

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

ADRIAN S. ARNOLD	:	
Appellant	:	
	:	
v.	:	Teacher Tenure Appeal
	:	No. 03-20
	:	
SCHOOL DISTRICT OF PHILADELPHIA	:	
	:	
Appellee	:	

OPINION AND ORDER

Adrian S. Arnold (Mr. Arnold) has appealed to the Secretary of Education (Secretary) the decision of the School District of Philadelphia (District) to discharge him from his employment as a professional employee.

FINDINGS OF FACT

1. Mr. Arnold was first hired by the District in 2010 to teach the Chinese language. (Arnold Reproduced Record (Arnold) 262). At that time, he did not have a teaching certificate, but instead was sponsored by the District for a temporary emergency permit. (Arnold 12, 262)
2. Mr. Arnold's employment was terminated in 2013 because he had not earned a teaching certificate. (Arnold 12, 264)
3. In 2015, the District sought to hire Mr. Arnold to teach the Chinese language at the Mayfair Elementary School (Mayfair). However, his rehiring was not approved by the District in 2015. (Arnold 12-13, 266)
4. Mr. Arnold was hired by the District as a Chinese teacher at Mayfair for the 2017-2018 school year. He taught kindergarten through sixth grade. (Arnold 11, 14-15, 129, 268)

The October 11, 2017, incident

5. On October 11, 2017, a fifth-grade student was playing with another student when the student was supposed to be in line along the wall to exit the classroom. (Arnold 35-36)

6. After he told the student several times to stop his behavior, and the student continually refused, Mr. Arnold finally approached the student and pulled him into the line by pulling on the student's backpack near the student's shoulder. (Arnold 36)

7. Mr. Arnold did not physically touch the student. Mr. Arnold's intent was to keep him from harming himself or other students. (Arnold 36, 130-131, 161, 164)

8. The student complained to the principal that Mr. Arnold had inappropriate physical contact with him. (Arnold 16)

9. Mr. Arnold was reassigned to the District's teacher reassignment room. (Arnold 18, 131-136, 269-270)

10. The incident was reported to Childline. (Arnold 17) Childline did not take action against Mr. Arnold and did not file an indicated report of abuse. (Arnold 570)

11. The Mayfair administrators investigated the October 11, 2017 incident. (Arnold 19)

12. The Mayfair administrators held an investigatory conference with Mr. Arnold on November 14, 2017. (Arnold 31-32)

13. A Philadelphia Federation of Teachers (PFT) union representative attended the conference with Mr. Arnold. (Arnold 32)

14. The Mayfair principal concluded that the incident was inconclusive. (Arnold 39, 41, 301)

15. After the investigatory conference, Mr. Arnold was returned to his teaching duties at Mayfair. (Arnold 136)

16. On December 19, 2017, Mr. Arnold's teaching performance was formally observed by an assistant principal who rated Mr. Arnold's classroom performance as distinguished in both classroom environment and professional responsibility. (Arnold 180-182)

17. On April 18, 2018, a second conference was held by the Mayfair principal to present the principal's unsatisfactory incident report pertaining to the first incident of October 11, 2017, which contained several recommendations. (Arnold 297-302)

18. Mr. Arnold attended the April 18, 2018, follow-up conference with his PFT union representative. (Arnold 42-46)

19. The unsatisfactory incident report made the following recommendations:

- 1.) That Mr. Arnold immediately create an action plan to be utilized within the classroom to ensure a safe, orderly environment within the classroom which enables a conducive learning environment.
- 2.) That Mr. Arnold continue to refrain from utilizing physical means to redirect students.
- 3.) That Mr. Arnold review the guidelines from Pennsylvania Act 126, and fully understand the expectations for educations [sic] with implementation.
- 4.) That any further incidents of unsafe classroom conditions under Mr. Arnold's direction will lead to further disciplinary action, including suspension and termination.
- 5.) That any further incidents of physical redirection of students will lead to further disciplinary action including suspension and termination.
- 6.) That the unsatisfactory incident report and all related documentation be forwarded for inclusion in Mr. Arnold's central office file.

