

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

RICHARD J. ERDLEN, JR.	:	
Appellant	:	
	:	
v.	:	TTA No. 04-15
	:	
LINCOLN INTERMEDIATE UNIT	:	
NO. 12	:	

OPINION AND ORDER

Richard J. Erdlen, Jr. (Dr. Erdlen) appeals to the Secretary of Education from the decision of the Board of School Directors (Board) of the Lincoln Intermediate Unit No. 12 (LIU) dismissing him from his position as a professional employee with the LIU.

FINDINGS OF FACT

1. Dr. Erdlen is a certified school psychologist who has been employed by the LIU since 1985 and, until his dismissal, had been a psychologist supervisor since 2001. (N.T. p. 310).¹
2. In his supervisory role, Dr. Erdlen’s title was Supervisor of Pupil Personnel, and he reported to the Director of Special Education. (N.T. pp. 325-26; Exh. E-3).²
3. From at least the 1999-2000 school year through the 2013-2014 school year, Dr. Erdlen received satisfactory ratings on his annual performance evaluations. (Exh. E-3).
4. During the time relevant to this matter, Dr. Robin Hamme was the Assistant Director of Special Education, had a supervisory role over Dr. Erdlen, and had authority to issue directives to Dr. Erdlen. (N.T. p. 189).

¹ N.T. refers to Notes of Testimony from the hearings before the Board of Directors on April 23, May 4, or May 13, 2015.

² Exhibits identified with the letter “E” are exhibits introduced into evidence by Dr. Erdlen at the hearings on April 23, May 4, or May 13, 2015.

Eastern York School District Issue

5. On November 14, 2014, Dr. Erdlen contacted Dr. Hamme stating that a building administrator in the Eastern York School District (Eastern York) had contacted an LIU psychologist, Dr. Kenien, about a situation where Eastern York's special education director was changing a child's placement and the administrator was questioning that change. Dr. Erdlen asked Dr. Hamme for her advice about how to support the building administrator and how to direct Dr. Kenien in this matter. (N.T. p. 190).

6. In response to Dr. Erdlen's request for advice on November 14, 2014, Dr. Hamme advised:

a. Dr. Kenien could answer any questions in general terms with regard to special education laws and could refer the building administrator to her chain of command within Eastern York;

b. Since the LIU works directly with Eastern York's director of special education, the building administrator's contact should be with Eastern York's director of special education to get information about why the change was made; it was not appropriate for the LIU to get involved;

c. It was not appropriate for Dr. Kenien to get involved because he did not work directly with the student;

d. The building administrator should not be referred directly to Dr. Hamme or Dr. Bertram, the LIU's Director of Special Education, but should be referred to her own administration within Eastern York. (N.T. pp. 189-192, 208; LIU Exh. 22).³

³ Exhibits identified as "LIU" are exhibits introduced into evidence by the LIU at the hearings on April 23, May 4, or May 13, 2015.

7. Dr. Hamme's advice to Dr. Erdlen was consistent with LIU policies and expectations because the building administrator had the ability to get any of her questions answered within Eastern York; thus, the LIU typically would not get involved. (N.T. p. 193).

8. On November 17, 2014, after Dr. Erdlen learned from Dr. Kenien that the student's placement now had been changed, he discussed the matter with some LIU special education specialists without identifying the specific student or school district, and then sent an email about the matter directly to Eastern York's superintendent, Dr. Pianowski. (N.T. pp. 342-43; LIU Exh. 4).

9. In his email to Dr. Pianowski, Dr. Erdlen stated the child had been demoted with parent approval, but it appeared to be a punishment and he was concerned for the child. He also stated he wanted to provide Dr. Pianowski with a "heads-up" about the legal and liability ramifications to Eastern York, and that she should fact-check the information and consult with Eastern York's solicitor about how a hearing officer would interpret the facts. Finally, Dr. Erdlen stated that, without identifying Eastern York, he spoke to someone who does audits and noted the decision-making process in this matter would likely be castigated in a special education audit. (LIU Exh. 4).

10. On November 17, 2014, Dr. Erdlen received a message from Eastern York's Director of Special Education, Ms. Lamison, asking that he call her about the email he had sent to Dr. Pianowski. When Ms. Lamison spoke to Dr. Erdlen she questioned why Dr. Erdlen had not contacted her first about the matter, and he explained that he wanted someone who could make a quick course correction. (N.T. p. 346).

11. On November 18, 2014, Dr. Erdlen learned the student had been returned to his initial placement, and he also received a call from Dr. Pianowski. Dr. Pianowski stated that she

disagreed with how Dr. Erdlen handled the matter because he should have called Ms. Lamison first and spoken to Dr. Pianowski either directly or in person. Dr. Pianowski also asked him three times who told him about this matter, but he refused to answer and stated that he would not engage himself in the internal workings of another agency. (N.T. pp. 349-50).

12. During the time relevant to this matter, Dr. Bertram was the LIU's Director of Special Education and Dr. Erdlen's direct supervisor. (N.T. 25).

13. On November 19, 2014, Dr. Erdlen told Dr. Bertram about the matter involving the special education student at Eastern York. Dr. Erdlen told Dr. Bertram that:

- a. Dr. Kenien had not seen the student's records and only talked to the building principal;
- b. He had sent an email to Dr. Pianowski and told her to verify the action with the solicitor;
- c. He spoke to Ms. Lamison and asked about the upcoming audit, and when she stated it would only be addressed if the auditors pulled the student's name, Dr. Erdlen stated that if they were sure it was a good decision about the student perhaps they should share his name at the audit;
- d. His contacts with Eastern York had not gone as well as he would have liked, but he did not believe they were contentious. (N.T. pp. 32-35; LIU Exh. 4).

14. Dr. Erdlen did not tell Dr. Bertram that he had any prior conversations about this matter with Dr. Hamme. (N.T. p. 35).

15. On November 19, 2014, after her conversation with Dr. Erdlen, Dr. Bertram received from Ms. Lamison a copy of the email Dr. Erdlen had sent to Dr. Pianowski on November 17, 2014. (LIU Exh. 4). Dr. Bertram found the email to be more pointed than what

Dr. Erdlen had described because in the email he wrote about rescuing the child, and talking with someone who performs audits about how the district likely would be castigated in a special education audit. (N.T. p 36).

16. If a psychologist had a concern about a student who was not an LIU student, the appropriate protocol for bringing the concern to the attention of the district would be a conversation between Dr. Bertram or Dr. Hamme and the psychologist's supervisor. Dr. Bertram or Dr. Hamme would take the concern to the district's director of special education, and if it needed to go further, the district's director of special education would take it to the superintendent. (N.T. pp. 37- 38).

17. On November 19, 2014, Dr. Bertram directed Dr. Erdlen to provide her with narratives about the phone conversations he had with Ms. Lamison and Dr. Pianowski within the last ten (10) days. Dr. Bertram had to issue a second directive for the narratives before Dr. Erdlen provided a response, which was a cursory summary of the conversations without specific details. (N.T. pp. 39-41; LIU Exh. 5).

18. Dr. Bertram spoke to Ms. Lamison who stated that she wanted emails to go to her rather than to the superintendent first, and that she was not happy with her conversations with Dr. Erdlen because she felt his tone was condescending and she felt threatened. (N.T. pp. 105-07; LIU Exh. 25). Based on the conversation with Ms. Lamison, Dr. Bertram believed she had "damage control" to address because Eastern York did not trust the professionalism of Dr. Erdlen. (N.T. pp. 42-45).

19. On November 20, 2014, Dr. Erdlen sent an email to Dr. Bertram stating, "Today's not a day to stir waters or reach out. District needs time and space." Dr. Bertram responded that she spoke to Ms. Lamison and would not tell Dr. Zeroth not to speak to Dr. Pianowski, to which

Dr. Erdlen responded, “Lesson learned.” Dr. Bertram understood this comment as Dr. Erdlen acknowledging that he did something incorrect in the eyes of the LIU, and that he thought the matter should be over. (N.T. pp. 45-47; LIU Exh. 7).

