

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

STEPHEN T. FURST,	:	
Appellant	:	
	:	
v.	:	Teacher Tenure Appeal
	:	No. 03-13
EASTON AREA SCHOOL DISTRICT	:	
Appellee	:	

OPINION AND ORDER

Stephen T. Furst (“Mr. Furst”) appeals to the Secretary of the Pennsylvania Department of Education (“Secretary”) from the decision of the Board of School Directors (“Board”) of the Easton Area School District (“District”) demoting him from the position of Director of Teaching and Learning K-12 to a middle school principal position.

For the reasons set forth below, the Board’s decision is affirmed.

Findings of Fact

Background

1. Mr. Furst was hired by the District in or about January 1985 as a professional employee and held the position of Director of Teaching and Learning K-12 (Director T/L, K-12) from July 2009 to June 30, 2013.

2. From July 1, 2008 to June 30, 2013, Susan McGinley (Dr. McGinley) was the District’s superintendent. (N.T. p. 299¹; Furst Exh. 9²).

3. In July 2009, Dr. McGinley made changes in the central office administrative team by reorganizing central administrative staff. As part of her reorganization she moved Mr.

¹ N.T. ___ refers to Notes of Testimony regarding testimony provided at the hearings before the Board on July 10, 2013 or August 13, 2013.

² Furst Exh. ___ refers to exhibits admitted into evidence by Mr. Furst at the hearings before the Board on July 10, 2013 or August 13, 2013.

Furst from principal of grades 7-8 to Director T/L, K-12, moved Angela DiVietro (Ms. DiVietro) from Director T/L, K-12 to principal of grades 7-8, moved William Rider (Mr. Rider) from head principal of the high school to Director of the Transition, and eliminated other positions including the Associate Director of Literacy that had been held by Janet Matthews (Mrs. Matthews) who was transferred to a literacy position in grades 7-8. (N.T. pp. 301-08; Furst Exh. 2).

4. Sometime after Dr. McGinley's reorganization, Mr. Rider and Mrs. Matthews retired and, as of the August 13, 2013 hearing, had been members of the District's Board for approximately one and one-half years. (N.T. p. 308).

5. Dr. McGinley's superintendent contract expired June 30, 2013, because the Board did not renew her contract. (N.T. pp. 15-16). Dr. McGinley was upset when her contract was not renewed and believed that Mr. Rider and Mrs. Matthews were not fair with her. (N.T. pp. 371-72). Pursuant to the contract, if it was not renewed, Dr. McGinley was to remain a professional employee of the District in an administrative capacity of the Board's choosing. (Furst Exh. 9).

6. During Dr. McGinley's tenure as superintendent, the assistant superintendent resigned. Dr. McGinley told the Board the new superintendent should pick the new assistant superintendent. However, for the remaining year of her term as superintendent, she asked that the Board provide assistance to Mr. Furst by either hiring an additional director and creating two positions-Director T/L, K-6 and & Director T/L, 7-12, or providing two supervisors under Mr. Furst. (N.T. p. 317).

7. The Board denied Dr. McGinley's request and stated that when a new superintendent was hired, the Board would decide how to proceed. (N.T. p. 318).

Facts Regarding Demotion

8. In May 2013, the Board spoke to John Reinhart (Mr. Reinhart) about becoming the interim Superintendent of the District beginning July 1, 2013. Mr. Reinhart had been a teacher in the District for approximately fourteen years, and then served as an administrator, assistant superintendent and superintendent at the Bangor School District before coming out of retirement to become a high school principal at Bangor. (N.T. pp. 15-16).

9. Mr. Reinhart had the perception that the Board was not pleased with the direction of the District, that the expectation for him was to create a leadership team that would move the District forward, and that he was responsible for building a team in the District that was more cohesive and better able to communicate. (N.T. pp. 20, 25).

10. As the Board encouraged him to do, Mr. Reinhart observed the District Board meetings in May and June 2013, visited the District schools and spoke to various people about the District. (N.T. pp. 16, 21-22). Mr. Reinhart gathered information about people and spoke to people to learn who had been in the District a long time, who had experience in leadership roles, and who seemed to be disconnected with the general concerns that seemed apparent to him in the central office. (N.T. pp. 123-24).