(Arnold 35-39, 295-302)

20. In that follow up conference on April 18, 2018, the Mayfair principal informed Mr. Arnold that Mr. Arnold was to refrain from utilizing physical means to redirect students. (Arnold 46) This recommendation came after the second incident of February 21, 2018. (Arnold 45-46)

21. The principal also stated that any further incidents of inappropriate physical redirection of students would lead to further disciplinary action up to and including suspension and termination. (Arnold 45-46, 295-302)

22. There was no suspension or disciplinary action taken against Mr. Arnold by the administration or the Board of Education (Board) pertaining to the first incident. (Arnold 36)

23. Mr. Arnold has observed other teachers physically redirect students. (Arnold 171)

24. The Collective Bargaining Agreement between the PFT and the District states that a teacher may use reasonable force to quell a disturbance that may cause physical injury to the teacher or to others. (Arnold 461)

25. That provision of the PFT contract provides that reasonable force shall mean the same degree of physical control that a parent would be legally privileged to exercise. (Arnold 461)

The February 21, 2018, Incident

26. On February 21, 2018, an incident occurred in Mr. Arnold's classroom, which is the basis of the dismissal action at issue in the present matter. (Arnold 347-351)

27. On February 21, 2018, a student ran around Mr. Arnold's classroom touching other students and trying get them to run, chase, and tag him. (Arnold 73, 138-139, 171-173).

28. Mr. Arnold told the student to stop running around the classroom, to return to his seat, and to be orderly. (Arnold 73, 138-139, 171-173)

29. The student refused to comply with Mr. Arnold's direction to stop running around the classroom, to return to his seat and to be orderly. (Arnold 73)

30. The student ran around the classroom for a few minutes. (Arnold 173)

31. Mr. Arnold telephoned the main office and reported that he needed assistance with a student. (Arnold 138-139, 173-174)

32. Mr. Arnold directed the student to leave the classroom and go to the assistant principal 's office. (Arnold 138-139, 173-174)
33. Mr. Arnold watched the student walk to the assistant principal's office. (Arnold 173-174)
34. Mr. Arnold was concerned about the safety of the other students. (Arnold 75, 177)
35. Several minutes later, the student walked back into the classroom unescorted by anyone and started cursing at Mr. Arnold. (Arnold 139, 174)
36. Mr. Arnold told the student to leave and go back to the assistant principal's office. (Arnold 139, 174)
37. The student left the classroom and Mr. Arnold again observed the student enter the doorway leading to the assistant principal's office. (Arnold 139, 174).
38. Mr. Arnold again telephoned the main office and reported that he needed assistance with a student. (Arnold 139, 174)
39. Again, the student walked back into the classroom cursing profanities and sat down in his seat. (Arnold 175)
41. Mr. Arnold told the student that he could not be in the classroom. The student refused to get up out of his seat and go back to the assistant principal's office. (Arnold 139, 175)
42. Mr. Arnold went to move the student toward the door by moving his seat. (Arnold 175-177)
43. The student got up and Mr. Arnold grabbed his loose-fitting shirt underneath his arm to pull him out of the room. (Arnold 76, 175-177)
44. As he was pulling the student toward the door, the student grabbed a table and pulled away from Mr. Arnold causing a commotion. (Arnold 48-49, 175-177).

45. An administrator arrived, and the administrator removed the student from the classroom. (Arnold 139, 176)

46. Mr. Arnold wanted to remove the student because he was concerned that his coming back into the room could have caused more disorderly behavior by him or by the other students who he had previously antagonized. (Arnold 178, 202-203, 206)

47. Mr. Arnold was not trying to hurt the student, not trying to be cruel to the student, not acting out of anger, and not trying to be aggressive. (Arnold 178-179, 202-203) Mr. Arnold did not hurt the student. (Arnold 178-179, 202-203)

48. Mr. Arnold removed the student to prevent the student's disorderly behavior and acted reasonably considering the student's prior behavior. (Arnold 179, 202-203)

49. On February 21, 2018, a parent of one of Mr. Arnold's students stated that Mr. Arnold had physically assaulted their child earlier that day. (Arnold 47-49, 138)

50. The principal started an investigation of the February 21, 2018, incident the day after he received the complaint. (Arnold 49)

51. On February 23, 2018, the principal assigned Mr. Arnold to the reassignment room in connection with the February 21, 2018, incident pending the outcome of the investigation. (Arnold 49-50, 139-140, 307-308).

