

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

DAVAUN BARNETT	:
Appellant	:
	:
	:
v.	:
	:
	: TTA No. 05-13
	:
PENN HILLS SCHOOL DISTRICT	:
Appellee	:

OPINION AND ORDER

Davaun Barnett (Mr. Barnett) appeals to the Secretary of Education from the decision of the Board of School Directors (Board) of the Penn Hills School District (District) dismissing him from his position with the District as a professional employee.

FINDINGS OF FACT

1. Until his dismissal from employment by the District, Mr. Barnett was a tenured professional employee with the District and was the Principal at Linton Middle School in the District.

Fundraising Event

2. On February 9, 2013, the Linton Middle School held a fundraising event that was organized with a theme involving the film “Star Wars” and was to benefit the Multiple Sclerosis Research Fund (Fundraising Event). (N.T. pgs. 11-12).¹

3. Lou Borgia (Mr. Borgia), the head teacher for the fifth and sixth grade, and Heather Hoolahan (Ms. Hoolahan), a member of the board of school directors, assisted Mr. Barnett with the Fundraising Event. (N.T. pgs. 11-12; 106-108).

¹ N.T. refers to Notes of Testimony during the hearings before the District’s board of school directors held September 10, October 2, 28, and 30 of 2013.

4. Ms. Hoolahan participated in selling food at the Fundraising Event. (N.T. pg. 112).

5. Mr. Borgia collected money at the door throughout the event except for short breaks throughout the day and a mid-day lunch break. (N.T. pg. 12).

6. Money collected at the door during the Fundraising Event was placed in a cash box. (N.T. pgs. 12-13).

7. During Mr. Borgia's lunch break, Mr. Barnett's wife relieved Mr. Borgia of his duties at the door. (N.T. pgs. 13-14).

8. When Mr. Borgia returned from his lunch break, he gave Mrs. Barnett \$300 from the cash box and asked that she deliver it to Mr. Barnett to which she replied "okay". (N.T. pg. 14).

9. Approximately ten (10) minutes after giving the \$300 to Mrs. Barnett, Mr. Borgia told Mr. Barnett that he gave Mrs. Barnett money from the cash box, to which Mr. Barnett replied "okay". (N.T. pgs. 14-15).

10. During his testimony at the Board hearing, Mr. Barnett acknowledged that the day of the Fundraising Event Mr. Borgia told him "I just gave your wife some money for you." (N.T. pg. 88).

11. At the end of the Fundraising Event, Mr. Borgia counted \$118.50 from the cash box, placed it in a manila envelope and delivered it to Mr. Barnett in his office. (N.T. pgs. 15-16).

12. Ms. Hoolahan placed \$503 from the concession sales in an envelope and delivered it to Mr. Barnett in the lobby. (N.T. pgs. 112-13).

13. At the end of the Fundraising Event, Ms. Hoolahan, Mr. Borgia, Jane Marra, Loujaue McPherson and Mr. Barnett met in Mr. Barnett's office. Mr. Borgia stated that over \$400 was collected at the door and Ms. Hoolahan stated that with the \$503 from the concession sales they collected roughly \$900. (N.T. pgs. 113-14).

14. Approximately one week after the Fundraising Event, Mr. Borgia went to Mr. Barnett's office to discuss an email he had received from a newspaper editor that wanted information about the Fundraising Event, including the number of people who attended, how much money was raised and where the money was being donated. (N.T. pg. 18).

15. Mr. Barnett testified that he had locked the envelopes in his desk drawer and had not removed them until Mr. Borgia told him that a reporter was requesting information about the Fundraising Event for a story. (N.T. pg. 78).

16. Mr. Barnett told Mr. Borgia to tell the editor that there were approximately 300 people who attended, that they raised \$900 and the money would be donated to the Multiple Sclerosis Research Society. Mr. Barnett also retrieved the two envelopes from his office and gave them to the secretaries. (N.T. p. 19).

17. The secretaries counted the money from the two envelopes given to them by Mr. Barnett and the total amount was \$621.50. When Mr. Borgia or one of the secretaries asked where the other money was, Mr. Barnett replied that his wife had it and he would bring it in. (N.T. pgs. 19-21).