11. Through his observations and discussions, Mr. Reinhart believed there was a leadership crisis at the District as well as a lack of communication between administration, between some individuals in the central office, between the Board and administration, and between the central office and building level administrators. (N.T. pp. 23-24).

12. Mr. Reinhart noted two areas of glaring need organizationally and instructionally. One of his initial considerations was the elimination of the Director T/L, K-12 position and creation of one director of curriculum and instruction position K-6 and another for 7-12. His

other consideration was having one high school principal rather than co-principals, and then moving a principal to the grade 7-8 building as an assistant principal. (N.T. pp. 29-31).

13. Mr. Reinhart consulted mostly with Michael Simonetta (Mr. Simonetta), Chief Operating Officer, and sought his advice about the inner workings of the administration and conferred with him on an administrative restructuring plan. (N.T. pp. 33, 169-71).

14. Mr. Simonetta believed the reason an administrative restructuring was needed was because of the lack of communication throughout the District, with the Board, and among administrative staff, which caused a perception of ineffectiveness. (N.T. p. 173).

15. On June 4, 2013, Mr. Reinhart and Mr. Simonetta provided the Board with a proposal of administrative changes that involved nine position changes and a change in the reporting structure. Central office administration and building principals would now report directly to and be evaluated by Mr. Reinhart. (N.T. pp. 27-28, 31, 37, 59; Exhs.³ 4, 5, & 6).

16. The nine position changes that Mr. Reinhart recommended were not based on anyone's inadequacy in their job but were based mostly on his observation that people were not functioning together as a team and that a mix of personalities and events caused a great deal of toxicity in the central office relationships. (N.T. p 82).

17. Six of the position changes were lateral moves or moves up on the organizational chart and three position changes, including Mr. Furst's, were moves down on the organizational chart. (N.T. p. 88).

18. Mr. Reinhart and Mr. Simonetta's recommendation included moving Mr. Furst from Director T/L, K-12 to principal of grades 7-8, moving Ms. DiVietro to the new position of

³ Exh. ___ refers to exhibits admitted into evidence by the District at the hearings before the Board on July 10, 2013 or August 13, 2013.

Director T/L, 7-12, and moving Robert Steckel (Mr. Steckel) to the new position of Director T/L, K-6. (Exhs. 4 & 5).

19. During his "review" of the District, Ms. DiVietro's and Mr. Steckel's names were brought up frequently to Mr. Reinhart as individuals who had a broad knowledge of the school system, understanding of administration and of changing the direction of curriculum, and established reputations as people who could communicate quickly, act quickly, were willing to move the District forward and were not connected to whatever occurred before Mr. Reinhart arrived. (N.T. p. 31, 123-24).

20. Mr. Reinhart considered the 7-8 principal position appropriate for Mr. Furst because previously he had been a successful principal of grades 7-8. Mr. Reinhart also understood from several individuals that Mr. Furst was perhaps not necessarily very pleased with his role and work as Director T/L, K-12 and that Mr. Furst had written a document that indicated he might want to return to a building level position. (N.T. p. 138).

21. Mr. Simonetta had at least one conversation with Mr. Furst in which Mr. Furst indicated his desire to return to a principal position, which Mr. Furst exhibited during some of the administration budget meetings. (N.T. p. 211). At one central administrative budget meeting, Mr. Furst presented a document that showed proposed changes in staff including the elimination of his position of Director of T/L, K-12 and Mr. Furst returning to a principal position. However, the central administrative team did not move forward with that plan at that time. (N.T. pp. 179, 181; Exh 10).

22. In their discussions, Mr. Simonetta indicated to Mr. Reinhart that it might not be a bad idea for Mr. Furst to return to his previously held position as principal and for Ms. DiVietro to return to her previously held position in central administration. Mr. Simonetta brought the

idea to Mr. Reinhart because, throughout the two years he was at the District, he had heard that Ms. DiVietro was a good employee and successful in her positions as a principal and as Director T/L, K-12. (N.T. pp. 183, 196-97).