52. The principal reported the incident to Childline. (Arnold 49) Childline did not act against Mr. Arnold and did not file an indicated report. (Arnold 570).

53. During the investigation of the February 21, 2018, incident, a student reported to an assistant principal that she had a 25 second video of what occurred in the classroom for on her cell phone. (Arnold 57-58)

54. A video was played during the hearing, and the principal identified Mr. Arnold and

the student who was removed from the classroom in the video. (Arnold 63-66)

55. The student who made the 25-second video did not appear and did not testify that it was a true and accurate copy of the video originally on her cell phone. (Arnold 1-3)

56. On April 18, 2018, an investigatory conference was held regarding the February 21, 2018, incident. (Arnold 69-70, 337-346)

57. At the April 18, 2018, investigatory conference, Mr. Arnold was represented by the PFT. (Arnold 69-70, 337-346)

58. Following the investigatory conference, the principal made the recommendation to dismiss Mr. Arnold because he had pulled a student by his loose-fitting shirt out of the classroom. (Arnold 337-346)

59. On May 31, 2018, a conference was held by the principal to discuss the report that the principal had written recommending that Mr. Arnold be discharged. (Arnold 347-351)

60. No new evidence was introduced during this conference. (Arnold 347-351)

61. On June 7, 2018, the principal again recommended that Mr. Arnold be discharged. (Arnold 347-351)

62. On September 11, 2018, a second level conference was held by the regional assistant superintendent to discuss the incident. (Arnold 352-357)

63. Mr. Arnold was not permitted to bring an attorney to any of the investigatory conferences. (Arnold 97, 352-357)

64. In the second level conference report, the regional assistant superintendent recommended that Mr. Arnold be discharged. (Arnold 352-357)

65. On March 27, 2019, Mr. Arnold was suspended without pay by a District administrative employee. (Arnold 140-143)

66. The District administrative employee informed Mr. Arnold that he was not to return to the reassignment room, and that he was going to be suspended without pay. (Arnold 140-143)

67. At that point in time Mr. Arnold properly understood that he was suspended without pay. (Arnold 143-144)

68. Mr. Arnold was not told of the reason for his suspension without pay, but reasonably believed that it was because he had been placed in the reassignment room because of the incident of February 21, 2018. (Arnold 142-143).

69. Mr. Arnold's pay was terminated on March 27, 2019. (Arnold 143-146)

70. Mr. Arnold did not receive a statement of charges and a notice of right to a hearing at the time of this pay termination. (Arnold 374-376)

71. At the hearing before the unemployment compensation referee, the District's representative provided the referee with the exact date of Mr. Arnold's pay termination, which was March 27, 2019. (Arnold 144-146, 379-381)

72. Based upon this admission, an unemployment compensation referee determined that the exact date of his pay termination was March 27, 2019. (Arnold 144-146, 379-381)

73. The District did not dispute that Mr. Arnold's pay was suspended and the date of the pay suspension. (Arnold 148, 379-381)

74. On March 28, 2019, the Board held a meeting. (Arnold 402-412)

75. The General Counsel announced that the Board had met in executive session prior to the start of the meeting to discuss personnel and employment matters in connection with the following proceedings. (Arnold 402)

76. None of the proceedings listed involved the circumstances that had led to Mr. Arnold's suspension without pay. (Arnold 402)

77. A roll call was taken at this meeting. (Arnold 402)

78. On March 28, 2019 , an Agenda Item No. 4 was placed on the Agenda of the Board meeting regarding the administration's recommended termination of professional employees.

(Arnold 405)

79. Action Item No. 4 stated 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:

A.A.
A.C.
L.H.
D.H.C.

and be it

Further Resolved, that the Secretary and the Board of Education President are directed to advise these professional employees of this action item and their right to a hearing.