18. Mrs. Barnett did not testify at the hearing.

19. Mr. Barnett testified that Mrs. Barnett purchased the DVD used at the Fundraising Event with money from the cash box and Mr. Barnett reimbursed himself \$80 for his costume out of one of the envelopes. (N.T. pgs. 74-75, 77).

20. Mr. Barnett also testified that "I believe Lisa took money to go buy the DVD the day of. The following Monday or something I reimbursed myself the \$80 and the \$10 for the tip. That came out that day as well." Mr. Barnett further testified that after being given the envelope from Mr. Borgia, three or four days later Mr. Barnett took about \$80 out of the envelope. (N.T. pgs. 81-82, 88).

21. Mr. Borgia never saw \$300 being delivered to Mr. Barnett and he has no evidence that Mr. Barnett ever put \$300 in his pocket or took \$300. (N.T. pg. 27, 33).

22. On April 2, 2013, Tracey Johnson sent Mr. Barnett an email message regarding any additional money for the Fundraising Event; but Mr. Barnett did not recall receiving this message. (S.D. Exh. 5),² (N.T. pgs. 92-93).

23. On May 3, 2013, Lori McKay sent Mr. Barnett an email message asking if there were any additional funds from the Fundraising Event to be deposited and Mr. Barnett responded that there were no additional funds. (S.D. Exhs. 6 & 7).

24. On May 9, 2013, District Superintendent Thomas Washington became aware that there may be funds from the Fundraising Event that had not been accounted for by Mr. Barnett. (N.T. pgs. 35-36).

25. On May 9, 2013, Mr. Washington, Ms. Pfister and Mr. Liberto telephoned Mr. Barnett about the discrepancy of the \$300 from the Fundraising Event that Mr. Borgia said Mr. Barnett's wife had received. (N.T. pgs. 37, 57).

26. During the May 9, 2013 telephone call, Mr. Barnett stated that there were things such as pizza, donuts, costume rental, and a DVD that could have been paid for out of the funds

² S.D. Exh. refers to exhibits admitted into evidence by the District during the hearings before the District's board of school directors held September 10, October 2, 28, and 30 of 2013.

for which he was entitled to a setoff; thus, he was asked to provide receipts. Mr. Barnett also stated that his wife could have some of the money. (N.T. pgs. 37-40, 57).

27. On May 9, 2013, Mr. Washington also met with Mr. Barnett and Mr. Barnett showed Mr. Washington that he had \$300 in his wallet and asked why would he need to steal \$300 when he had \$300. Mr. Barnett also stated that if he gave Mr. Washington the \$300 people would think he stole the money; so, he would produce receipts. Mr. Barnett asked for an official statement of exactly what money was missing and when it needed to be turned in. (N.T. pgs. 40-41, 51, 80).

28. By letter dated May 13, 2013, Mr. Washington reiterated the previous discussions with Mr. Barnett that the amount in dispute was \$300 and that by May 20, 2013, the District expected either the receipts and/or \$300 to alleviate the discrepancy. It was further stated in the letter that failure to comply “could result in disciplinary action leading up to and including termination.” (S.D. Exh. 3; N.T. pg. 42).

29. On May 17, 2013, Ms. Pfister and Mr. McClarnon delivered a “Loudermill” letter, essentially a statement of charges, to Mr. Barnett. (N.T. pgs. 61, 82). *See Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985).

30. On May 22, 2013, a Loudermill hearing was held to allow Mr. Barnett to respond to the charges identified in the May 17, 2013 letter. Mr. Barnett, Mr. Washington, Ms. Pfister, and Mr. McClarnon testified they were in attendance at the Loudermill hearing.

31. At the Loudermill hearing, Mr. Barnett did not provide any receipts or the \$300 that was in dispute. (N.T. pgs. 42-44, 61-62, 83, 87-88).

32. The District provided Mr. Barnett, as an administrator, a procurement card by which he could purchase items he needed for his building. With his procurement card, Mr.

Barnett purchased items for the Fundraising Event, including pizza and donuts, which were items Mr. Barnett had indicated might have been paid for out of the funds collected at the Fundraising Event for which he believed he was entitled to a setoff. (N.T. pgs. 37-38, 44-45, 57, 62-63; S.D. Exh. 4).