23. As Director T/L, K-12, Mr. Furst had overseen teaching and learning from kindergarten to grade 12, supervised the elementary, middle and high schools, and supervised and evaluated 13 principals who reported directly to Mr. Furst. (N.T. pp. 255, 272, 287, 303; Furst Exh. 2). However, the responsibility to supervise and evaluate 13 principals is not a responsibility of either the newly-created positions of Director T/L, K-6 or Director T/L, 7-12. (N.T. p. 292). The job descriptions for Director T/L, K-6 and Director T/L, 7-12, provide that they supervise K-12 staff as assigned in collaboration with the Superintendent. (N.T. p. 296; Furst Exh. 8).

24. Since Mr. Reinhart only became interim Superintendent on July 1, 2013, at the time of his testimony before the Board on July 10, 2013, he testified that he would expect the responsibilities of Director of T/L, K-6 and Director of T/L, 7-12 to change and be altered as time passed. (N.T. p. 150).

25. Mr. Reinhart testified that as of July 10, 2013, he had not necessarily made a determination about other central office staff. He believed the critical piece was splitting the job of Director of T/L, K-12 into two positions and getting two people who would communicate and direct the instruction because the District was in warning status academically. Mr. Reinhart was building his cabinet with two people who were not involved in anything that happened before he came to the District. (N.T. pp. 142-43).

26. Before conferring with Mr. Reinhart and during the time they worked on an administrative restructuring plan, Mr. Simonetta was not instructed by any third party about who to transfer or to do anything with any specific position. (N.T. p. 172).

27. No Board member told Mr. Reinhart to transfer Mr. Furst out of central administration and Mr. Reinhart did not consider his recommendation to transfer Mr. Furst to be disciplinary. (N.T. pp. 35-37).

Facts Regarding Dr. McGinley's Testimony and the Drago Matter

28. In October 2012, Mr. Furst filed a complaint with Dr. McGinley stating, that he saw evidence on his computer that the Director of Technology, Thomas Drago (Mr. Drago), was accessing Mr. Furst's computer. (N.T. p. 329, 332; Furst Exh. 12).

29. Pursuant to District policy, the superintendent was the only individual authorized to access to other employee's computers, and Dr. McGinley had not authorized Mr. Drago to access Mr. Furst's computer. (N.T. p. 331; Furst Exh. 11).

30. Dr. McGinley notified the District's solicitor, Board president, Mr. Simonetta and Mr. Castrovinci, Director of Human Resources, of Mr. Furst's complaint, and the solicitor handled the investigation of the matter. (N.T. p. 332-33).

31. Mr. Simonetta was involved in the investigation of the complaint made by Mr. Furst regarding Mr. Drago. Mr. Drago eventually resigned, and the District investigation ended. (N.T. pp. 238-240).

32. Dr. McGinley understood that the investigation uncovered an inordinate amount of entries into Mr. Furst's computer to access and/or download files from his computer. Although Dr. McGinley asked that the matter be reported to the police, the District did not do so;

however, the police eventually began an investigation and issued a search warrant in the beginning of February 2013. (N.T. pp. 334-35, 341).

33. Dr. McGinley testified that the Board was irate about the police investigation and stated that all administrators needed to be fired. (N.T. pp. 336-37, 341-42).

34. Mr. Simonetta testified that he had been in executive sessions of the Board and heard Board members make critical remarks not only about Mr. Furst but also about other administrators and the administration as a whole. (N.T. pp. 186-87).

35. Dr. McGinley testified that she did not know whether Mr. Reinhart had any information about the Board's attitude towards Mr. Furst when he made his reorganization recommendation. (N.T. p. 374).

36. Dr. McGinley did not discuss the investigation with Mr. Reinhart other than to ask if he was aware of an ongoing investigation. (N.T. p. 343).

37. Mr. Reinhart testified that he did not know any specific information about what occurred regarding Mr. Drago, did not know Mr. Drago or what he did, or that Mr. Furst reported the incident about Mr. Drago. Mr. Reinhart only recalled an article about the inappropriate use of technology. (N.T. pp. 132-36).

38. Mr. Simonetta testified that the investigation regarding Mr. Drago had nothing to do with moving Mr. Furst to a principal position from his position as Director T/L, K-12. (N.T. p. 247).