(Arnold 405, 412)

80. There is no evidence on the record that any Board member had ever seen any of the allegations against Mr. Arnold. (Arnold 402-412)

81. Following the vote, the Action Item No. 4 was approved, and Mr. Arnold's employment was terminated on March 28, 2019. (Arnold 405, 412)

82. On March 28, 2019, a letter containing a statement of charges and a notice of hearing (letter) was mailed to Mr. Arnold. (Arnold 371-372, 400-401)

83. The letter did not indicate that the Board previously reviewed the charges in executive session. (Arnold 371-372, 400-401)

84. The letter was signed by the president and the secretary of the Board. (Arnold 371-372, 400-401)

85. In the letter, the secretary of the Board did not attest that as secretary they were

authorized to make the attestation. (Arnold 371-372, 400-401)

86. In the letter, the secretary of the Board did not attest that the Board had approved the statement of charges and the notice of hearing and that it was signed by the president of the Board in the secretary's presence. (Arnold 371-372, 400-401)

87. There is no evidence on the record that any Board member, other than the president of the Board, had ever seen the letter before it was sent to Mr. Arnold. (Arnold 371-372, 400-401)

88. Mr. Arnold received the statement of charges on the date of April 5, 2019. (Arnold 374-376)

89. The Statement of Charges stated in part:

You are hereby notified that allegations have been made against you that constitute just cause for discipline pursuant to the collective bargaining agreement and, in addition, are sufficient grounds for termination of your employment as specified in Section 1122 of the Pennsylvania School Code of 1949.

The Administration of the School District of Philadelphia recommended that you be dismissed from employment effective March 28, 2019 based on these allegations and administrative findings made against you. The Board of Education resolved that there existed sufficient evidence to support the School District Administration's recommendation of our dismissal, and directed the Board Secretary and President to issue this Statement of Charges and Notice of Right to Hearing letter.

(Arnold 371-372, 400-401)

90. The Statement of Charges alleged the following as just cause for termination of Arnold's employment:

The allegations amount to immorality; incompetency; cruelty; persistent negligence in the performance of duties; and 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.

(Arnold 371-372, 400-401)

91. On the same date, April 5, 2019, Mr. Arnold' s counsel sent to the District Mr. Arnold's election of remedy letter, timely electing a hearing to be held by the Board pursuant to the teacher tenure provisions of the School Code of 1949, 24 P.S. §§ 11-1127, 1129 (School Code).

(Arnold 374-376)

92. There was never any Board resolution to suspend Mr. Arnold without pay. (Arnold 402-412)

93. There is no evidence that any Board member other than the president ever knew that Mr. Arnold had been suspended without pay. (Arnold 400-412)

94. The only Board resolution was to terminate Mr. Arnold. (Arnold 405, 412)

95. On March 3, 2020, a hearing was held by a hearing officer. (Arnold 4).

96. There was never any resolution of the Board which appointed the hearing officer as the hearing officer for the Board. (Arnold 4, 516, 543)

97. No Board member ever attended the hearing or participated in any aspect of the hearing process. (Arnold 1-3)

98. No student was brought to the hearing to testify or any witness who had first-hand knowledge, testimony, or evidence of anything which happened in Mr. Arnold's classroom in either of the two incidents in question. (Arnold 1-3)

99. The alleged victims of Mr. Arnold were not brought to the hearing to testify. (Arnold 1-3)

100. Mr. Arnold testified in his own behalf. (Arnold 1-3)

101. The principal of Mayfair testified for the District. (Arnold 1-3)

102. The parties filed briefs and responsive briefs before the hearing officer. (Arnold 546-623)

103. On May 21, 2020, the hearing officer issued his Findings of Fact and Conclusions of Law to the parties independently of the Board. (Arnold 516-543)

104. The hearing officer held that substantial evidence supported the dismissal of Mr. Arnold from the District. (Arnold 516-543)