33. At the Board hearing, Mr. Barnett produced invoices for his costume rental and the DVD his wife purchased for the Fundraising Event. (Barnett Exhs. A & B).

Writing of “a bomb” in bathroom

34. On April 29, 2013, Loujaue McPherson, head of security at Linton Middle School, viewed the words “a bomb” on the sink in a bathroom at the school and informed Mr. Barnett. (N.T. pgs. 139-40).

35. Mr. Barnett responded that it might be a student trying to play a joke or get the day off; but Mr. Barnett did not think it was a credible threat and tried to call Mr. Washington and Mr. McClarnon, Director of Student Services. Mr. Barnett instructed Mr. McPherson to get a custodian and have the words cleaned off immediately, which Mr. McPherson did. (N.T. pg. 140-41).

36. Mr. McPherson heard Mr. Barnett leave messages for Mr. Washington and Mr. McClarnon stating that the school had a possible threat but Mr. Barnett did not believe it to be a credible one and that they should call him. (N.T. pg. 158-59).

37. After the words were cleaned from the sink, Mr. McPherson returned to Mr. Barnett’s office and asked if he was going to call the police to which Mr. Barnett replied that he would take care of it. (N.T. pg. 143).

38. Approximately ten (10) to twelve (12) minutes elapsed from the time the words were found on the sink until Mr. McPherson left Mr. Barnett's office the second time. (N.T. pg. 144).

39. After leaving Mr. Barnett's office the second time, Mr. McPherson left a voicemail message for his supervisor, David Drew, who was in charge of police advisory and security for the District and a police officer; but then saw him a few minutes later and told him about the "bomb" incident and that the building was not being evacuated, the writing had been erased, the police had not looked at the writing, and the writing had not been photographed. Mr. Drew told Mr. McPherson to have his security force start quietly checking things out for anything out of the ordinary. (N.T. pgs. 146-47; 182, 185-86).

40. Mr. Drew went to Mr. Barnett's office and Mr. Barnett said he was not planning to evacuate the building, had not contacted the police, had seen the writing and did not believe it was a valid threat. Mr. Drew stated he would call the police if Mr. Barnett was not going to and Mr. Barnett told him to go ahead if that was what he had to do. (N.T. pgs. 186-88).

41. When Mr. Drew advised Sgt. Manning of the police department about everything that had happened after finding the words "a bomb" in the bathroom, Sgt. Manning stated that it did not appear to be too credible. (N.T. pg. 209).

42. Mr. Barnett testified he had performed a threat analysis using criteria established by the FBI to determine whether there was a credible threat. When determining whether the words "a bomb" written in the bathroom were a credible threat, Mr. Barnett considered the age of the school's students and the fact that what was written did not communicate a threat and was not specific. (N.T. pgs. 237, 240-41).

43. Mr. Barnett contacted Mr. McClarnon telling him there was a message found that could be deemed to be threatening and Mr. McClarnon went to Mr. Barnett's office where he also found Mr. Garofalo, an associate principal, and Mr. Cooke, a vice-principal. Mr. Barnett told him that the words "a bomb" were found, that the police had been contacted and that it was found not to be credible. (N.T. pgs. 364-65). Mr. McClarnon arrived at Mr. Barnett's office at the end of the "bomb" event after everything had been done. (N.T. pg. 273).

44. Mr. Washington did not have any discussion with Mr. Barnett that Mr. Barnett had not followed District policy regarding the "bomb" incident until the Loudermill hearing on May 22, 2013. (N.T. pg. 228, 233-34).

45. To the best of his understanding, Mr. McClarnon believed protocols were followed and he did not have a concern that the safety of the children or the school was put in jeopardy. Mr. McClarnon has no dispute about how Mr. Barnett handled the situation based on the information he had. (N.T. pg. 280). Based on the responses provided at the Loudermill hearing, Mr. McClarnon did not believe that Mr. Barnett violated any policies in his handling of the "bomb" incident. (N.T. pgs. 271-72).

46. Mr. Washington, Mr. Drew and Mr. McPherson believed Mr. Barnett was putting procedures in place to make the school safer and that he had the safety of students as a priority. (N.T. pgs. 169-70, 200, 229-30).

