

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

<b>ELAINE CUTLER</b>	:	
	:	
v.	:	<b>TTA No. 01-13</b>
	:	
<b>BELLEFONTE AREA SCHOOL DISTRICT</b>	:	
	:	
Appellee	:	

**OPINION AND ORDER**

Elaine Cutler (“Appellant”) appeals to the Secretary of Education from the decision of the Bellefonte Area School District (the “District”) dismissing her from the position of Principal of the Bellefonte Elementary School.

**Findings of Fact**

1. The District formally evaluated Appellant as Principal of the Bellefonte Elementary School at the end of the 2009-2010 school year. N.T.<sup>1</sup> Vol. 2 at 207-209; and Administration Exhibit 42.
2. The applicable rating system then in place included the following categories: (a) Below 60 - Unsatisfactory; (b) 60-79 - Needs to Improve; (c) 80-85 -Satisfactory; (d) 86-99 - Above Standard; and Above 100 - Commendable. *Id.*
3. Appellant received an overall rating of 80, which was at the bottom of the “Satisfactory” range. *Id.*
4. Appellant also received a rating of “Below Acceptable Standards” or “Unsatisfactory Performance” on several of the performance areas listed on her 2009-2010 evaluation. *Id.*

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<sup>1</sup> “N.T.” refers to the transcripts of the hearing regarding Appellant’s termination before the District’s Board of School Directors.

## Failure to Complete Classroom Observations in 2011-2012

5. In the opinion of Dr. Cheryl Potteiger, who was hired as District Superintendent effective June 22, 2011, observing teachers should be a high priority for building principals. N.T. Vol.1 at 17 and Vol. 2 at 27-28, 58, 86, 88-89.

6. In or about August 2011, during a leadership meeting with all principals including Appellant, Potteiger went over the observation requirements, protocols, and procedures. Observations included a written component provided to the teacher. N.T. Vol. 1 at 36-37, 231-232.

7. Potteiger told principals that their most important job is observation and evaluation of teachers. *Id.* at 233-234.

8. Potteiger reminded Appellant throughout the 2011-2012 school year of the requirement to complete the observations. *Id.* at 40.

9. Potteiger reminded principals in administrative meetings to not forget that observations are essential and to make sure they are completed with the written component submitted to her in a timely fashion. *Id.* at 234.

10. Potteiger reminded Appellant more than once to make sure that she set up a calendar or schedule to complete the observations. *Id.*

11. During the 2011-2012 school year, Potteiger offered to help Appellant get organized. Appellant declined the offer of help. *Id.* at 58.

12. Every District principal was given a spreadsheet, which listed every teacher and detailed the timing and number of observations that were to be completed. *Id.* at 36-37; and Administration Exhibit 6.

13. A total of 32 observations of non-tenured teachers were scheduled for the 2011-2012 school year. *Id.*

14. Appellant was responsible for completing 13 of the 32 observations. Three other District administrators were responsible for the other 19 observations *Id.*

15. The other three administrators completed all 19 scheduled observations. *Id.*

16. Appellant did not complete any of the 13 observations of non-tenured teachers, that she was assigned. *Id.* and N.T. Vol. 1 at 31-32.

17. On or about June 11, 2012, Appellant sent an electronic mail message to Potteiger regarding the observations that stated: "I did not get them all done. I am finishing the write-ups now. No excuses. I know I'm in trouble." Administration Exhibit 38.

18. Appellant received an unsatisfactory rating for the 2011-2012 school year. N.T. Vol. 1 at 58; and Administration Exhibit 7.

19. Following the unsatisfactory rating, the District provided Appellant with an Administrative Improvement Plan ("Improvement Plan"). *Id.*

20. The Improvement Plan provided for monthly meetings to assess progress, and make changes as needed. *Id.* at 61.

21. Appellant's supervisors met with her during the 2012-2013 school year to discuss the Improvement Plan, to which amendments were made, and to see what they could do to assist Appellant in improving her performance. Potteiger offered to spend time with Appellant to assist her with time management. N.T. Vol. 2 at 222-224. Again, Appellant declined Potteiger's offer of additional assistance. *Id.*

**Failure to Timely Submit State-Mandated, eComprehensive Plan in 2012-2013**

22. The eComprehensive Plan is a five-year plan that the Commonwealth of Pennsylvania requires each school district to complete. N.T. Vol. 2 at 232.