20. Although there was not a documented chain of command that prohibited a supervisor from talking to a district’s administration if there was a concern about a district student, Dr. Bertram believed the process by which Dr. Erdlen notified Eastern York about the student issue did not follow protocol. Dr. Bertram believed past practice was as important as protocol. Past practice was that an issue would be brought to her first, and she never had a supervisor address a superintendent the way Dr. Erdlen addressed Dr. Pianowski. (N.T. pp. 108-09).

21. During the time relevant to this matter, Dr. Zeroth was the Executive Director of the LIU, and under her leadership there was an increased emphasis on accountability, customer relationships both internal and external, and leadership. (N.T. p. 249).

22. After Dr. Bertram told Dr. Zeroth that Dr. Erdlen had contacted Dr. Pianowski and what he had said, Dr. Zeroth contacted Dr. Pianowski. Dr. Pianowski stated that she believed Dr. Erdlen’s actions were not appropriate, that he was condescending and defensive on the phone, and that his comment about auditors was threatening. (N.T. p. 254; LIU Exh. 29).

23. On November 20, 2014, Dr. Zeroth emailed Dr. Erdlen telling him to cooperate with the district and answer their questions about the student situation, and not to discuss the matter with anyone other than senior leadership at Eastern York and at the LIU. (N.T. 254; LIU Exh. 27).

24. In response to Dr. Zeroth's email, Dr. Erdlen stated he could assist Eastern York with its school improvement. He also stated that the Eastern York student's demotion had been rescinded, and the case was closed. (N.T. p. 255; LIU Exh. 27).

25. Dr. Zeroth responded to Dr. Erdlen again on November 20, 2014, telling him Eastern York was not seeking his advice or recommendations, but simply wanted to have further discussion with him as it was conducting its own investigation of the matter. She further advised Dr. Erdlen that he was not a consultant or facilitator of team maintenance, and he should not offer to provide that service to Eastern York. (N.T. p. 257; LIU Exh. 27).

26. On November 21, 2014, Dr. Erdlen emailed Dr. Pianowski, without copying or notifying Dr. Zeroth, and stated he understood she wanted further assistance with the student and that they could meet to review ideas for the student. He also recommended others who could help with organizational consultation because he did not get the impression she would want that service from him. Dr. Erdlen testified he sent this email before reading Dr. Zeroth's email from the night before. (N.T. pp. 258, 358; LIU Exhs. 5 & 28).

27. Dr. Pianowski responded to Dr. Erdlen's November 21, 2014 email, and stated she did not know why he sent her the message because she had not asked for his assistance with the student. She stated she had asked for his cooperation with an investigation Eastern York was conducting, and that he should only speak to her, Dr. Becker, or Ms. Lamison about the investigation. (LIU Exh. 5).

28. Dr. Erdlen did not acknowledge or tell Dr. Zeroth about the email he had sent to Dr. Pianowski on November 21, 2014. However, Dr. Pianowski sent a copy of Dr. Erdlen's email to Dr. Zeroth and called Dr. Zeroth stating that she did not understand where he was coming from. (N.T. p. 258).

29. Thereafter, Dr. Zeroth asked Dr. Bertram and Dr. Hamme to start pulling together information about the matter so they could see what was happening. They submitted information to Dr. Zeroth, and she prepared a narrative of the events. (N.T. pp. 259-61; LIU Exh. 29).

30. On December 9, 2014, Dr. Zeroth and Dr. Bertram received a call from Eastern York leadership that Dr. Erdlen was in one of their buildings, and he had not signed in. They were concerned because Dr. Zeroth had assured Eastern York that Dr. Erdlen would not speak to anyone other than Eastern York leadership. Eastern York leadership learned from another principal that Dr. Erdlen was going to that building to talk to the building administrator. Both buildings were those related to the student situation. (N.T. pp. 264-65).

31. Dr. Zeroth emailed Dr. Erdlen on December 9, 2014, and stated he was in violation of directives from her and Dr. Pianowski because he visited the Eastern York middle school principal. She directed that from that point forward he was not to visit anyone in Eastern York and he was not to communicate with any Eastern York or LIU staff assigned to Eastern York or to provide services to Eastern York without first receiving approval from Dr. Bertram. (N.T. p. 265; LIU Exh. 30).

32. Dr. Erdlen's job description provides that he is to meet with district principals to discuss the role and function of the LIU psychologists. (N.T. p. 363; Exh. E-3). Dr. Erdlen testified that on December 9, 2014, he had gone to Eastern York middle school to talk to the principal about a new psychologist for the middle school since Dr. Kenien was being moved from that school. (N.T. p. 363).

Debriefing Meeting Regarding the Eastern York Matter

33. On December 10, 2014, Dr. Bertram emailed Dr. Erdlen that she and Ms. Greth, the Director of Human Resources, wanted to meet with him on December 15, 2014, to debrief about the Eastern York matter. (N.T. pp. 61; LIU Exh. 14).

34. Dr. Zeroth had asked Ms. Greth to conduct an investigation because of Dr. Erdlen's behavior, including his disregard of directives given to him. (N.T. p. 221).

35. At the beginning of the meeting Dr. Erdlen started discussing another matter, was working on his laptop, avoiding eye contact, and ignoring Dr. Bertram and Ms. Greth. (N.T. p. 225; LIU Exh. 15).

36. Dr. Erdlen did not say he wanted to use his laptop to take notes, and he was told to close the laptop because Dr. Bertram and Ms. Greth needed him to be focused. Ms. Greth told Dr. Erdlen that, if he wanted to have meeting minutes, she would share her notes with him because she was the designated note taker. (N.T. p. 223; LIU Exh. 15).

37. During the meeting, when Dr. Erdlen asked if he could have an attorney present, he was told there was no need for an attorney because they were in the initial stages of an investigation, they were not making accusations, and they were not imposing discipline. In this type of meeting, it was the LIU's standard procedure that an attorney not be present. (N.T. p. 225; LIU Exh. 15).

38. During the meeting, Dr. Erdlen was defensive, confrontational, did not want to answer the questions he was asked, and continued to divert the meeting to other topics. (N.T. pp. 63, 223). The questions concerned issues such as Dr. Erdlen's self-interjection into the Eastern York matter, whether he thought his actions adhered to the Code of Professional Conduct, and whether his actions reflected role model behavior of a leader. He was also advised that he was

no longer invited to attend the meeting they were having with Dr. Kenien on Friday. (LIU Exh. 15).

39. As the Director of Human Services, Ms. Greth has authority to provide directives to Dr. Erdlen. (N.T. p. 220).

40. At the conclusion of the meeting, Dr. Erdlen understood the LIU would continue its investigation. (N.T. p. 382).

41. After the meeting, Ms. Greth sent Dr. Erdlen an email directing he not speak to anyone regarding the issues they discussed and to advise Ms. Greth immediately if he had already done so. This directive was emailed to Dr. Erdlen because as an ongoing personnel issue, the LIU wanted to gather the most accurate information, protect everyone involved in the process, and keep the investigation from being compromised. (N.T. pp. 224, 298-301; LIU Exh. 24).

42. Dr. Erdlen responded to Ms. Greth's email approximately three and one-half (3 ½) hours later stating that he had "already done so." Ms. Greth replied and directed he tell her who he spoke to and about what, and she reiterated her directive that he was not to have any other communication with anyone until further notice. Dr. Erdlen confirmed her email and stated that he would review her inquiry and respond before the week was out; but he never provided the information he was directed to provide. (N.T. pp. 226-28; LIU Exh. 24).

Survey and PowerPoint Presentation

43. At a regularly scheduled meeting of school psychologists on December 17, 2014, attended by Dr. Bertram and Dr. Hamme, Dr. Erdlen provided psychologists with a five (5) question survey for them to complete. (N.T. pp. 66-67, 194-95).