47. The District's policy number 805 is entitled Emergency Evacuation of Schools and includes a section on bomb threats, which states:

In the event of a threat that a bomb has been placed in a district school, the established procedures shall be followed:

1. Bomb-threats normally require evacuation of the building, after consideration of mitigating circumstances by the Superintendent or designee.
2. Police and fire departments shall be notified immediately.

3. A search of the building may be conducted, with the assistance of the police and/or fire departments personnel.
4. If an evacuation occurred, and after a thorough search has discovered no bomb, the Superintendent or designee may permit reentry by students and staff.
5. A request for investigation shall be made to law enforcement agencies.

Any decision concerning dismissal of students and staff and subsequent action is at the discretion of the Superintendent or designee.

(Exh. C).³

Charges

48. On August 23, 2013, the District sent Mr. Barnett a formal Statement of Charges charging Mr. Barnett with persistent neglect of duties, willful neglect of duties, intemperance, immorality, cruelty, violation of school policies and persistent willful violation of the school laws of the Commonwealth of Pennsylvania. These charges resulted from Mr. Barnett's alleged failure: (1) to account for or return \$300.00 placed in his trust through his wife following the Fundraising Event; and (2) to follow proper procedure pertaining to a recent bomb threat/scare at Linton Middle School.⁴ See Exhibit 1.

49. Mr. Barnett requested a hearing before the Board and hearings were held on September 10, October 2, 28, and 30 of 2013.

50. By Resolution dated November 25, 2013, the Board adopted the hearing officer's Findings of Fact, Conclusions of Law and Adjudication and dismissed Mr. Barnett from his employment with the District based on immorality, improper conduct and willful neglect of duty.

³ Exh. C refers to an exhibit admitted into evidence by Mr. Barnett during the hearings before the District's board of school directors held September 10, October 2, 28, and 20 of 2013.

⁴ A third charge is not stated here because no evidence or testimony was provided about that charge and was not any part of the Board's determination.

DISCUSSION

Mr. Barnett's dismissal by the District was pursuant to Section 1122 of the Public School Code, *as amended*, 24 P.S. §11-1122, 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; . . . 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 employee . . .

A tenured professional employee such as Mr. Barnett may only be dismissed for the reasons set forth in Section 1122 of the Public School Code. *Foderaro v. School District of Philadelphia*, 531 A.2d 570, 571 (Pa. Cmwlth. 1987), *appeal denied*, 542 A.2d 1372 (Pa. 1988). “It is thus apparent that the legislature intended to protect tenure except for the serious charges listed.” *Lauer v. Millville Area School District*, 657 A.2d 119, 121 (Pa. Cmwlth 1995), *appeal denied* 675 A.2d 1253 (Pa. 1996). In order to uphold Mr. Barnett’s dismissal only one of these charges must be established. *Horton v. Jefferson County-DuBois Area Vocational Technical School*, 630 A.2d 481, 483 (Pa. Cmwlth. 1993).

After hearing, and a thorough review of the record, I find that there is sufficient evidence to sustain the District’s dismissal of Mr. Barnett.

Immorality

Immorality has been defined by courts as conduct that “offends the morals of the community and is a bad example to the youth whose ideals a teacher is supposed to foster and to elevate.” *McFerren v. Farrell Area School District*, 993 A.2d 344, 353 (Pa. Cmwlth. 2010), quoting *Horosko v. School District of Mt. Pleasant Township*, 6 A.2d 866, 686 (Pa. 1939). In order to establish immorality, a school district must prove: (1) that the alleged immoral act actually occurred; (2) that the act offends the morals of the community; and (3) that the act sets a

bad example for students. *McFerren*, 993 A.2d at 354. “Immoral conduct is something more serious than unprofessional conduct.” *Id.*

Deciding whether conduct offends the morals of a community is a legal determination. The general rule requires that the District present direct evidence or evidence from which the Secretary can infer that a professional educator’s conduct offended the morals of the community. *Palmer v. Wilson Area School District*, TTA No. 5-94. If there are insufficient facts from which the Secretary can determine or infer whether the conduct offends the morals of the community, no legal determination can be made on the issues of immorality. *Id.*

However, there are limited exceptions to this general rule. There is some conduct that is so egregious that its immoral nature transcends geographic or community boundaries. *Id.* Even in the absence of evidence of community standards, courts have expressed a willingness to review legal precedent to determine whether similar conduct has been adjudicated to be immorality.

