 1122 of the Public School Code which provides, in pertinent part:

The only valid causes for termination of a contract heretofore or hereafter entered into with a professional employee shall be immorality; incompetency; unsatisfactory teaching performance based on two (2) consecutive ratings of the employe's teaching performance that are to include classroom observations, not less than four (4) months apart, in which the employe's teaching performance is rated as unsatisfactory; intemperance; cruelty; persistent negligence in the performance of duties; willful neglect of duties; ...persistent and willful violation of or failure to comply with school laws of this Commonwealth, including official directives and established policy of the board of directors; on the part of the professional employe:

24 P.S. § 11-1122.

A tenured professional employee has a property interest in continued employment. *School District of Phila. v. Jones*, 139 A.3d 358, 366 (Pa. Cmwlth. 2016). A tenured professional employee may only be dismissed for the reasons set forth in Section 1122 of the Public School Code. *Foderaro v. Sch. Dist. of Phila.*, 531 A.2d 570, 571 (Pa. Cmwlth. 1987). "It is thus apparent that the legislature intended to protect tenure except for the serious charges listed." *Lauer v. Millvale Area Sch. Dist.*, 657 A.2d 119, 121 (Pa. Cmwlth. 1995).

The purpose of Section 1122 is to provide "the greatest protection possible against dismissal." *McFerren v. Farrell Area Sch. Dist.*, 993 A.2d 344, 353 (Pa. Cmwlth. 2010); (quoting *Lauer v. Millville Area Sch. Dist.*, 657 A.2d 119, 121 (Pa. Cmwlth. 1995)). "Section 1122 was not intended to provide a school district with an arsenal of weapons to use when it wishes to relieve itself of its contractual obligations to a professional employee." *Id.* "[T]o dismiss a professional employee protected by contract requires a serious reason, not 'picayune and unwarranted criticisms.'" *Id.* (quoting *Lauer*, 657 A.2d at 123). In short, the grounds for dismissal listed in Section 1122 must be strictly construed in favor of the professional employee

and against the school district. *McFerren v. Farrell Area Sch. Dist.*, 993 A.2d 344, 353 (Pa. Cmwlth. 2010).

The Public School Code does not define “persistent and willful violation.” See 24 P.S. §§ 11-1101 and 11-1122. However, Pennsylvania courts interpret these terms based on their common and approved usage. *Kinniry v. Abington Sch. Dist.*, 673 A.2d 429 (Pa. Cmwlth. 1996). “Persistent” generally means “continuing” or “constant.” *Lucciola v. Secretary of Educ.*, 360 A.2d 310, 312 (Pa. Cmwlth. 1976). Persistency is shown where the improper conduct is repeated in a series of separate incidents over a substantial period of time. *Horton v. Jefferson County-Dubois Area Vocational Tech. Sch.*, 630 A.2d 481 (Pa. Cmwlth. 1993). This Court has concluded that there must be sufficient continuity and repetition of negligent acts to support a charge of persistent negligence. *Lauer v. Millville Area Sch. Dist.*, 657 A.2d 119, 121 (Pa. Cmwlth. 1995)

On the other hand, “[w]illfulness requires the presence of intention and at least some power of choice.” *Horton*, 630 A.2d at 483. While willfulness or intent can often be inferred from the nature of a particular violation, such intent is not to be presumed where facts do not so indicate. *Cowdery v. Bd. of Educ. of Sch. Dist. of Philadelphia*, 531 A.2d 1186 (Pa. Cmwlth. 1987). Thus, a persistent and willful violation of or failure to comply with school laws requires three elements: persistency, willfulness, and a violation of school law. See *Horton*, 630 A. 2d at 430-431.

Regarding the procedure to be followed for dismissing a professional employee, the Public School Code provides as follows:

Before any professional employe having attained a status of permanent tenure is dismissed by the board of school directors, such board of school directors shall furnish such professional employe with a detailed written statement of the charges upon which his or her proposed dismissal is based and shall conduct a hearing. A written notice

signed by the president and attested by the secretary of the board of school directors shall be forwarded by registered mail to the professional employe setting forth the time and place when and where such professional employe will be given an opportunity to be heard either in person or by counsel, or both, before the board of school directors and setting forth a detailed statement of the charges.

24 P.S. § 11-1127

After fully hearing the charges or complaints and hearing all witnesses produced by the board and the person against whom the charges are pending, and after full, impartial and unbiased consideration thereof, the board of school directors shall by a two-thirds vote of all the members thereof, to be recorded by roll call, determine whether such charges or complaints have been sustained and whether the evidence substantiates such charges and complaints, and if so determined shall discharge such professional employe. If less than two-thirds of all of the members of the board vote in favor of discharge, the professional employe shall be retained and the complaint shall be dismissed.

24 P.S. § 11-1129

Before any tenured professional employee is dismissed by the school board, the school board must resolve to dismiss the employee and to furnish him with a detailed written statement of the charges upon which his or her proposed dismissal is based and must conduct a hearing before the school board. 24 P.S. § 11-1127; *Vladimirsky v. Sch. Dist. of Phila.*, 144 A.3d 986, 994 (Pa. Cmwlth. 2016); *School Dist. of Phila. v. Jones*, 139 A.3d 358 (Pa. Cmwlth. 2016).