44. The survey asked: (1) Do you feel supported by the psychology supervisor, special education director, executive director; (2) What activities do you feel expressed support for school psychology; (3) Whether you would feel supported if you could invite your supervisor to a HR fact-finding meeting to review your work performance; (4) Whether the psychology supervisor is a poor model for the practice of school psychology; (5) Whether you have known the psychology supervisor to violate professional ethics? (LIU Exh. 17).

45. The survey pertained to issues addressed in the December 15, 2014 meeting with Dr. Bertram and Ms. Greth, which Dr. Erdlen had been directed not to discuss. Dr. Erdlen acknowledged that the questions on the survey pertained to issues raised by Dr. Bertram and Ms. Greth in the December 15, 2014 meeting. (N.T. pp. 67-68, 228-29, 372-73).

46. After consultation with Ms. Greth and Dr. Nace, Assistant Executive Director, about the survey, Dr. Bertram told Dr. Erdlen that he was not allowed to share the survey with the psychologists. When told of this decision, Dr. Erdlen asked Dr. Bertram “on whose authority?” Dr. Erdlen appeared indignant that they would take this action, and he then announced to the room that he was not allowed to share the survey and that Dr. Bertram and Dr. Hamme would collect the survey from them, which they did. (N.T. pp. 70-71).

47. At the December 17, 2014 school psychologists meeting, Dr. Erdlen presented a PowerPoint presentation that had a strong parallel to the Eastern York matter, and indirectly referenced and presented facts identical to those involved in the Eastern York matter. (N.T. pp. 72, 199-200, 214-15; LIU Exh. 18).

48. The first slide of the PowerPoint presentation stated: “This is a LIU PowerPoint, and don’t let anyone tell you otherwise.” Dr. Hamme perceived this to be a reference to the fact

that the presentation was not on the LIU-branded PowerPoint template that was supposed to be used. (N.T. p. 196).

49. Dr. Erdlen admitted he chose to make his presentation about child advocacy because of the timeliness of the Eastern York matter. Dr. Erdlen believed it was important to emphasize that advocacy was an important role for school psychology, it was important how to do it to meet ethical guidelines without causing greater conflict, and there were risks if people did not agree with you. (N.T. pp. 369-70).

50. Dr. Erdlen admitted that he previously had discussed the Eastern York matter at regional meetings of school psychologists without identifying the student. (N.T. pp. 427-28). Despite Dr. Erdlen initially stating at the PowerPoint presentation that it was a hypothetical situation, Dr. Hamme could identify it as the Eastern York matter and she observed that there were questioning looks among psychologists, which caused her to believe others also identified the situation. Dr. Bertram believed it was obvious by the questions being asked that not everyone in the room believed it to be hypothetical. Toward the end of the presentation, Dr. Erdlen shared that it was an actual situation. (N.T. pp. 73, 77, 197, 200).

51. Although Dr. Erdlen had been told that how he handled the Eastern York matter was not supported by the LIU and not appreciated by Eastern York, his PowerPoint presentation looked like a training tool to teach the school psychologists to follow that same path. The PowerPoint presentation was very biased and was nudging the school psychologists into his point of view. (N.T. pp. 73, 77; LIU Exh. 19).

52. On a slide in the PowerPoint titled “Lessons Learned” Dr. Erdlen stated: “Don’t be disappointed because decision-makers don’t have your ethical code or professional training. They may catch up.” Dr. Hamme interpreted this comment to be another example of Dr. Erdlen

trying to create conflict between the staff and administration of the LIU. (N.T. pp. 202-03; LIU Exh. 18).

53. Two slides toward the end of the PowerPoint presentation were entitled implications, and were implications for the executive director and for the special education director. However, Dr. Erdlen flipped through those slides and stated that for the sake of time they were not going to review them. (N.T. p. 76).

54. At the end of the psychologists' meeting on December 17, 2014, Dr. Bertram and Ms. Greth met with Dr. Erdlen to talk about the survey and the PowerPoint presentation. Dr. Erdlen was directed two or three times to provide a copy of the PowerPoint presentation. Although he had his laptop with him, he refused to provide a copy at that time, and stated he would send a copy to Ms. Greth before he left for the day. (N.T. pp. 78-79, 231-32).

55. Dr. Erdlen was defensive and confrontational at the December 17 meeting. (N.T. pp. 78, 231).

56. Dr. Erdlen provided a copy of the PowerPoint presentation before he left for the day on December 17, 2014, but changes had been made and some slides had been removed. (N.T. pp. 80-82, 232).

57. Dr. Erdlen admitted he removed slides from the PowerPoint presentation he provided to the LIU because they were not presented at the meeting. Dr. Erdlen testified that, after receiving a letter placing him on administrative leave, he was not in a very good mood so he was protecting his intellectual property because he had developed the presentation at home and the slides he removed were not presented or shared with others. (N.T. pp. 407-08).

58. Dr. Erdlen did not see a conflict between his statement at the beginning of the PowerPoint presentation that "this is a LIU PowerPoint" and his testimony at the May 13, 2015

hearing before the Board that he was protecting his intellectual property by removing some slides from the PowerPoint. (N.T. 410).

59. The LIU's Administrative Compensation Plan does not state that if an employee works on material at home after hours that it is the employee's intellectual property rather than the LIU's intellectual property. (N.T. 409; Jt. Exh. 4).

Paid Administrative Leave

60. At the December 17, 2014 meeting with Dr. Erdlen, Dr. Bertram read and gave Dr. Erdlen a letter that stated allegations of unprofessional behavior had been reported to her office and, as a result, he was being placed on paid administrative leave. Dr. Erdlen refused to sign the letter to evidence he had received it. (N.T. p. 81; Jt. Exh. 5).⁴ Dr. Erdlen was directed that while on paid administrative leave he was not to enter onto the property of the LIU or of any school district client, and was not to contact any LIU employee or LIU client for any reason by any means of communication. (Jt. Exh. 5).

61. The LIU administration believed Dr. Erdlen's behavior was spiraling and paid administrative leave was necessary so the LIU could conduct a clear investigation and review information without needing to address continual issues concerning Dr. Erdlen that were interfering with the investigation. (N.T. pp. 79-80, 230-231).

62. The December 17, 2014 letter to Dr. Erdlen advised he would be contacted to have the accusations against him shared and to give him the opportunity to respond, explain his side of the events, and ask any questions. However, Dr. Erdlen was not contacted thereafter because the following week was Christmas week, and by the following week the LIU had

⁴ Exhibits identified as "Jt. Exh." are exhibits introduced into evidence as Joint Exhibits at the hearings on April 23, May 4, or May 13, 2015.

received communication from an attorney representing Dr. Erdlen. (N.T. pp. 233, 419-20; Jt. Exh. 5).

63. By letter dated December 18, 2014, Dr. Bertram notified Dr. Erdlen that the LIU was able to determine that modifications had been made to the PowerPoint presentation that he provided to the LIU on December 17, 2014. Dr. Erdlen was directed to do the following by December 22, 2014:

a. Provide a copy of the exact and original PowerPoint presentation that did not have any slides omitted;

b. Comply with Ms. Greth's directive that he identify to whom he spoke after the December 15, 2014 meeting and what was shared;

c. Sign the December 17, 2014 letter notifying him of his paid administrative leave indicating that he had received it;

d. Not have discussions with anyone regarding any aspect of this information. (N.T. pp. 80-82; LIU Exh. 20).

64. After Dr. Erdlen was placed on paid administrative leave, Ms. Greth continued the investigation of the Eastern York matter and Dr. Erdlen's subsequent behavior. (N.T. pp. 233, 269).