39. In January 2013, Dr. McGinley saw an administrative restructuring proposal that was discussed among central administration, which showed Dr. McGinley as an assistant principal in the middle school and Mr. Furst remaining as the Director T/L, K-12 with two supervisors working under him. When Dr. McGinley asked who decided that she would be an

assistant principal, several administrators stated that was what the Board wanted. (N.T. pp. 320-21; Furst Exh. 5).

40. On about June 12, 2013, Dr. McGinley learned from Mr. Reinhart and Board president Mr. Fehnel that there was going to be a complete reorganization, which included transferring her to an assistant principal position and Mr. Furst to a principal position on July 1, 2013. (N.T. pp. 312-13).

41. Mr. Reinhart and Mr. Fehnel met with Mr. Furst on June 13, 2013, and they advised Mr. Furst that, as of July 1, 2013, he would be assigned to his former position as the principal of grades 7-8. (N.T. p. 48).

42. Dr. McGinley believed that only she could make personnel decisions or recommendations to the Board while she remained the superintendent until June 30, 2013. (N.T. p. 315).

43. Mr. Reinhart testified that he made his recommendations about position changes prior to July 1, 2013, because after July 1 there were no scheduled board meetings until the end of July. In order to make changes that would be effective after July 1, decisions had to be made in the last several weeks of June 2013. (N.T. p. 98).

Board's Decision and Furst's Appeal

44. On June 18, 2013, the Board voted to effectuate the administrative reorganization plan recommended by Mr. Reinhart, which included moving Mr. Furst from his position as Director T/L, K-12 to a middle school principal position. (Exhs. 1 & 2).

45. Mr. Furst requested a hearing before the Board regarding his demotion. The Board held hearings on July 10, 2013, and August 13, 2013.

46. On November 19, 2013, based on a unanimous vote, the Board issued its adjudication that the Board's demotion of Mr. Furst was lawful and not arbitrary, discriminatory or founded upon improper considerations.

47. On December 19, 2013, Mr. Furst filed a Petition of Appeal of the Board's November 19, 2013 adjudication with former Acting Secretary Dumaresq.

48. On January 10, 2014, the District filed a Motion to Dismiss, and brief in support, alleging that former Acting Secretary Dumaresq lacked jurisdiction to hear Mr. Furst's appeal.

49. Mr. Furst filed a brief in opposition to the District's Motion to Dismiss on January 13, 2014.

50. By Order dated April 16, 2014, former Acting Secretary Dumaresq denied the District's Motion to Dismiss.

51. On June 19, 2014, the parties presented oral argument on the Petition of Appeal before the hearing officer appointed by former Acting Secretary Dumaresq.

Discussion

Legal Standard

Section 1151 of the Public School Code governs matters related to the demotion of a professional employee:

[T]here shall be no demotion of any professional employe either in salary or type of position without the consent of the employe, or, if such consent is not received, then such demotion shall be subject to the right to a hearing before the board of school directors.

24 P.S. § 11-1151.

A demotion occurs when a professional employee is reassigned to a position that has less authority, prestige, or salary. *See Walsh v. Sto-Rox School Dist.*, 532 A.2d 547, 548 (Pa. Cmwlth. 1987). Any rational reason is sufficient to support the demotion of a

professional employee, and a demotion will be overturned only if it is shown that the decision was arbitrary. *Board of Public Education of the School District of Pittsburgh v. Thomas*, 399 A.2d 1148, 1150 (Pa. Cmwlth. 1979). A school district possesses broad discretion in making personnel and administrative decisions that result in demotions, and a school board's decision is presumptively valid. *Id.* at 1149; *Piazza v. Millville Area Sch. Dist.*, 624 A.2d 788, 790 (Pa. Cmwlth. 1993). A district's exercise of discretion in a demotion case should stand unless the demoted employee meets the heavy burden of proving that the demotion was arbitrary or based on discriminatory or improper considerations. *Id.*; *Williams v. Abington Sch. Dist.*, 397 A.2d 1282, 1283 (Pa. Cmwlth. 1979). A demotion is not to be considered arbitrary merely because it does not effectuate a policy in the most effective or efficient manner. *Thomas, supra*, 399 A.2d at 1150.