23. Building principals were responsible for providing information into a computer system (the “system”) for inclusion in the eComprehensive Plan. *Id* at 234-235.

24. The responsibility of each building principal with regard to the eComprehensive Plan began in September and October 2012. *Id* at 235.

25. Assistant District Superintendent Michelle Saylor, whose role it was to facilitate completion of the eComprehensive Plan, also had individual conversations with the building principals regarding the plan. *Id* at 233-235

26. Saylor regularly checked on the progress each building principal was making, and specifically asked Appellant if she was having any problems. N.T. Vol. 2 at 237.

27. Through January 2013 Appellant continued to respond that she was fine, she did not have any questions. *Id.* At 237-238.

28. On January 16, 2013, Saylor sent Appellant an electronic mail reminder, and indicated that Bellefonte Elementary School had yet to enter anything into the system. Administration Exhibit 15.

29. Saylor subsequently checked-in again with Appellant and she again assured Saylor that everything was fine. N.T. Vol. 2 at 238.

30. On January 24, 2013, all the eComprehensive Plan stakeholders were at the scheduled meeting, and the system was brought up for everyone to see. *Id.*

31. Despite Appellant’s repeated assurances that she was fine, the data from Bellefonte Elementary School was not entered into the system. *Id.*

32. The data from Bellefonte Elementary School was not entered into the system until January 25, 2013, after the stakeholder meeting, which was held the prior day. *Id.*

### **Failure to Timely Submit Budget**

33. The budget calendar was given to all administrative staff and to the Board. For 2013-2014, budgets for District schools were due in the Business Office by February 28, 2013. N.T. Vol. 1 at 119; Administration Exhibit 18.

34. The deadline was extended to March 1, 2013. N.T. Vol. 3 at 134.

35. Appellant submitted the budget for the Bellefonte Elementary School on March 5 or 6, 2013. *Id.* at 136.

36. Appellant neither submitted her budget on time, nor requested an extension. N.T. Vol. 1 at 119-121.

### **Failure to Conduct State-Mandated Severe Weather Drill in 2012-2013**

37. Annually, the Commonwealth of Pennsylvania requires school districts to conduct a severe weather drill. N.T. Vol. 1 at 131-133; and Administration Exhibit 24.

38. An electronic mail message is distributed which establishes the date for the drill, as well as what must be done. *Id.*

39. The chairman of the District's safety committee disseminated information regarding the drill to building principals. N.T. Vol. 2 at 198.

40. After the drill is completed, a report is filed with the Commonwealth. N.T. Vol. 1 at 131-133; and Administration Exhibit 24.

41. For the 2012-2013 school year, March 5 was established as the date for the drill. *Id.* No drill was conducted at the Bellefonte Elementary School on March 5. N.T. Vol. 1 at 133.

42. Every District Principal other than Appellant at every other District building conducted the drill on March 5, as required. N.T. Vol. 1 at 136-138, 187-188; and Administration Exhibit 1.

### **Failure to Complete Classroom Observations in 2012-2013**

43. Doing observations, and doing them in a timely and complete manner were a focal point of both the Appellant's Administrative Improvement Plan and the unsatisfactory rating she received at the end of the 2011-2012 school year. N.T. Vol. 1 at 159.

44. Observations were also a significant subject of discussion during the monthly Administrative Improvement Plan meetings during the 2012-2013 school year. *Id.*

45. Throughout the 2012-2013 school year, Appellant was regularly and frequently advised that her observations were not being completed in a timely fashion. N.T. Vol. 1 at 160.

46. On or about May 30, 2013, Potteiger sent Appellant an electronic mail message indicating that observations were still outstanding for six teachers. *Id.* Administration Exhibit 36.

47. Four of the six were ultimately submitted, albeit not in a timely fashion, and two were never submitted. N.T. Vol. 1 at 161; Administration Exhibit 37; N.T. Vol. 2 at 104-106; and N.T. Vol. 3 at 255.

48. Appellant received an unsatisfactory rating for the 2012-2013 school year. N.T. Vol. 1 at 170-171; and Administration Exhibit 41.