65. Ms. Greth spoke to Ms. Lamison and also asked that she provide a statement regarding the Eastern York matter of November 17, 2014. Ms. Lamison stated in an email to Ms. Greth that Dr. Erdlen's tone of voice was abrupt and that he acted as though he knew all the facts of the case and would not listen to Ms. Lamison. Dr. Erdlen had stated to Ms. Lamison that if she thought she was right she should pull the student's file for the special education audit that was to be done, and Ms. Lamison believed he had no right to say that. Dr. Erdlen also stated that

he had spoken to people who conduct audits, and this information not only concerned Ms. Lamison, but she believed it to be threatening. (N.T. p. 234; LIU Exh. 25).

66. Ms. Greth also received an email from Dr. Pianowski regarding her concern in reference to Dr. Erdlen's behavior. Dr. Pianowski stated she told Dr. Erdlen it was not appropriate for him to email her accusing Eastern York of things he had no business being involved in or discussing with others. She told Dr. Erdlen she did not appreciate his course of action and asked why he had not contacted Ms. Lamison. Dr. Erdlen stated to her that if she believed Eastern York had done the right thing she should nominate the case to be reviewed in Eastern York's special education audit. When Dr. Pianowski responded that it sounded as though he was reporting Eastern York, Dr. Erdlen stated: "You are going to be in a pickle either way." Dr. Erdlen refused to tell Dr. Pianowski where he gathered his information to make the accusations. (LIU Exh. 26).

67. The LIU obtained a cell phone utilization report for Dr. Erdlen's LIU-issued cell phone to determine whether Dr. Erdlen had any phone calls or text messages with LIU employees while he was on paid administrative leave, which would be in violation of the directive not to communicate with LIU employees. (N.T. pp. 86-87, 236; LIU Exh. 21).

68. The cell phone utilization report captured the time period between December 26, 2014 and January 7, 2015, and showed that Dr. Erdlen had phone calls and/or text messages with four (4) LIU employees, including a sixty (60) minute phone call and six (6) text messages with Dr. Kenien. (N.T. pp 86-87, 236-37; LIU Exh. 21).

Inappropriate Out-of-Office Email Response

69. Dr. Zeroth directed Dr. Erdlen to cooperate with Eastern York in its internal investigation, but Dr. Erdlen was absent the following Monday through Wednesday, November

24- 26. On November 25, the LIU Director of Technology noted an automatic out-of-office email response on Dr. Erdlen's email, which stated: "I am under the weather and will be out of the office for a few days. I'll return to fight for truth, justice and the American way once the costume returns from the dry cleaner." Dr. Zeroth believed that in the context of what was happening it was clear what the message was in Dr. Erdlen's email response. (N.T. pp. 51, 276; LIU Exh. 9).

70. On November 25, 2014, Dr. Bertram emailed Dr. Erdlen advising that the out-of-office response was inappropriate, unprofessional, and did not align with the guidelines the Director of Technology previously had provided to staff. Dr. Bertram directed that the out-of-office response be removed immediately and replaced with one in compliance with guidelines. The out-of-office response was removed a little over 24 hours later. (N.T. pp. 51, 53; LIU Exh. 10).

71. Dr. Erdlen admits his out-of-office response was not what the technology department suggested, but stated that he was not feeling well and that it was an impulsive thing to do. (N.T. pp. 365-66).

Inappropriate Messages to All Psychologists

72. On December 1, 2014, Dr. Erdlen forwarded to all LIU psychologists the November 25, 2014 email Dr. Bertram sent to him telling him his out-of-office response was unprofessional, and stated that Dr. Bertram caught his error before any damage was done. (N.T. p. 52; LIU Exh. 10).

73. Dr. Bertram believed Dr. Erdlen's forwarding of the November 25, 2014 email to all psychologists was disrespectful and undermined her authority. (N.T. p. 56). Dr. Zeroth

believed that Dr. Erdlen's forwarding of Dr. Bertram's email to all psychologists was "kind of in my mind really it's almost like showing that mom and dad are fighting." (N.T. p. 276).

74. On December 3, 2014, Dr. Erdlen sent an email to all psychologists, in which he stated Dr. Bertram had asked that he send to her and Dr. Hamme the schedule for the professional development meetings and regional meetings for the remainder of the year. He further stated: "It's not certain whether they'll attend or not, but we certainly have their support." (N.T. p. 57; LIU Exh. 12).

75. Dr. Erdlen testified he sent the December 3, 2014 email to all psychologists as a courtesy because Dr. Bertram was not a regular attendee at a school psychology professional development day. (N.T. p. 368).

76. The two emails Dr. Erdlen sent were not typical for him or any supervisors to send to staff, and he was sharing information with staff that he had no reason to share. Dr. Bertram received feedback from some psychologists asking why they were getting these emails, that they knew something was going on, but did not know what it was. Dr. Erdlen was creating confusion and some anxiety in the psychologists, and Dr. Bertram was concerned about the division Dr. Erdlen was creating between the psychologists and the administration, and she was losing trust in his professional judgment. (N.T. pp. 57-59).

77. On December 3, 2014, Dr. Bertram directed Dr. Erdlen not to forward any emails from her or Dr. Hamme without their explicit permission, and that he was to send email drafts to her before he sent blanket emails to his staff regarding any program or process information. Dr. Bertram further directed that Dr. Erdlen was to copy her on all emails he sent regardless of the topic and to whom they were sent, and that disregard of this directive could result in disciplinary action. (N.T. p. 59; LIU Exh. 13).

78. Dr. Erdlen did not comply with Dr. Bertram's directives because he continued to send some emails without copying her on the emails. (N.T. p. 60).

Failure to Provide Leadership Framework Reflection

79. On November 3, 2014, Dr. Erdlen asked Dr. Bertram if he and another supervisor could miss the supervisors' meeting scheduled for December 2, 2014, in order to attend a BrainSTEPS update, which was a professional development program. (N.T. p. 28; LIU Exh. 1).

80. Dr. Bertram approved Dr. Erdlen's request to miss the supervisors' meeting, but with the directive that he and the other supervisor complete their Personal Leadership Framework Reflection beforehand. (N.T. p. 29; LIU Exh. 1).

81. On December 2, 2014, Dr. Bertram emailed Dr. Erdlen that he had failed to provide her with his Personal Leadership Framework Reflection as she had directed. Dr. Erdlen admits he did not provide the Personal Leadership Framework Reflection to Dr. Bertram, and he did not provide Dr. Bertram with any reason for not providing it to her. (N.T. pp. 30-32, 396; LIU Exh. 2).

Failure to Provide Materials for Advisory Council Meeting

82. Dr. Bertram and Dr. Erdlen developed a tier system for psychologists certified to supervise district psychologists, and Dr. Bertram directed Dr. Erdlen to put together a presentation to share the tier system with the advisory council at the December 9, 2014 meeting. (N.T. pp. 48-49).

83. Supervisors are required to submit presentations to Dr. Bertram's administrative assistant in advance of advisory council meetings, and on November 28, 2014, Dr. Bertram directed Dr. Erdlen to send the presentation to her administrative assistant so it could be added to "moodle" for the meeting. (N.T. p. 49; LIU Exh. 8).

84. Dr. Erdlen failed to provide a copy of the presentation to Dr. Bertram's administrative assistant as of December 8, 2014. Dr. Bertram's administrative assistant left a message for Dr. Erdlen asking if he was prepared to make the presentation to the advisory council, but she received no response as of December 9, 2014, which was the day of the advisory council meeting. Dr. Erdlen never provided Dr. Bertram's office with a copy of the presentation. (N.T. pp. 48-50; LIU Exh. 8).

Proceedings to Dismiss Dr. Erdlen

85. On January 15, 2015, Dr. Zeroth sent a Notice of Hearing/Statement of Charges to Dr. Erdlen notifying him that the LIU administration was recommending to the Board that he be dismissed from his employment with the LIU, and that the Board would conduct a hearing on January 22, 2015, to determine whether he should be dismissed. Dr. Zeroth stated that the recommendation was based on persistent negligence in the performance of duties and the willful neglect of duties and violation of school laws, as summarized by the LIU's counsel in a letter to Dr. Erdlen's counsel. (Jt. Exh. 1).