Thus, in rare instances there does not need to be testimony to establish the morals of the community and that those morals were offended by a professional educator’s actions. For example, a school district is not required to produce evidence of the morals of a particular community for crimes of moral turpitude. *Id.* at 354. In *Appeal of Batrus*, 26 A.2d 121 (Pa. Super. 1942), the court held that the dismissal of a teacher on the ground of immorality was proper where it was shown that the teacher knowingly made false statements for the procurement of a liquor license with the purpose of misleading the Liquor Control Board. In *Kinniry v. Abington School District*, 673 A.2d 429 (Pa. Cmwlth. 1996), the court held that trafficking in counterfeit goods was a *crimen falsi* crime that was *per se* offensive to the morals of the community.

In another case, a teacher was alleged to have misappropriated funds of a school district. *Appeal of Flannery*, 178 A.2d 751 (Pa. 1962). The Pennsylvania Supreme Court stated that “[c]ertainly the misappropriation of funds is contrary to ethical conduct and inconsistent with the rules and principles of morality.” *Id.* at 754. In *Bethel Park School District v. Krall*, 445 A.2d 1377 (Pa. Cmwlth. 1982), a teacher misrepresented her time off work for two days by listing illness as the reason for her absence. In fact, the teacher had attended a conference for which she had previously been denied paid personal time to attend. The court noted that “her misrepresentations are properly the subject of an immorality charge.” *Id.* at 1379. “Immorality under Section 1122 of the School Code may include lying and/or making false statements to school district staff.” *Riverview School District v. Riverview Education Association*, 639 A.2d 974, 978 (Pa. Cmwlth. 1994) *citing, Balog v. McKeesport Area School District*, 484 A.2d 198 (Pa. Cmwlth. 1984) (Secretary found substantial credible evidence teacher made false statements to the Superintendent and other district staff).

In the instant case, it is the District’s burden to present evidence of the morals of the community and that Mr. Barnett’s actions offended those morals. *Id.* at 356. In this case, the District did not present any direct evidence about the morals of the community and that Mr. Barnett’s actions offended those morals. However, in its adjudication, the Board found that Mr. Barnett’s behavior clearly offended the morals of the community and set a bad example for youth. To support this conclusion the Board stated in its adjudication that

Mr. Barnett not only turned a blind eye to the repeated indicators that there [was] no accounting of money which had been entrusted to his wife, but when it became necessary to respond to the Superintendent, Mr. Barnett deliberately sought to mislead and misdirect by attributing expenses to the money as rationales for reimbursement when he knows that he had already reimbursed himself independently of the cash at issue.

Although there was no direct testimony about the morals of the community and that Mr. Barnett's actions offended those morals, I find there is sufficient credible evidence that Mr. Barnett made deliberately false statements to Mr. Washington and other District staff about the \$300 given to Mrs. Barnett by Mr. Borgia. Therefore, I can make a reasonable inference that Mr. Barnett's actions offend the morals of the local community and that his misrepresentations support the charge of immorality.

On February 9, 2013, the Linton Middle School held its Fundraising Event. (N.T. pgs. 11-12). Mr. Borgia and Ms. Hoolahan assisted Mr. Barnett with the Fundraising Event. (N.T. pgs. 11-12; 106-108). Mr. Borgia collected money at the door throughout the event except for short breaks throughout the day and a mid-day lunch break. (N.T. pg. 12). During Mr. Borgia's lunch break, Mr. Barnett's wife relieved Mr. Borgia of his duties at the door. (N.T. pgs. 13-14). When Mr. Borgia returned from his lunch break, he gave Mrs. Barnett \$300 from the cash box and asked that she deliver it to Mr. Barnett to which she replied "okay." (N.T. pg. 14). During his testimony before the Board, Mr. Barnett acknowledged that the day of the Fundraising Event Mr. Borgia told him "I just gave your wife some money for you." (N.T. pg. 88).