### **Failure to Complete Teacher Evaluations in 2012-2013**

49. A non-tenured teacher must be evaluated at least twice annually, and informed of the professional quality, professional progress, and rating of his or her service. 24 P.S. § 1108(a).

50. Auditors, when auditing the District, randomly review files to ensure that completed evaluations are there. N.T. Vol. 1 at 228-229.

51. Timely completion of teacher evaluations was part of Appellant's Improvement Plan. Administration Exhibit 7; and N.T. Vol. 3 at 258-259.

52. The subject was repeatedly discussed with Appellant. *Id.*

53. For the 2012-2013 school year, Appellant was responsible for completing formal evaluations on all of the 37 teachers, whether non-tenured or tenured, at Bellefonte Elementary School. N.T. Vol. 1 at 184; Administration Exhibit 36.

54. The completed evaluations were due prior to the end of the school year, which was June 12, 2013. N.T. Vol. 2 at 213.

55. As of June 25, 2013, Appellant had completed only one of the required 37 evaluations. N.T. Vol. 1 at 184; N.T. Vol. 2 at 110, 176-178, 213; and N.T. Vol. 3 at 257. Although the one evaluation was substantively completed, it was unsigned by either the Appellant or the teacher. N. T. Vol. 2, 213-214.

### Discussion

#### **Procedural Issues:**

In her appeal, Appellant alleges that the District did not satisfy procedural requirements of the Public School Code. According to Appellant, one or more of the school board members, did not attend the hearings or review the transcripts of the proceeding before the Board. Even assuming *arguendo* that the allegation was true, this procedural issue is irrelevant at this stage in the proceedings.

The Pennsylvania Supreme Court has held that "in an appeal by an aggrieved professional employee under Section 1131 of the School Code, the Secretary is vested with the

authority to conduct a *de novo* review whether he takes additional testimony or merely reviews the official record of the proceedings before the board.” *Belasco v. Board of Public Education*, 510 A.2d 337, 343 (Pa. 1986). This *de novo* review establishes the Secretary as the ultimate fact finder and authorizes him to determine the credibility of witnesses, the weight of their testimony and the inferences to be drawn therefrom. *Id.* at 342. “[T]he Secretary’s *de novo* review of the decision of a school board ensures that the requirements of due process are satisfied.” *Katruska v. Bethlehem Center School District*, 767 A.2d 1051, 1056 (Pa. 2001). “Because the Secretary decides the case anew, events occurring procedurally at an earlier stage of the case are irrelevant.” *Forest Area School District v. Shoup*, 621 A.2d 1121, 1125 (Pa. Cmwlth. 1993).

Accordingly, Appellant’s allegation of procedural error is not relevant in a *de novo* review. The Acting Secretary has reviewed the record from below, made her own findings of fact, determined the credibility of witnesses, the weight of their testimony and any inferences to be drawn therefrom. Thus, the Acting Secretary’s *de novo* review of the Board of Directors’ decision ensures that the requirements of due process have been satisfied.

**Substantive Issues:**

Appellant’s dismissal was pursuant to Section 1122 of the Public School Code, as amended, 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 employe.

24 P.S. §11-1122

A tenured professional employee, such as Appellant, 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).

Following a thorough review of all evidence in the record, the Acting Secretary finds that there is sufficient competent evidence to sustain the District’s dismissal of Appellant.

**Persistent and Willful Violation of or Failure to Comply with School Laws Including Official Directives and Established Policy of the Board of Directors and Persistent Negligence in the Performance of Duties**

The following three elements must be met to determine that a persistent and willful violation of school laws has occurred: persistency, willfulness and a violation of school law. Persistency occurs either as a series of individual incidents or one incident carried on for a substantial period of time. *Gobla v. Board of School Directors of Crestwood School District*, 414 A.2d 772 (Pa. Cmwlth. 1980). Willfulness requires the presence of intention and some power of choice. *Horton*, 630 A.2d at 484. A violation of school laws includes a violation of a school district’s rules and orders. *Sertik v. School District of Pittsburgh*, 584 A.2d 390 (Pa. Cmwlth. 1990), *appeal denied* 593 A.2d 428 (Pa. 1991).