86. By letter dated January 15, 2015, the LIU's counsel wrote to Dr. Erdlen's counsel in response to a letter Dr. Erdlen's counsel had sent to Dr. Bertram on December 31, 2014. The LIU counsel responded to allegations in the letter that had been sent to Dr. Bertram, and advised that the LIU intended to recommend that Dr. Erdlen be dismissed from employment with the LIU. LIU counsel summarized the bases for the recommendation, and included a copy of the Notice of Hearing/Statement of Charges. (Jt. Exh. 6).

87. The Board held hearings regarding the recommendation to dismiss Dr. Erdlen on April 23, May 4, and May 13, 2015.

88. On September 1, 2015, the Board voted to dismiss Dr. Erdlen from employment with the LIU, effective September 1, 2015.

89. On October 1, 2015, the Secretary of Education received a Petition for Appeal from Dr. Erdlen appealing the decision of the Board to dismiss him from employment with the LIU.

90. On October 6, 2015, the Secretary of Education appointed a hearing officer to this matter, and a hearing was held before the hearing officer on October 29, 2015.

DISCUSSION

Dr. Erdlen's dismissal by the Board 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 Dr. Erdlen 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. Cmwlt. 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. Cmwlt. 1995), *appeal denied* 675 A.2d 1253 (Pa. 1996). In order to uphold Dr. Erdlen'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. Cmwlt. 1993).

After hearing, and a thorough review of the record, I find there is sufficient evidence to sustain the Board's dismissal of Dr. Erdlen.

A. Persistent and Willful Violation of or Failure to Comply With School Laws, Including Official Directives and Established Policy of the Board of Directors

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). Failing to comply with the directives of a supervisor constitutes conduct that has been deemed to be a violation of the school laws of the Commonwealth, and even simple requests of supervisors, if reasonable, are considered to be school laws for dismissal purposes. *Harris v. Secretary of Education*, 372 A.2d 953 (Pa. Cmwlth. 1977); *Spano v. School District of Brentwood*, 316 A.2d 1652 (Pa. Cmwlth. 1974); *Johnson v. United School District*, 191 A.2d 897 (Pa. Super. 1963); *Lenker v. East Pennsboro School District*, TTA 10-90 (1995).

The record evidences that beginning in November 2014, and continuing through January 2015, when the LIU administration recommended dismissal, there were numerous occasions when Dr. Erdlen violated or failed to comply with official directives of his supervisors. Therefore, the Board's dismissal of Dr. Erdlen on the ground of persistent and willful violation of or failure to comply with school laws, including official directives, is affirmed.

1. *Eastern York School District Issue*

On November 14, 2014, Dr. Erdlen discussed with Dr. Hamme a situation in Eastern York regarding a student who was not an LIU student. Although an Eastern York building principal told the LIU psychologist, Dr. Kenien, she thought the student's placement was not proper, neither Dr. Erdlen nor Dr. Kenien had reviewed the student's file, or had any direct knowledge of the student or the student's placement. Dr. Hamme advised Dr. Erdlen that it would not be appropriate for the LIU to get involved in Eastern York's internal situation, and directed Dr. Erdlen to advise Dr. Kenien to tell the Eastern York principal to address the matter with Eastern York's director of special education or pursue proper channels within Eastern York's administration. (N.T. pp. 189-192, 208; LIU Exh. 22).

Notwithstanding the directive from Dr. Hamme that the LIU should not be involved in this matter, on November 17, 2014, Dr. Erdlen directly emailed Eastern York's Superintendent, Dr. Pianowski, regarding this matter. In the email, Dr. Erdlen provided information about the situation, although he had no personal knowledge the information was accurate, and advised Dr. Pianowski to conduct a fact-check before deciding on a course of action. Dr. Erdlen also provided his opinion that this action suggested a disciplinary procedure, or punishment, and that he was concerned about the student. Dr. Erdlen further stated that he spoke to someone who conducts special education audits and that Eastern York's decision-making process would likely be castigated in a special education audit, so he wanted to give Dr. Pianowski a heads-up about the legal and liability ramifications. (LIU Exh. 4).

On November 17, 2014, Eastern York's Director of Special Education, Ms. Lamison, contacted Dr. Erdlen, and asked why he had not contacted her about the student rather than directly emailing Dr. Pianowski. (N.T. p. 346). Ms. Lamison was not happy with her

conversation with Dr. Erdlen as she felt he had been condescending, and she felt threatened and concerned when he referenced Eastern York's special education audit and stated that he had spoken to people who perform audits. (N.T. pp. 105, 234; LIU Exh. 25). On November 18, 2014, Dr. Pianowski also spoke to Dr. Erdlen and expressed her disagreement with how he had handled the matter and that it was inappropriate for him to send her an email accusing Eastern York of things in which he had no business being involved. Dr. Pianowski also stated Dr. Erdlen should have contacted Ms. Lamison rather than sending Dr. Pianowski an accusatory email. His reference to the special education audit made Dr. Pianowski believe he was reporting Eastern York. However, when Dr. Pianowski asked where he had obtained this information about the student, he refused to answer, and stated he did not have any business answering, and that Eastern York had an internal problem. (N.T. pp. 50; LIU Exh. 26).

On November 19, 2014, Dr. Erdlen informed Dr. Bertram, his direct supervisor, about the Eastern York matter and his contacts with Ms. Lamison and Dr. Pianowski. Dr. Erdlen did not tell Dr. Bertram that he previously had spoken to Dr. Hamme, and that she had directed that the LIU not get involved in the Eastern York matter. Although he said his contacts with Eastern York had not gone as well as he would have liked, he said he did not believe they were contentious. (N.T. pp. 32-35; LIU Exh. 3). However, when Dr. Bertram received from Ms. Lamison a copy of the email Dr. Erdlen had sent to Dr. Pianowski, Dr. Bertram found it to be more pointed than what Dr. Erdlen had described to her, particularly because he had written in the email that he had spoken to an auditor and that the district likely would be castigated in a special education audit. (N.T. p. 36; LIU Exh. 4). Dr. Bertram spoke to Ms. Lamison who told Dr. Bertram that Dr. Erdlen had been condescending, and she felt threatened by his reference to the special education audit and that he had spoken to auditors. (N.T. pp. 44, 105; LIU Exh. 25).

Protocol and past practice at the LIU directed that if a psychologist had an issue about a student who was not an LIU student, such as the Eastern York student, the psychologist would bring the matter to Dr. Bertram or Dr. Hamme, and the psychologist's supervisor. Dr. Bertram or Dr. Hamme would contact the district's director of special education about the matter. (N.T. pp. 37-38). Dr. Bertram had never had a supervisor address a superintendent the way Dr. Erdlen addressed Dr. Pianowski, and Dr. Bertram believed she had to address damage control because now Eastern York did not trust Dr. Erdlen's professionalism. (N.T. pp. 44-45, 108).

Dr. Bertram directed Dr. Erdlen to provide her with narratives of his phone conversations with Ms. Lamison and Dr. Pianowski, but he did not respond until a second directive was issued. However, the narratives Dr. Erdlen provided were simply a cursory summary of the conversations without any significant detail. (N.T. pp. 40-41; LIU Exh. 5).