In determining whether a demoted employee has satisfied his or her heavy burden of proof, the Secretary performs a *de novo* review of the record. *Belasco v. Board of Public Ed. of the Sch. Dist. of Pittsburgh*, 510 A.2d 337, 343 (Pa. 1986). The Secretary's review ensures that the requirements of due process are satisfied. *Id.* at 343; *Katruska v. Bethlehem Center School District*, 767 A.2d 1051, 1054 (Pa. 2001).⁴ The following principles control the Secretary's inquiry in a demotion case:

- (1) A Board of School Directors may demote a professional employee in position or salary or both without his or her consent;
- (2) the action of the Board in such case is presumptively valid; and

⁴ In his Brief in Support of Petition of Appeal, Mr. Furst stated that at the first hearing before the Board he noted an objection to the District retaining Marc Fisher, Esquire, as the hearing officer because of Mr. Fisher's representation of the District at expulsion hearings. Other than noting that he made this objection on the record before the Board, Mr. Furst has not argued this issue in his appeal to the Secretary. Nevertheless, the Commonwealth Court has held that due process violations at the Board level are cured by the Secretary's *de novo* review on appeal.

- (3) the demoted employee contesting the Board's action has the burden of proving it to be arbitrary, discriminatory or founded upon improper considerations.

Brownsville Area Sch. Dist. v. Lucostic, 297 A.2d 516, 518 (Pa. Cmwlth. 1972) (citations omitted).

Mr. Furst's Appeal

In this appeal, Mr. Furst argues that his demotion from Director T/L, K-12, to a principal of grades 7-8 was arbitrary, discriminatory or founded upon improper considerations.⁵ In an attempt to meet his heavy burden of proof, Mr. Furst argues that the District failed to provide any rational basis for his demotion and ignored the testimony of Dr. McGinley. Mr. Furst argues that Mr. Reinhart and Mr. Simonetta had great difficulty articulating the basis for demoting Mr. Furst particularly since they had nothing negative to say about his performance in his position as Director T/L, K-12. *See, Harris v. School District of Philadelphia*, 624 A.2d 784 (Pa. Cmwlth. 1993) (the just cause standard is not applicable to demotions under section 1511 of the Public School Code). Mr. Furst also argues that the only reasons the District provided for the administrative restructure were personal anxiety, distrust, and communication problems, even though District witnesses acknowledged Mr. Furst was not responsible for those problems although he was the only central administrator demoted. The crux of Mr. Furst's argument is that his demotion was in retaliation for reporting to Dr. McGinley that he saw evidence on his

⁵ Although the District's position at the hearings before the Board was that Mr. Furst had not been demoted, the Board held that Mr. Furst's transfer to a principal position was a demotion. In response to Mr. Furst's appeal to former Acting Secretary Dumaresq, the Board filed a Motion to Dismiss arguing that Mr. Furst's transfer was a realignment demotion and, therefore, the Court of Common Pleas had jurisdiction over the matter. Former Acting Secretary Dumaresq issued an Opinion and Order dated April 16, 2014, denying the District's Motion to Dismiss based on her finding that Mr. Furst's demotion was not a realignment demotion. The question of whether Mr. Furst was demoted is not an issue in this appeal.

computer that Mr. Drago had improperly accessed Mr. Furst's computer, which resulted in an internal investigation and subsequently a police investigation that angered the Board.

Rational Basis for Demotion

Mr. Furst has been employed by the District as a professional employee since January 1985. In 2008, Dr. McGinley became the District Superintendent and after one year in that position made changes in the central office administration. As part of her reorganization, Dr. McGinley (1) moved Mr. Furst from his position as principal of grades 7-8 to the Director T/L, K12 position; (2) moved Ms. DiVietro from Director T/L, K-12 to the principal of grades 7-8; (3) moved Mr. Rider from head principal of the high school to Director of the Transition; and (4) eliminated other positions including the Associate Director of Literacy that had been held by Mrs. Matthews who was transferred to a literacy position in grades 7-8. Mr. Rider and Mrs. Matthews subsequently retired from the District, and at the time of Mr. Furst's hearing before the Board on August 13, 2013, they had been members of the Board for approximately one and one-half years.