“[W]here a school board undertakes to terminate a contract, dismiss or demote a professional employe, the procedure set forth in the School Code must be strictly followed, and failure on the part of the Board to comply therewith renders an attempted demotion abortive. We can find no provision in the School Code conferring upon the administrative staff of a school district, whether it be the Superintendent or Principal, the authority to demote a professional employee.” *Board of School Directors v. Pittenger*, 305 A.2d 382, 386 (Pa. Cmwlth. 1973). When a district dismisses a professional employee without full compliance with the Public School Code, the employee is entitled to reinstatement. *West Shore Sch. Dist. v. Bowman*, 409 A.2d 474, 480 (Pa. Cmwlth. 1979). A professional employee is entitled to a hearing prior to any

demotion in status or pay. 24 P.S. § 11-1151; *Burnett v. Sch. Dist. of Phila.*, 166 A.3d 521, 525, (Pa. Cmwlth. 2017) A demotion is a reassignment to a position which has less importance, dignity, authority, prestige or salary." *Walsh v. Sto-Rox Sch. Dist.*, 532 A.2d 547, 548 (Pa. Cmwlth. 1987).

Section 1131 of the School Code, 24 P.S. § 11-1131, vests the Secretary with authority to hear appeals brought by professional employees from actions of school boards. The Secretary has the authority to review the school board's termination decision *de novo*. *Belasco v. Board of Public Educ. of the Sch. Dist. of Pittsburgh*, 510 A.2d 337, 343 (Pa. 1986). The credibility of witnesses and the weight to be accorded their testimony is within the exclusive province of the Secretary. *Rhodes v. Laurel Highlands Sch. Dist.*, 544 A.2d 562 (Pa. Cmwlth. 1988). Additionally, the Secretary is not required to make specific findings as to the credibility of every witness where the decision itself reflects which witnesses were believed and upon whose testimony the Secretary relied. *Forest Area Sch. Dist. v. Shoup*, 621 A.2d 1121, 1124 (Pa. Cmwlth. 1993). Furthermore, the Secretary is the ultimate fact finder when, as here, he decides to make findings of fact. *Belasco v. Board of Public Educ. of the Sch. Dist. of Pittsburgh*, 510 A.2d 337 (Pa. 1986). The Secretary makes findings of fact based on the preponderance of the evidence. *Fisler v. State System of Higher Educ.*, 78 A.3d 30, 47 (Pa. Cmwlth. 2013).

DISCUSSION

I. Mr. Slater did not receive due process of law.

I find Mr. Slater credible in all respects regarding his description of the incidents that led to his dismissal and the procedure used to terminate his employment. To the extent that Mr. Slater's testimony is contradicted by the testimony of the student who changed his testimony from his previously written statement, I find the student's testimony not credible. To the extent

that Mr. Slater's testimony is contradicted by witness statements in documents that were not verified at the hearing by live testimony, I find the witnesses' statements not credible.¹

For the reasons I discuss below, I conclude that Mr. Slater was dismissed in violation of the strict procedure outlined in the Public School Code. Because he was not dismissed in accordance with strict compliance to the Public School Code, I conclude that Mr. Slater was denied due process of law and shall be reinstated.

Mr. Slater has argued that he was denied due process of law pursuant to the Sunshine Act, 65 Pa. C.S. § 708. He also has argued that he was subjected to disparate treatment by his employer. Because Mr. Slater was denied due process of law under the terms of the Public School Code and must be reinstated, it is not necessary to resolve the Sunshine Act and disparate treatment issues Mr. Slater has raised.

In the Commonwealth Court's recent Opinion of *Vladimirsky v. The School District of Philadelphia*, 144 A.3d 986, 1003-1004 (Pa, Cmwlth. 2016), the Court held that the following procedure was inappropriate for dismissal of a professional employee of the School District of Philadelphia and reinstated Mr. Vladimirsky to his employment. This defective procedure consisted of an alleged incident, reassignment, investigatory conference, unsatisfactory incident report recommending dismissal, conference summary recommending dismissal, second level conference recommending dismissal, and a letter from the District recommending dismissal, and a cessation of Mr. Vladimirsky's pay. *Id.* at 986, 990-991. The Court concluded that this procedure violated Mr. Vladimirsky's due process right and reinstated him to his employment.

¹ I note that the hearing officer specifically found the one student's testimony and the other students' affidavits to be credible. I am concluding that the students are not credible and that the students' testimonies and/or affidavits are insufficient to support findings of fact and conclusions of law.

Id. at 1003-1004.

In the present matter, on September 14, 2017, the SRC resolved as follows:

RESOLVED, that there exists sufficient evidence to support the recommendation of the Superintendent and/or his designee to terminate the employment from the School District of Philadelphia, of the following professional employees:

1. J.S.

And be it

FURTHER RESOLVED, that the Secretary and the Commission Chair are directed to advise these professional employees of this resolution and their right to a hearing.