Persistent negligence in the performance of duties is not defined in the Public School Code. However, negligence is defined “as the failure to exercise that care a reasonable person would exercise under the circumstances.” *Lauer*, 657 A.2d at 121. Persistent is defined as continuing or constant, thus, “there must be sufficient continuity and repetition of negligent acts to support a charge of persistent negligence.” *Id.* This can occur either as a series of individual incidents or as one incident carried on for a substantial period of time. *Strinich v. Clairton*

*School District*, 431 A.2d 267, 271 (Pa. 1981).<sup>2</sup>

The Acting Secretary finds that the District has presented credible and persuasive evidence to establish that Appellant failed to: (1) complete required observations of teachers during the 2011-2012 and the 2012-2013 school years; (2) complete and timely submit the eComprehensive plan; (3) timely submit the required budget or request an extension; (4) conduct a state mandated, severe weather drill and; (5) complete required evaluations of teachers in the 2012-2013 school year.<sup>3</sup>

These multiple failures on the part of Appellant, especially when viewed collectively, provide sufficient evidence that Appellant persistently and willfully violated or failed to comply with school laws including official directives, the District's rules and orders, and established policy of the Board of Directors. These incidents also evidence Appellant's persistent negligence in the performance of her duties.

### **Willful Neglect of Duties**

Willful neglect is not defined in the Public School Code and there are few cases that have provided a definition. *Williams v. Clearfield County Vocational-Technical School*, TTA No. 4-99. "Willfulness requires the presence of intention and at least some power of choice." *Horton v. Jefferson County-DuBois Area Vocational Technical School*, 630 A.2d 481, 483 (Pa. Cmwlth. 1993). Neglect is defined as ignoring, disregarding, failing to care for or give proper attention to something, or failing to do or carry out, as through oversight or carelessness.

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<sup>2</sup> Part of *Strinich*, which is not relevant here, was overruled by *Belasco v. Board of Public Education of the School District of Pittsburgh*, 510 Pa. 504, 510 A.2d 337 (1986).

<sup>3</sup> These multiple failures on the part of Appellant are more than sufficient to sustain the dismissal at issue. Accordingly, the several additional charges upon which the District based the dismissal need not be addressed.

*Webster's II New College Dictionary*, 1995. Neglect may also mean an omission to do or perform some work, duty or act. *Black's Law Dictionary*, (Sixth Ed. 1990).

Appellant was appropriately placed on notice by her employer that observing and evaluating teachers were important requirements of her job. Appellant's failure to complete required observations in 2012-2013 (even after being warned about it during the prior school year) is a glaring example of her choice to ignore or disregard her duty, her failure to carry out her duty, as through oversight or carelessness, and her omission to do or perform her work. Likewise, Appellant's failure to complete nearly all of the many teacher evaluations she was required to complete in 2012-2013 provide further evidence of Appellant's poor choice to ignore or disregard her responsibilities multiple times. Appellant's misconduct here constitutes willful neglect of duties.<sup>4</sup>

Based on all of the above, the District has provided sufficient evidence in the record to support Appellant's dismissal. Accordingly, the following Order is entered:

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<sup>4</sup> The evidence of record establishes the following grounds for dismissal: (1) persistent negligence in the performance of duties; (2) willful neglect of duties; and (3) 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) 24 P.S. §11-1122. In order to uphold Appellant's dismissal, only one of these grounds must be established. *Horton v. Jefferson County-DuBois Area Vocational Technical School*, 630 A.2d 481, 483 (Pa. Cmwlth. 1993). Thus, Appellant's dismissal on the grounds of incompetency need not be addressed.

IN THE OFFICE OF THE SECRETARY OF EDUCATION  
COMMONWEALTH OF PENNSYLVANIA

ELAINE CUTLER

Appellant

v.

BELLEFONTE AREA SCHOOL DISTRICT

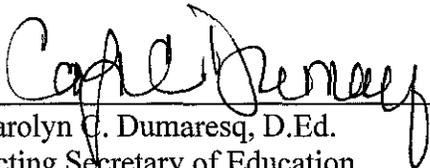
Appellee

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TTA No. 01-13

ORDER

AND NOW, this 4th day of March 2014, it is hereby ordered and decreed that the appeal of Elaine Cutler is denied.

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

Date Mailed: March 4, 2014