On November 20, 2014, after having been told of the situation with Eastern York, and having conversations with Dr. Pianowski, Dr. Zeroth, the LIU Executive Director, directed Dr. Erdlen to cooperate with Eastern York's internal investigation by answering its questions, and to speak only with senior leadership at Eastern York and at the LIU. (N.T. p. 254; LIU Exh. 27). Later that night, in response to Dr. Erdlen's email in which he stated that he could assist Eastern York in its school improvement, Dr. Zeroth further directed that Dr. Erdlen not offer to provide consultant services to Eastern York because Eastern York was not seeking his advice or recommendations about this matter. (N.T. p. 257; LIU Exh. 27). Dr. Erdlen failed to comply with Dr. Zeroth's directive, and the next morning, November 21, he sent an email to Dr. Pianowski stating they could meet to review ideas for the student, and that he was recommending others that could help with organizational consultation since he did not think she would want that service from him. (N.T. pp. 258, 358; LIU Exhs. 5 & 28). Dr. Erdlen testified that he sent this

email to Dr. Pianowski before he had read Dr. Zeroth's email that directed him not to offer consultant services to Eastern York. (N.T. p. 358). However, Dr. Erdlen's statement in the email to Dr. Pianowski, that he did not think she would want consultation services from him, undermines his testimony that he did not read Dr. Zeroth's email until after he sent the email.

In response, Dr. Pianowski advised Dr. Erdlen that she was not seeking his assistance with the student, but only wanted his cooperation with Eastern York's investigation. She further directed that Dr. Erdlen should speak only to Dr. Becker, Ms. Lamison or herself about the investigation. (LIU Exh. 5). When Dr. Pianowski advised Dr. Zeroth about this email from Dr. Erdlen, Dr. Zeroth directed Dr. Bertram and Dr. Hamme to gather information about the matter so they could determine what was happening because Dr. Erdlen was not complying with his supervisors' directives. (N.T. pp. 258-61; LIU Exh. 29).

On December 9, 2014, Eastern York leadership called Dr. Zeroth and Dr. Bertram because Dr. Erdlen was at one of the district's buildings, had not signed in at the building, and Eastern York had been assured that Dr. Erdlen would not speak to anyone except Eastern York leadership, which did not include the middle school principal. In addition, Eastern York leadership learned that Dr. Erdlen planned to talk to an administrator at another building. Both buildings were those related to the student situation in which Dr. Erdlen had interjected himself. (N.T. pp. 264-65). Dr. Erdlen's visit to the middle school and his planned visit to the elementary school after he had been told to stay out of the Eastern York student matter obviously raised suspicion and created concern with Eastern York. When learning of Dr. Erdlen's actions, Dr. Zeroth advised Dr. Erdlen that he was in violation of directives from her and Dr. Pianowski because he had visited the Eastern York middle school principal. Dr. Zeroth directed that from that point forward Dr. Erdlen was not to visit anyone in Eastern York or communicate with any

Eastern York employee or LIU employee providing services to Eastern York unless he first received Dr. Bertram's approval. (N.T. p. 265; LIU Exh. 30).

Dr. Erdlen testified he had gone to the Eastern York middle school on December 9 to talk to the principal about a new psychologist. (N.T. p. 363). Although Dr. Erdlen's job description provides that he is to meet with district principals about the role and function of LIU psychologists (Exh. E-3), Dr. Erdlen had been directed not to speak to anyone other than the Eastern York leadership. (LIU Exh. 27).

In summary, between November 14, 2014 and December 9, 2014, Dr. Erdlen failed to comply with numerous directives of his supervisors regarding the Eastern York matter. Dr. Hamme's directive not to involve the LIU in the Eastern York matter; Dr. Bertram's directive to provide narratives about his conversations with Dr. Pianowski and Ms. Lamison, and when he did, he only provided a cursory summary with no significant detail; Dr. Zeroth's directive that he cooperate with Eastern York's internal investigation; Dr. Zeroth's directive that he speak only with senior leadership at Eastern York and the LIU about the investigation; and Dr. Zeroth's directive not to offer consultant services to Eastern York.

Dr. Erdlen argues he was advocating for the Eastern York student, and his dismissal was, therefore, not appropriate. However, Dr. Erdlen testified the Eastern York student was returned to the student's original placement on November 18, 2014. (N.T. p. 349). Therefore, even if Dr. Erdlen believed his failure to comply with Dr. Hamme's November 14 directive was justified, there was no justification for his failure to comply with his supervisors' directives thereafter.

2. *Debriefing Meeting Regarding the Eastern York Matter*

On December 10, 2014, Dr. Erdlen was advised that he was to meet with Dr. Bertram and Ms. Greth, the LIU's Director of Human Resources, on December 15, 2014, to debrief about the

Eastern York matter. (N.T. p. 61; LIU Exh. 14). During the meeting Dr. Erdlen asked if he could have an attorney present, but was told this was the initial stage of an investigation, and they were not imposing discipline, so there was no need for an attorney. (N.T. p. 225; LIU Exh. 15). Dr. Erdlen was defensive, confrontational, and did not want to answer questions he was asked. The questions concerned issues such as Dr. Erdlen's interjection of himself into the Eastern York matter, whether he thought his actions adhered to the Code of Professional Conduct, and whether his actions reflected role model behavior of a leader. He was also advised not to attend the meeting they were having with Dr. Kenien on Friday. (N.T. pp. 63, 223; LIU Exh. 15).

Because this was an ongoing personnel issue, after the meeting, Ms. Greth emailed Dr. Erdlen directing that he was not to speak to anyone regarding the issues they had discussed and to let her know if he had done so. (N.T. pp. 224, 298-301; LIU Exh. 24). Approximately three and one-half (3 ½) hours later, he emailed Ms. Greth stating he had "already done so." When she asked to whom he had spoken and about what, Dr. Erdlen stated he would respond to her before the week was out. However, Dr. Erdlen never provided the information he was directed to provide. (N.T. pp. 226-28; LIU Exh. 24). Therefore, Dr. Erdlen failed to comply with Ms. Greth's directive.

3. *Survey and PowerPoint Presentation*

On December 17, 2014, Dr. Bertram and Dr. Hamme attended the regularly scheduled meeting of school psychologists, and learned that Dr. Erdlen had provided the psychologists with a five (5) question survey for them to complete. (N.T. pp. 66-67, 194-95; LIU Exh. 17). On reviewing the survey, Dr. Bertram noted, and Dr. Erdlen acknowledged, that the questions pertained to the issues addressed in the December 15 meeting she and Ms. Greth had with Dr.

Erdlen, which Dr. Erdlen had been directed not to discuss. (N.T. pp. 67-69, 228-29, 372-73).

After being told he could not share the survey with the psychologists, Dr. Erdlen became indignant, questioned Dr. Bertram's authority to take this action, announced to all the psychologists that he was not allowed to share the survey, and that Dr. Bertram and Dr. Hamme would collect the surveys. (N.T. pp. 70-71).

Also at the December 17 meeting of the psychologists, Dr. Erdlen presented a PowerPoint presentation that strongly paralleled the Eastern York matter, and indirectly referenced and presented facts identical to that matter. (N.T. pp. 72, 199-200, 214-15; LIU Exh. 18). Although the presentation was not on the required LIU template, Dr. Erdlen stated at the beginning of the presentation that "this is a LIU PowerPoint, and don't let anyone tell you otherwise." (N.T. p. 196). Dr. Erdlen admitted he chose to make this presentation about child advocacy because of the Eastern York matter. (N.T. pp. 369-70). Dr. Hamme could identify that the presentation was the Eastern York matter, and in her opinion, some psychologists also identified the situation as the Eastern York matter. Dr. Hamme's opinion that some psychologists identified the presentation as the Eastern York matter is reasonable because Dr. Erdlen admitted he previously had discussed the case at regional meetings of the psychologists without identifying the student. (N.T. pp. 73, 197, 200, 427).

By using the Eastern York matter as the basis for his PowerPoint presentation, Dr. Erdlen violated his supervisors' directives not to discuss the Eastern York matter with anyone other than the senior administration at the LIU and at Eastern York. Dr. Erdlen did not specifically identify Eastern York in the PowerPoint presentation, but since he had discussed this matter with psychologists at regional meetings it is reasonable to believe the psychologists knew he was discussing the actual matter in which he had been involved. Additionally, even though Dr.