(A. Ex. 2, 3)

At that time, Mr. Slater had received a detailed written statement of the charges upon which his proposed dismissal was based. Mr. Slater's pay was ended on October 2, 2017, prior to the statement of the charges and the notice of right to hearing and prior to his hearing. (N.T. 39, 41-42, 43, 314, A. Ex. 8, 9)

The procedure used by the District in *Vladimirsky* is almost identical to the District's procedure in this case. *Vladimirsky* at 1003-1004. The only difference is that the SRC, without any discussion, voted to terminate Mr. Slater and stopped his pay prior to sending him an incomplete statement of charges and a notice of right to a hearing. (A. Ex. 2, 3)

Mr. Slater was dismissed when the SRC held that his employment was terminated, his pay was discontinued, and work was no longer made available to him. (N.T. 39, 41-42, 43, 314, 316-317; S.D. Ex 8; A. Ex. 8, 9) At that time, Mr. Slater had not received a detailed written statement of the charges upon which his dismissal was based. When he received the statement of the charges on October 11, 2017, the statement of charges contained only unsupported allegations that a student bruised his cheek after Mr. Slater pulled his chair and that Mr. Slater

allegedly told the student to “[s]hut his mouth.” (S.D. Ex.11)

Due process required that Mr. Slater be given a detailed written statement of the charges upon which his proposed dismissal was based as well as notice of the charges against him and an opportunity to be heard. 2 Pa. C.S. § 501 et seq.; *McCoy v. Lincoln Intermediate Unit No. 12*, 391 A.2d 1119 (Pa. Cmwlth. 1978). The effective date of dismissal cannot be earlier than the date of the school board’s resolution. *Neshaminy Sch. Dist. v. Neshaminy Federation of Teachers*, 84 A.3d 391 (Pa. Cmwlth, 2014). Additionally, *Vladimirsky* specifically held that a retroactive order does not cure any defect in the school board’s procedure. *Vladimirsky* at 986, 1003. Further, in *School Dist. of Phila. v. Jones*, 139 A.3d 358, 369 (Pa. Cmwlth. 2016), Commonwealth Court held that when a District states that a professional employee is to be terminated and ceases to pay that employee, the employee is not suspended but dismissed.

II. Mr. Slater did not persistently and willfully violate the school laws of the Commonwealth by violating the District’s policy against physically aggressive behavior by teachers towards students.

On appeal, the District argues that Mr. Slater was dismissed for persistent and willful violation of the school laws of the Commonwealth by violating the District’s policy against physically aggressive behavior by teachers towards students. The District’s argument is not supported by credible evidence. I conclude that Mr. Slater did not deliberately act in a physically aggressive manner towards students and did not violate the District’s policy. I find that Mr. Slater did not persistently and willfully physically grab any students, did not deliberately and willfully push a student, and did not deliberately and willfully cause a student to bruise his cheek on a table. In short, I find that Mr. Slater never intended to be physically aggressive towards any student. Additionally, I conclude that Mr. Slater was not persistently negligent. The first two incidents of alleged negligence occurred more than two years prior to

the third incident of alleged negligence. Thus Mr. Slater was not persistently negligent.

I have accepted Mr. Slater's testimony to be credible. To the extent that Mr. Slater's testimony is contradicted by the testimony of the student who changed his testimony from his previously written statement, I have found the student's testimony not to be credible. To the extent that Mr. Slater's statements are contradicted by witness statements in documents where the witnesses did not appear to confirm those statements at the hearing, I have found those statements not to be credible.

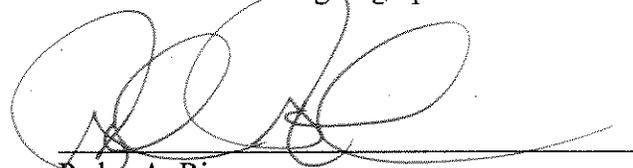
I find insufficient support in the record for the allegation that Mr. Slater persistently and willfully violated and/or failed to comply with the school laws of the Commonwealth, including the official directives and established policy of the board of directors. By the preponderance of the evidence, I conclude that the District has not met its burden of proof. I reverse the Board of Education's decision to terminate Mr. Slater's employment as a tenured professional employee pursuant to Section 1122 of the Public School Code. I conclude that Mr. Slater is entitled to reinstatement. Accordingly, the following order is entered:

**IN THE OFFICE OF THE SECRETARY OF EDUCATION
COMMONWEALTH OF PENNSYLVANIA**

JAMES R. SLATER	:	
Appellant	:	
	:	
v.	:	Teacher Tenure Appeal
	:	No. 01-19
	:	
SCHOOL DISTRICT OF PHILADELPHIA	:	
	:	
Appellee	:	

ORDER

AND NOW this 6th day of June 2019, the Secretary reverses the School District of Philadelphia's decision to dismiss James R. Slater, a tenured professional employee. I reinstate James R. Slater to his employment, in accordance with the foregoing opinion.



Pedro A. Rivera
Secretary of Education

Date Mailed: June 6, 2019