Dr. McGinley's contract as superintendent expired June 30, 2013, because the Board did not renew her contract. When Dr. McGinley's assistant superintendent resigned during her term, Dr. McGinley told the Board the new superintendent should pick the new assistant superintendent. However, for the remaining year of her term, Dr. McGinley asked the Board to provide assistance to Mr. Furst by either hiring an additional director and creating two positions-Director T/L, K-6 and & Director T/L, 7-12-or providing two supervisors under Mr. Furst. The Board denied Dr. McGinley's request and stated that when a new superintendent was hired, the Board would decide how to proceed.

In May 2013, the Board spoke to Mr. Reinhart, then a high school principal at Bangor School District, about becoming the District's interim superintendent beginning July 1, 2013. (N.T. pp. 15-16). Mr. Reinhart had been a teacher in the District for approximately fourteen years before becoming an administrator, assistant superintendent, and superintendent at the Bangor School District. He then retired from Bangor, but later came out of retirement to become a high school principal at Bangor.

Mr. Reinhart perceived that the Board was not pleased with the direction of the District and the expectation was for him to create a leadership team that would move the District forward by building a team that was more cohesive and better able to communicate. Through Mr. Reinhart's observations of Board meetings in May and June 2013, and discussions with others about the District, Mr. Reinhart believed there was a leadership crisis as well as a lack of communication at various levels. Mr. Reinhart noted two areas of glaring need organizationally and instructionally. One of his initial considerations was the elimination of the Director T/L, K-12 position and creation of one director of curriculum and instruction for K-6 and another for 7-12. His other consideration was having one high school principal rather than co-principals, then moving a principal to grades 7-8 as an assistant principal.

Mr. Reinhart consulted mostly with the District's Chief Operating Officer, Mr. Simonetta, and sought his advice about the inner workings of the administration and conferred with him on an administrative restructuring plan. On June 4, 2013, Mr. Reinhart and Mr. Simonetta provided the Board with a proposal of administrative changes that involved nine position changes and a change in the reporting structure. Central office administration and building principals would now report directly to and be evaluated by Mr. Reinhart. The nine position changes that Mr. Reinhart recommended were not based on anyone's inadequacy in

their job but were based mostly on his observation that people were not functioning together as a team and that a mix of personalities and events caused a great deal of toxicity in the central office relationships. Six of the position changes were lateral moves or moves up on the organizational chart and three position changes, including Mr. Furst's, were moves down on the organizational chart.

Mr. Reinhart recommended that Mr. Steckel and Ms. DiVietro move to new positions of Director T/L, K-6 and 7-12, respectively, because their names were brought up to Mr. Reinhart as individuals who had a broad knowledge of the school system, an understanding of administration and of changing the direction of curriculum, and established reputations as people who could communicate quickly, act quickly, were willing to move the District forward and were not connected to whatever occurred before Mr. Reinhart arrived. Mr. Reinhart recommended that Mr. Furst be moved to the 7-8 principal position because Mr. Furst previously had been a successful principal of grades 7-8. Mr. Simonetta also had at least one conversation with Mr. Furst where Mr. Furst indicated his desire to return to a principal position, and Mr. Reinhart understood from several individuals that Mr. Furst was perhaps not necessarily very pleased with his role and work as Director T/L, K-12. Additionally, at one central administrative budget meeting, Mr. Furst presented a document showing proposed changes in staff, which included Mr. Furst returning to a principal position and the elimination of his Director of T/L, K-12 position. However, the central administrative team did not move forward with that plan.

As noted above, eliminating the Director T/L, K-12 position and creating the Director T/L, K-6 and Director T/L, 7-12 positions, also included changes in the reporting by, and evaluation of, principals. Mr. Furst's responsibility as Director T/L, K-12, included supervising and evaluating 13 principals, but that was not to be a responsibility of the new positions of

Director T/L, K-6 or Director T/L, 7-12. Thus, the newly created positions included different responsibilities than the responsibilities Mr. Furst had as Director T/L, K-12.