At the end of the Fundraising Event, Mr. Borgia counted \$118.50 from the cash box, placed it in a manila envelope and delivered it to Mr. Barnett. (N.T. pgs. 15-16). Ms. Hoolahan placed \$503 from the concession sales in an envelope and delivered it to Mr. Barnett. (N.T. pgs. 112-13). At the end of the Fundraising Event, Ms. Hoolahan, Mr. Borgia, Jane Marra, Loujaue McPherson and Mr. Barnett met in Mr. Barnett's office. Mr. Borgia stated that over \$400 was collected at the door and Ms. Hoolahan stated that with the \$503 from the concession sales they collected roughly \$900. (N.T. pgs. 113-14).

One or two weeks after the Fundraising Event, Mr. Borgia advised Mr. Barnett that a local paper wanted to write an article about the Fundraising Event. Mr. Barnett retrieved from his desk the two envelopes containing the money he had been given the night of the Fundraising Event and gave them to the secretaries. The secretaries counted the money from the two envelopes and the total amount was \$621.50. When Mr. Borgia or one of the secretaries asked where the other money was, Mr. Barnett replied that his wife had it and he would bring it in. (N.T. pgs. 19-21).

Although Mr. Barnett testified that he did not recall receiving an email from Tracey Johnson on April 2, 2013, Ms. Johnson sent Mr. Barnett an email asking about any additional money for the Fundraising Event. (S.D. Exh. 5). Then on May 3, 2013, Lori McKay sent Mr. Barnett an email asking if there were any additional funds from the Fundraising Event to be deposited and Mr. Barnett responded that there were no additional funds. (S.D. Exhs. 6 & 7).

During a May 9, 2013 telephone call with Mr. Washington, Ms. Pfister and Mr. Liberto, regarding the \$300 that had not been accounted for, Mr. Barnett stated that there were things such as pizza, donuts, costume rental, and a DVD that were purchased for which he was entitled to a setoff; thus, he was asked to provide receipts. During that telephone call Mr. Barnett also stated that his wife could have some of the money. (N.T. pgs. 37-40, 57).

Mr. Barnett testified that his wife purchased the DVD used at the Fundraising Event with money from the cash box and Mr. Barnett reimbursed himself \$80 for his costume out of one of the envelopes given to him the night of the Fundraising Event. (N.T. pgs. 74-75, 77). A receipt for Mr. Barnett's costume shows a cost of \$90.95, which included tax, and a receipt for the DVD shows a cost of \$57.77. (Barnett Exhs. A & B). Mr. Barnett testified "I believe Lisa took money to go buy the DVD the day of. The following Monday or something I reimbursed myself the \$80

and the \$10 for the tip [for pizza]. That came out that day as well." (N.T. pgs. 81-82). Mr. Barnett further testified that three or four days after being given the envelope from Mr. Borgia he took about \$80 out of the envelope. (N.T. p. 89).

Mr. Barnett testified that he never counted the money in the envelopes given to him by Mr. Borgia and Ms. Hoolahan. (N.T. pgs. 90-91). However, Mr. Borgia and Ms. Hoolahan testified that the envelopes given to Mr. Barnett the night of the Fundraising Event contained \$118.50 and \$503, respectively, and there is no evidence disputing those amounts. (N.T. pgs. 16, 112-13). The total amount in the envelopes given to Mr. Barnett the night of the Fundraising Event was \$621.50, the same amount the secretaries counted a week or two later when Mr. Barnett gave them the envelopes. Thus, Mr. Barnett could not have taken money from the envelopes to reimburse himself for his costume and a tip for the pizza. Any money with which Mr. Barnett reimbursed himself had to have come from some other source. Based on the testimony and evidence in the record, the only other money related to the Fundraising Event was the \$300 that Mr. Borgia had given to Mrs. Barnett.

The District provided Mr. Barnett, as an administrator, a procurement card by which he could purchase items he needed for his building. With his procurement card, Mr. Barnett purchased items for the Fundraising Event, including pizza and donuts, which were items Mr. Barnett had indicated might have been paid for out of the funds collected at the Fundraising Event. (N.T. pgs. 37-38, 44-45, 57, 62-63; S.D. Exh. 4). Since he used his procurement card to pay for these items, Mr. Barnett was not entitled to any reimbursement for these items.