Erdlen had been told that the LIU did not support how he had handled the Eastern York matter, he was using the PowerPoint as a training tool to teach the psychologists to follow the same path he had followed and was nudging them to his point of view. (N.T. pp. 73, 77; LIU Exh. 19).

On one of the slides in the presentation titled “Lessons Learned”, Dr. Erdlen stated: “Don’t be disappointed because decision-makers don’t have your ethical code or professional training. They may catch up.” Dr. Hamme interpreted this comment to be another example of Dr. Erdlen trying to create conflict between the staff and the administration of the LIU. (N.T. pp. 202-03; LIU Exh. 18). In addition, two slides near the end of the presentation were entitled implications for the executive director and for the special education director, but Dr. Erdlen flipped through them without reviewing them. (N.T. p. 76).

After the December 17 psychologists meeting, Dr. Bertram and Ms. Greth met with Dr. Erdlen to talk about the survey and the PowerPoint presentation. Although Dr. Erdlen had his laptop with him and was directed multiple times to provide a copy of the PowerPoint, he refused to do so at that time and stated he would send a copy before the end of the day. (N.T. pp. 78-79, 231-32). Dr. Erdlen sent a copy of the PowerPoint to Ms. Greth that day, but changes had been made and some slides had been removed (N.T. pp. 80-82, 232); therefore, he failed to comply with the directive to produce a copy of the PowerPoint.

Dr. Erdlen admitted that slides had been removed, and he testified at the Board hearing that he believed he was justified in doing so because they were not presented at the meeting and were his intellectual property. Dr. Erdlen did not see a conflict between his statement at the December 17 psychologists’ meeting that the presentation was a LIU PowerPoint, and his statement at the hearing before the Board that the removed slides were his intellectual property because he developed them at home after work hours. (N.T. pp. 407-410).

Section VI of the LIU's Administrative Compensation Plan is titled "Intellectual Property." Section VI does not state that if an employee works on material at home that it is the employee's intellectual property. (Jt. Exh. 4). In addition, although Dr. Erdlen stated he had developed the PowerPoint at home after work hours, Dr. Erdlen did not state the entire PowerPoint was his intellectual property. There is no evidence demonstrating that Dr. Erdlen created some slides at home versus at his office. I find no basis for Dr. Erdlen's argument that the slides he changed and/or removed were his intellectual property, and therefore, did not need to be provided to the LIU. Additionally, Dr. Erdlen's statement at the beginning of the presentation that the PowerPoint presentation was a LIU PowerPoint undermines his argument that any part of the presentation was his intellectual property. Therefore, as stated above, Dr. Erdlen failed to comply with the directive to provide a copy of the PowerPoint to Ms. Greth.

4. *Paid Administrative Leave*

At the December 17 meeting with Dr. Bertram and Ms. Greth, Dr. Erdlen also was advised that accusations of unprofessional conduct had been made against him and, therefore, he was being placed on paid administrative leave. Dr. Bertram provided Dr. Erdlen with a letter regarding the paid administrative leave, which included the directives not to enter the LIU or district client premises, or contact any LIU employee or LIU client for any reason using any means of communication. The letter further provided that Dr. Erdlen would be contacted for a meeting where the accusations would be shared with him and he would be given an opportunity to respond to them and explain his side of the events. Dr. Erdlen was asked to sign the letter acknowledging its receipt, but he refused to do so because he wanted someone else to read the letter before he signed it. (Jt. Exh. 5).

As a follow-up to the December 17 meeting, Dr. Bertram sent Dr. Erdlen a letter dated December 18, 2014, again directing that Dr. Erdlen provide “the exact and original PowerPoint . . . without any slides omitted . . .” and comply with Ms. Greth’s request that he identify to whom he spoke and what he shared after their meeting on December 15, 2014. The letter further directed that Dr. Erdlen sign the December 17 letter to evidence he received it, and reminded him that he was not to have any discussions with anyone regarding any aspects of this information. (N.T. pp, 80-82; LIU Exh. 20). Dr. Erdlen did not provide the original PowerPoint, did not provide information Ms. Greth had requested on December 15, and did not sign the December 17 letter acknowledging receipt of the letter. Thus, Dr. Erdlen failed to comply with Dr. Bertram’s directives.

After December 17, 2014, Ms. Greth continued to investigate the Eastern York matter and Dr. Erdlen’s subsequent behavior. During the investigation, cell phone utilization records for Dr. Erdlen’s LIU-issued cell phone were reviewed, and they evidenced that he had phone calls and text messages with LIU employees during his paid administrative leave. (N.T. pp. 86-87, 236-37; LIU Exh. 21). These communications were in violation of the directive issued to him by Dr. Bertram.

5. *Inappropriate Out-of-Office Email Response*

As previously stated, Dr. Zeroth directed Dr. Erdlen to cooperate with Eastern York in its investigation. Dr. Erdlen was then absent from work the following Monday-Wednesday, November 24-26. The out-of-office response Dr. Erdlen placed on his email stated: “I am under the weather and will be out of the office for a few days. I’ll return to fight for truth, justice and the American way once the costume returns from the dry cleaner.” (N.T. p. 51; LIU Exh. 9). Although Dr. Erdlen testified that he had not been feeling well and this out-of-office response

was an impulsive act (N.T. pp. 365-66), Dr. Zeroth believed that, in the context of what was happening with the Eastern York matter, it was clear what message Dr. Erdlen was conveying in this response. (N.T. p. 276). Dr. Zeroth did not explain what she believed Dr. Erdlen was conveying, but it is reasonable to interpret Dr. Erdlen's out-of-office message as relating to his actions in the Eastern York matter and that he would continue on what he believed to be a justified crusade when he returned.

Dr. Bertram notified Dr. Erdlen that his out-of-office response was inappropriate, unprofessional, and not in compliance with the LIU guidelines; therefore, he was directed to remove it immediately. (LIU Exh. 10). Dr. Erdlen did not remove the response until over 24 hours later, which was not a timely response to Dr. Bertram's directive. (N.T. pp. 51, 53). Dr. Erdlen admitted during his testimony at the Board hearings that his out-of-office message was not in compliance with guidelines of the LIU's technology department. (N.T. pp. 364-65).

6. *Inappropriate Messages to All Psychologists*

On December 1, 2014, Dr. Erdlen sent to all the LIU psychologists, a copy of Dr. Bertram's email that directed him to remove his inappropriate out-of-office response. (N.T. p. 52; LIU Exh. 10). Dr. Bertram believed the email was undermining her authority, and Zeroth believed that by sending this email to all psychologists, Dr. Erdlen was basically showing that "mom and dad are fighting." (N.T. pp. 56, 276).

On December 3, 2014, Dr. Erdlen sent all psychologists an email advising that Dr. Bertram had asked him to send her and Dr. Hamme the schedule for the professional development and regional meetings for the remainder of the year. Dr. Erdlen stated in his email that he was not certain they would attend, but that the psychologists have their support. (N.T. p. 57; LIU Exh. 12). Dr. Erdlen testified that he sent the December 3 email as a courtesy to the

psychologists since Dr. Bertram was not a regular attendee at their professional development days. (N.T. p. 367-68). Although she did not attend the psychologists' meetings routinely, Dr. Bertram had attended meetings in the past, and she believed this email also was undermining her authority. (N.T. p. 57).

In addition, it was not typical for Dr. Erdlen or other supervisors to send such emails to staff. Dr. Bertram believed Dr. Erdlen was sharing information he had no reason to share, and that it was creating confusion and some anxiety with the psychologists. Some psychologists asked Dr. Bertram why they were getting these emails, they knew something was going on, but did not know what it was. (N.T. pp. 57-58). Because Dr. Bertram believed Dr. Erdlen was creating a division between the psychologists and the administration, she directed Dr. Erdlen not to forward any emails from her or Dr. Hamme without their explicit permission, and directed that Dr. Erdlen send any email drafts to her before sending blanket emails to staff regarding any program or process information. Dr. Bertram further directed that Dr. Erdlen copy her on all emails he was sending regardless of the topic and to whom they were sent. (N.T. pp. 58-59; LIU Exh. 13). Dr. Erdlen failed to comply with Dr. Bertram's directive because after receiving the directive he continued to send some emails to others without copying Dr. Bertram. (N.T. p. 60).