105. On July 1, 2020, the Board resolved to adopt the decision of the hearing officer. (Arnold 413-415)

106. There were no deliberations of the Board pertaining to Mr. Arnold's case in the recorded minutes of the meeting. (Arnold 413-415)

107. A roll call was conducted at the July 1, 2020, meeting. (Arnold 413)

108. The resolution indicated that there was an independent review of the record by individual members of the Board. (Arnold 415)

109. A letter dated August 5, 2020, from the District informed Mr. Arnold of the Board's resolution to adopt the decision issued by the hearing officer. (Arnold 544-545)

110. Arnold filed an appeal from the Board's decision to the Secretary of Education (Secretary) on July 25, 2020. ((Hearing Officer's (H.O.) Exhibit 1)

111. Maribeth Wilt-Seibert was appointed as a hearing officer for the Secretary. (H.O. Ex. 2)

112. Both parties filed briefs before the hearing officer, the hearing officer held a hearing on September 15, 2020, and both parties appeared and argued at the hearing. (H.O. Ex. 3-5)

LEGAL STANDARDS

Mr. Arnold was dismissed pursuant to Section 1122 of the Public School Code of 1949, (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 employe has a property interest in continued employment. *School District of Phila. v Jones*, 139 A.3d 358, 366 (Pa. Cmwlth. 2016). A tenured professional employe may only be dismissed for the reasons set forth in Section 1122 of the 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 employe.” *Id.* “[T]o dismiss a professional employe 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 employe and against the school district. *McFerren v. Farrell Area Sch. Dist.*, 993 A.2d 344, 353 (Pa. Cmwlth. 2010).

The 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). The Court has concluded that there must be 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). To dismiss a professional employee for willful neglect of duties, a district must show that the employee intentionally disregarded his known duties. *Flickinger v. Lebanon Sch. Dist.*, 898 A.2d 62, 67 (Pa. Cmwlth. 2006) (holding that the failure of a principal to immediately respond to the report of a gun in the school was a choice that he made as he knew he was required to respond immediately to a report of a gun and, therefore, his conduct constituted willful neglect of duty as it placed the students in danger); *Williams v. Joint Operating Comm. of the Clearfield City. Vocational-Tech. Sch.*, 824 A.2d 1233 (Pa. Cmwlth. 2003) (holding that assistant director’s act of opening bids before the bid submission deadline and discussing the content of the bids with one of the bidders of the project was a willful neglect of duty because doing so was illegal). 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.

A district may dismiss a professional employee for cruelty when a teacher intentionally and maliciously inflicts physical suffering upon a student. *Blascovich v. Bd. of Sch. Dirs. of Shamokin Area Sch. Dist.*, 410 A.2d 407, 408-09 (Pa. Cmwlth. 1980). A district may dismiss a professional employee

for intemperance when the employee exhibits a loss of self-control, which may be inferred from the use of excessive force. *McFerren v. Farrell Area Sch. Dist.*, 993 A.2d 344, 360 (Pa. Cmwlth. 2010); *Belasco v. Bd. of Pub. Educ. of Sch. Dist. of Pittsburgh*, 486 A.2d 538, 541-42 (Pa. Cmwlth. 1985), *aff'd*, 510 A.2d 337 (Pa. 1986).

Regarding the procedure to be followed for dismissing a professional employee, the 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 employe is dismissed by the school board, the school board must resolve to dismiss the employe 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

employee, 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 of the Abington Sch. Dist. v. Pittenger*, 305 A.2d 382, 386 (Pa. Cmwlth. 1973). When a district dismisses a professional employee without full compliance with the 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. Credibility

I find Mr. Arnold credible in all respects regarding his description of the incidents that lead to his dismissal and the procedure used to terminate his employment. To the extent that Mr. Arnold's testimony is contradicted by students' statements in documents that were not verified at the hearing by live testimony, I find the students' statements not credible. Because the students' statements are not credible, I conclude that the students' statements cannot support findings of fact as a matter of law. Additionally, I conclude that the video of the incident is unpersuasive. The student who made the video did not appear at the hearing and did not testify as to its authenticity.