Since Mr. Barnett testified that he reimbursed himself \$80 for his costume and \$10 for the tip for pizza and Mrs. Barnett paid \$57.77 for the DVD, the amount used by Mr. and/or Mrs. Barnett out of the Fundraising Event funds was \$147.77. Therefore, because Mr. Borgia credibly

testified that he gave Mrs. Barnett \$300, and there is no testimony to the contrary, there is at least \$152.23 of Fundraising Event funds for which there has been no accounting by Mr. Barnett.

Mr. Barnett's differing accounts of what happened to the \$300 Mr. Borgia gave Mrs. Barnett at the Fundraising Event is evidence of deliberate misrepresentations by Mr. Barnett. On one occasion Mr. Barnett stated that his wife had the money and he would get it from her; on another occasion Mr. Barnett stated that his wife could have some of the money. In the May 3, 2013 email, Mr. Barnett stated that there were no additional funds from the Fundraising Event. Mr. Barnett also stated that he reimbursed himself for his costume and a tip for pizza out of money in envelopes given to him by Mr. Borgia and Ms. Hoolahan the night of the Fundraising Event. However, as stated previously, the same amount of money was in the envelopes when opened one or two weeks after the Fundraising Event so Mr. Barnett could not have reimbursed himself from those funds. Other items he said might have been purchased with money collected at the Fundraising Event for which he believed he should receive reimbursement were actually purchased with his procurement card.

Mr. Barnett acknowledged that Mr. Borgia gave his wife money at the Fundraising Event and his testimony only accounts for \$147.77; some being used to purchase a DVD and some to reimburse himself for his costume and a tip for the pizza. Thus, Mr. Barnett failed to account for the remaining \$152.23 that should have been turned in from the \$300 Mr. Borgia gave to Mrs. Barnett. Although there is no direct evidence Mr. Barnett ever had possession of the \$300 Mr. Borgia gave to Mrs. Barnett, he clearly received money from somewhere to reimburse himself for his costume and the tip for pizza. Since, as stated previously, he could not have reimbursed himself from money in the envelopes given to him by Mr. Borgia and Ms. Hoolahan, he deliberately misrepresented where he got the money to reimburse himself. In addition to

deliberately misrepresenting where he got the money to reimburse himself, he deliberately misrepresented what happened to all of the money Mr. Borgia gave to his wife; one time stating that his wife had the money and he would bring it in, another time stating his wife might have some of the money and then stating in an email that there were no additional funds from the Fundraising Event to be deposited.

There is no community that would embrace or accept deliberate misrepresentations as being representative of the morals of the community. *See infra, Bethel Park School District v. Krall, Appeal of Flannery, Riverview School District v. Riverview Education Association*, and *Balog v. McKeesport Area School District*. There is sufficient evidence that Mr. Barnett made deliberate misrepresentations about the use of some of the money collected at the Fundraising Event. There is sufficient evidence by which a reasonable inference can be made that Mr. Barnett's deliberate misrepresentations offend the morals of the local community and that making deliberate misrepresentations about the use of money raised at a school event is a bad example to the youth whose ideals a teacher is supposed to foster and elevate. Therefore, Mr. Barnett's deliberate misrepresentations of what happened to some of the money collected at the Fundraising Event constitute immorality.

Willful Neglect of Duties

Willful neglect of duties was added to Section 1122 in 1996 as one of the grounds by which a professional employee can be dismissed. Commonwealth Court has defined willful neglect of duties by a professional employee as “an intentional disregard of duties by that employee.” *Flickinger v. Lebanon School District*, 898 A.2d 62, 67 (Pa. Cmwlth. 2006). In this charge, there is no requirement of a continuous course of conduct. *Id.*