7. *Failure to Provide Leadership Framework Reflection*

On November 2, 2014, Dr. Erdlen asked Dr. Bertram to allow him to miss a supervisors meeting on December 2, 2014, so he could attend a professional development program. Dr. Bertram approved Dr. Erdlen's request with the directive that Dr. Erdlen provide Dr. Bertram with his Personal Leadership Framework Reflection prior to December 2, 2014. (N.T. pp. 28-29; LIU Exh. 1). The Personal Leadership Framework Reflection was part of the evaluation process for the 2014-2015 school year. (N.T. p. 100). Dr. Erdlen admits that he never completed or

submitted his Personal Leadership Framework Reflection to Dr. Bertram. (N.T. p 396; LIU Exh. 2). Thus, Dr. Erdlen failed to comply with Dr. Bertram's directive.

8. *Failure to Provide Materials for Advisory Council Meeting*

Dr. Bertram and Dr. Erdlen developed a tier system for psychologists certified to supervise district psychologists, and Dr. Bertram directed Dr. Erdlen to develop a presentation to share the tier system with the advisory council on December 9, 2014. (N.T. pp. 48-49). Supervisors were required to submit presentations to Dr. Bertram's administrative assistant in advance of an advisory council meeting so they could be added to "moodle" for the meeting. On November 28, 2014, Dr. Bertram directed Dr. Erdlen to provide the presentation to her administrative assistant. (N.T. p. 49; LIU Exh. 8). Even after Dr. Bertram's administrative assistant asked Dr. Erdlen about the presentation, Dr. Erdlen failed to comply with the directive to provide the presentation to Dr. Bertram's administrative assistant. (N.T. pp. 49-50; LIU Exh. 8).

The directives identified above that were issued to Dr. Erdlen were reasonable directives from his supervisors. Dr. Erdlen introduced into evidence at the hearings copies of his professional employee evaluations for school years 1999-2000 through 2013-2014 to show he had received a satisfactory rating each year. However, these evaluations do not negate the fact that during the 2014-2015 school year, Dr. Erdlen persistently failed to comply with reasonable directives of his supervisors, as discussed above. Therefore, Dr. Erdlen's continual failure to comply with directives issued by his supervisors during a two-month period in the 2014-2015 school year supports the Board's dismissal of Dr. Erdlen on the grounds of persistent and willful violation of or failure to comply with school laws, including official directives.

B. Persistent Negligence in the Performance of Duties

The Public School Code does not define persistent negligence. However, negligence is generally defined as “the failure to exercise that care a reasonable person would exercise under the circumstances.” *Lauer v. Millville Area School District*, 657 A.2d 119, 121 (Pa. Cmwlth. 1995). In defining persistent negligence, the Commonwealth Court held that there is not “any willfulness inherent in the charge of persistent negligence,” and the court noted the Pennsylvania Supreme Court approved the following language:

As a general proposition, ‘persistent’ is defined as ‘continuing’ or ‘constant’. In particular application, persistency characterizes a violation of the school laws by a professional employee where the violation occurs either as a series of individual incidences, or as one incident carried on for a substantial period of time.

Id. (quoting *Strinich v. Clairton School District*, 431 A.2d 267, 271 (Pa. 1981)). In addition, the *Lauer* court noted that Commonwealth Court also has stated:

Dismissal for persistent negligence is warranted when a teacher fails to comply with a directive of supervisors *on numerous occasions*. In fact, a single act, *continued for a period of time*, may support dismissal for persistent negligence.

Lauer, 657 A.2d at 122 (quoting *Harrison v. Capital Area Intermediate Unit*, 479 A.2d 62, 64 (Pa. Cmwlth. 1984)). In addition, the same act may be used to support both the charge of willful and persistent violation of school laws and the charge of persistent negligence in the performance of job duties. *McFerren v. Farrell Area School District*, 993 A.2d 344 (Pa. Cmwlth. 2010).

As discussed in the previous section, during November and December 2014, Dr. Erdlen’s supervisors issued reasonable directives to him. However, Dr. Erdlen, on numerous occasions within that two-month period of time, failed to comply with the directives that were issued to him. Therefore, Dr. Erdlen’s conduct of not complying with his supervisors’ directives not only supports his dismissal on the grounds of persistent and willful violation of or failure to comply

with school laws, but also supports his dismissal on the grounds of persistent negligence in the performance of duties.

C. 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. The 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.*

Dr. Erdlen had been directed by Dr. Bertram to provide her with his Personal Leadership Framework Reflection by December 2, 2014. Dr. Bertram directed Dr. Erdlen to develop a presentation for the advisory council regarding the tier system they had developed, and directed him to provide a copy of the presentation to Dr. Bertram’s assistant in advance of the advisory council meeting so they could be added to “moodle” for the meeting. Dr. Erdlen’s failure to comply with either of these directives was an intentional disregard of his job duties, and supports his dismissal on the grounds of willful neglect of duties.

D. Progressive Discipline

Dr. Erdlen argues he was denied procedural due process because the LIU did not follow its progressive discipline policy and because he was not informed of any alleged offense except through the Notice of Charges. The LIU’s Conduct/Disciplinary Procedures, Policy 317, pertaining to administrative employees provides:

The Executive Director or designee shall prepare and promulgate disciplinary rules for violations of Intermediate Unit policies, rules and procedures that provide progressive penalties, including but not limited to verbal warning, written warning, reprimand, suspension, demotion, dismissal, and pursuit of civil and criminal sanctions.

(Jt. Exh. 3). Although Policy 317 states that the Executive Director is to promulgate disciplinary procedures that include progressive penalties, it does not state that an employee cannot be dismissed unless all of the following occur prior to dismissal: verbal warning, written warning, reprimand, suspension, and demotion. Nevertheless, Dr. Erdlen was provided with warnings and reprimands when his supervisors continually advised that his conduct and actions were in violation of their directives. A long-time supervisory employee such as Dr. Erdlen knew or should have known that he was being reprimanded when his supervisors continually advised him that he was violating their directives. By continually violating his supervisors' directives, Dr. Erdlen knew or should have known that, at a minimum, his actions and conduct were willful and persistent violations of his supervisors' directives. In addition, after repeatedly violating his supervisors' directives, Dr. Erdlen was placed on paid administrative leave. Therefore, even to the extent Policy 317 requires that progressive discipline be followed in every employee matter, prior to the LIU recommending his dismissal, Dr. Erdlen received warnings and reprimands about his conduct and then was placed on administrative leave. Dr. Erdlen was not denied procedural due process.

CONCLUSION

The LIU provided sufficient evidence that Dr. Erdlen's conduct constitutes persistent and willful violation of or failure to comply with the school laws of the Commonwealth, persistent negligence in the performance of duties, and willful neglect of duties.

Accordingly, the following Order is entered:

IN THE OFFICE OF THE SECRETARY OF EDUCATION
COMMONWEALTH OF PENNSYLVANIA

RICHARD J. ERDLEN, JR. :
Appellant :
v. : TTA No. 04-15
LINCOLN INTERMEDIATE UNIT :
NO. 12 :

ORDER

AND NOW, this 27th day of July, 2016, it is hereby **ORDERED** that the appeal of Richard J. Erdlen, Jr. is denied, and the decision of the Lincoln Intermediate Unit No. 12 to dismiss Richard J. Erdlen, Jr. from employment with the Lincoln Intermediate Unit No. 12 is **AFFIRMED**.



Pedro A. Rivera
Secretary of Education

Date Mailed: July 27, 2016 termination