To the extent that Mr. Arnold's testimony that he called the main office twice is contradicted by the principal, I conclude that Mr. Arnold is credible and that he did call the main office. I conclude that he did call the main office because eventually an administrator did report to Mr. Arnold's classroom.

II. The District failed to establish sufficient grounds for dismissal pursuant to the Public School Code.

Mr. Arnold was dismissed for immorality; incompetency; cruelty; persistent negligence in the performance of duties; and persistent and willful violation of or failure to comply with school laws of this Commonwealth, including official directives and established policy of the Board, by allegedly violating the District's policy against physically aggressive behavior by teachers towards students. (Arnold 400-401) I conclude that the District's argument is not supported by credible evidence. I conclude that Mr. Arnold did not persistently and deliberately act in a physically aggressive manner towards students and did not violate the District's policy. I find that Mr. Arnold did not persistently and willfully physically touch any students. I find that Mr. Arnold never intended to be physically aggressive towards any student. Mr. Arnold was not trying to hurt the student, not trying to be cruel to the student, not acting out of anger, and not trying to be aggressive. (Arnold 178-179, 202-203)

Mr. Arnold did not hurt the student. (Arnold 178-179, 202-203) I conclude that Mr. Arnold's alleged misconduct was not persistent.

I have accepted Mr. Arnold's testimony to be credible. To the extent that Mr. Arnold's statements are contradicted by the video that was not confirmed by its maker as being a true and accurate copy, I have found the video to be not credible. To the extent that Mr. Arnold's statements are contradicted by witness statements in documents where the witnesses did not appear and confirm those statements at the hearing, I have found those witness statements to be not credible. To the extent that Mr. Arnold's statements are contradicted by the principal, I find Mr. Arnold to be credible.

The first incident occurred when Mr. Arnold used a student's backpack to direct a student into the line. In using a student's backpack to direct the student into the line, Mr. Arnold did not persistently and willfully violate the District's policy against physically aggressive behavior by teachers toward students.

In the second incident, Mr. Arnold attempted to escort a student out of the classroom when the student was repeatedly refusing Mr. Arnold's directive to leave the room. In so doing, Mr. Arnold was behaving reasonably. When the student grabbed a table to prevent Mr. Arnold from escorting him out of the classroom, the student did not fall and was not hurt. Mr. Arnold was not attempting to harm the student or to be mean or cruel to the student. Once again, Mr. Arnold did not willfully violate the School Code or any policy of the District. Mr. Arnold's conduct was not cruel nor exhibited a loss of self-control or excessive use of force. Therefore, I conclude that Mr. Arnold did not commit an act which warrants dismissal under Section 11-1122 of the School Code. *School District of Philadelphia v. Sonarith Chek*, No. 1266 C.D. 2019, LEXIS 521 (Pa. Cmwlth. 2020)

I find insufficient support in the record for the allegation that Mr. Arnold 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. I also conclude that Mr. Arnold was not intemperate and was not cruel. By the preponderance of the evidence, I conclude that the District has not met its burden of proof. I reverse the District's decision to terminate Mr. Arnold's employment as a tenured professional employee pursuant to Section 1122 of the Public School Code. I conclude that Mr. Arnold is entitled to reinstatement with backpay.¹ Accordingly, the following order is entered:

¹ In the foregoing Opinion, I reverse the District's personnel action due to the District's failure to establish sufficient grounds for dismissal under the School Code. I need not reach the issue of whether the District's personnel action also should be reversed on due process grounds.

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

ADRIAN S. ARNOLD	:	
Appellant	:	
	:	
v.	:	Teacher Tenure Appeal
	:	No. 03-20
	:	
SCHOOL DISTRICT OF PHILADELPHIA	:	
	:	
Appellee	:	

ORDER

AND NOW this 17th day of February 2021, the Secretary reverses the School District of Philadelphia's decision to dismiss Adrian Arnold, a tenured professional employee. I reinstate Adrian S. Arnold to his employment, in accordance with the foregoing opinion.



Noe Ortega
Acting Secretary of Education

Date Mailed: February 17, 2021