On April 29, 2013, Loujaue McPherson, head of security at Linton Middle School, viewed the words “a bomb” on the sink in a bathroom at the school and informed Mr. Barnett. (N.T. pgs. 139-40). Mr. Barnett responded that it might be a student trying to play a joke or get the day off; but Mr. Barnett did not think it was a credible threat and tried to call Mr. Washington and Mr. McClarnon, Director of Student Services. Mr. Barnett instructed Mr. McPherson to get a custodian and have the words cleaned off immediately, which Mr. McPherson did. (N.T. pg. 140-41). Mr. McPherson spoke with his supervisor, Mr. Drew, about the “bomb” incident approximately ten (10) minutes after the incident. Mr. McPherson told Mr. Drew that the building was not being evacuated, the writing had been erased, the police had not looked at the writing, and the writing had not been photographed. (N.T. pgs. 185-86). Mr. Drew directed that the security forces quietly check for things out of the ordinary. (N.T. pgs. 147-47; 182). When Mr. Drew addressed the issue with Mr. Barnett, Mr. Barnett advised that he was not planning to evacuate the building, had not contacted the police, had seen the writing and did not believe it was a valid threat. However, Mr. Barnett did not prevent Mr. Drew from contacting police. (N.T. pgs. 186-88).

The District’s policy number 805 is entitled Emergency Evacuation of Schools and includes a section on bomb threats. (Exh. C). The policy states that “[i]n the event of a threat that a bomb has been placed in a district school” established procedures shall be followed. The procedures are: (1) Evacuation of the building, after consideration of mitigating circumstances by the Superintendent or designee; (2) Immediate notification of police and fire departments; (3) A search of the building may be conducted with the assistance of police and fire personnel; (4) If an evacuation occurred, reentry by students and staff if no bomb is discovered; and (5) a request for investigation by law enforcement agencies. The policy also provides that a decision

concerning dismissal of students and staff and subsequent action is at the discretion of the Superintendent or designee. (Exh. C).

Mr. Barnett testified that he performed a threat analysis using criteria established by the FBI to determine whether there was a credible threat. Mr. Barnett considered the age of the school's students, the fact that writing "a bomb" did not communicate a threat and was not specific. (N.T. pgs. 237, 240-41). Mr. Barnett's analysis of the situation was that the words "a bomb" did not constitute a credible threat that a bomb had been placed in the school because the threat was not specific; there was no threat to detonate or blow up. (N.T. pg. 237). Mr. Barnett testified that if there was a credible threat, the police would be notified immediately, the building evacuated and other procedures in the policy would be performed. However, if there was no credible threat the procedures would not be followed. (N.T. pg. 240).

Mr. Barnett contacted Mr. McClarnon about the message and when Mr. McClarnon arrived at Mr. Barnett's office other associate/vice-principals were there and Mr. Barnett told him the police had been notified and it was found not to be a credible threat. (N.T. pgs. 364-65). Mr. McClarnon did not believe, based on the information he had, that the safety of the school or children were put in jeopardy and he had no dispute with how Mr. Barnett handled the situation. (N.T. pg. 280). In addition, Mr. Washington, Mr. Drew and Mr. McPherson all testified that Mr. Barnett had been putting procedures in place to make the school safer and that he had the safety of students as a priority. (N.T. pgs. 169-70, 200, 229-30).

Mr. Washington did not address the "bomb" incident with Mr. Barnett or advise that he had violated any policy in handling the incident until the "Loudermill" hearing on May 22, 2013. (N.T. pg. 228, 233-34). Nevertheless, based on the responses provided at the Loudermill

hearing, Mr. McClarnon testified that he did not believe Mr. Barnett violated any policies in his handling of the “bomb” incident. (N.T. pgs. 271-72).

Based on the testimony and evidence presented at the hearing before the Board, there is not sufficient evidence that Mr. Barnett’s actions regarding the “bomb” incident constitute a willful neglect of duties.

Accordingly, the following Order is entered:

IN THE OFFICE OF THE SECRETARY OF EDUCATION
COMMONWEALTH OF PENNSYLVANIA

DAVAUN BARNETT :
Appellant :
:
v. :
: TTA No. 05-13
:
PENN HILLS SCHOOL DISTRICT :
Appellee :

ORDER

AND NOW, this 18th day of July, 2014, it is hereby ordered and decreed
that the appeal of Davaun Barnett is denied and the decision of the Penn Hills School District to
dismiss Davaun Barnett from employment with the Penn Hills School District is affirmed.


Carolyn C. Dumaresq, Ed.D.
Acting Secretary of Education

Date Mailed: 7/18/14