When Mr. Reinhart testified at the July 10, 2013 hearing, he had been the interim Superintendent only since July 1, 2013, and testified that he had not necessarily made a determination about other central office staff. He believed the critical piece was splitting the job of Director of T/L, K-12 into two positions and getting two people who would communicate and direct the instruction because the District was in warning status academically. Mr. Reinhart was building his cabinet with two people who were not involved in anything that happened before he came to the District.

Mr. Simonetta testified that before conferring with Mr. Reinhart and during the time they worked on an administrative restructuring plan, Mr. Simonetta was not instructed by any third party about who to transfer or to do anything with any specific position. Mr. Reinhart testified that no Board member told Mr. Reinhart specifically to transfer Mr. Furst out of central administration and Mr. Reinhart did not consider his recommendation to transfer Mr. Furst to be disciplinary. Neither Mr. Simonetta's nor Mr. Reinhart's testimony was refuted by any other witnesses.

The facts and testimony provided at the hearings before the Board provide a rational basis for Mr. Furst's demotion. Mr. Reinhart believed he was brought in as interim superintendent to create a leadership team to move the District forward quickly because the Board was not pleased with the District's direction. Even though Mr. Furst could have filled one of the newly created positions of Director T/L, K-6 or Director T/L, 7-12, the Board had broad discretion in making personnel and administrative decisions that resulted in Mr. Furst's demotion and the Board's decision is presumptively valid. *See, Thomas, supra* and *Piazza, supra*. Mr. Reinhart had heard

positive comments about Mr. Steckel's and Ms. DiVietro's knowledge of the school system, their understanding of administration and changing the direction of curriculum, as well as their ability to communicate and act quickly and move the District forward. With this information about Mr. Steckel and Ms. DiVietro combined with the information that Mr. Furst was perhaps not happy with his role and work as Director T/L/, K-12 and that Mr. Furst had stated to Mr. Simonetta his desire to return to a principal position, there was a rational basis to move Mr. Furst to a principal position.

Just as a reorganization of administrative staff occurred when Dr. McGinley was superintendent, another reorganization was recommended for when her superintendent term ended. The Board's decision to approve the administrative reorganization recommended by Mr. Reinhart, which resulted in Mr. Furst's demotion, was, by law, presumptively valid and Mr. Furst did not provide evidence to overcome this presumption.

Dr. McGinley's Testimony and The Drago Matter

Mr. Furst further argues that his demotion was in retaliation for reporting to Dr. McGinley that Mr. Furst saw evidence on his computer that Mr. Drago had improperly accessed Mr. Furst's computer. Although Mr. Furst infers that the proximity in time (approximately 8 months) between his reporting of Mr. Drago to Dr. McGinley and the recommended administrative reorganization that resulted in his demotion evidences that his demotion was retaliatory, there is no evidence to support his inference. "Temporal proximity alone does not establish a retaliatory motive." *Butterfield v. Dover Area School District*, 2013 WL 3946241 at 5 (Pa. Cmwlth. 2013). As the ultimate fact-finder, the Secretary has the "power to determine credibility of witnesses, the weight of their testimony and the inferences to be drawn therefore."

Belasco, 510 A.2d at 342. The testimony and evidence presented do not support Mr. Furst's allegation that his demotion was in retaliatory.

In October 2012, Mr. Furst filed a complaint with Dr. McGinley stating that he saw evidence on his computer that Mr. Drago had accessed Mr. Furst's computer. Since Dr. McGinley was the only individual who could authorize access to other employees' computers, and she had not authorized Mr. Drago to access Mr. Furst's computer, Dr. McGinley notified the District's solicitor, Board president, Mr. Simonetta and Mr. Castrovinci of Mr. Furst's complaint.

The District conducted an internal investigation and Dr. McGinley understood that the investigation uncovered an inordinate amount of entries into Mr. Furst's computer to access and/or download files from his computer. Although the District did not report the matter to the police, the police eventually began an investigation and issued a search warrant in the beginning of February 2013. There is no evidence in the record that Mr. Furst notified the police about the complaint against Mr. Drago, or about the internal investigation.

However, Dr. McGinley testified that the Board was irate about the police investigation and stated that all administrators, including Mr. Furst, needed to be fired. However, no administrators were fired. Mr. Simonetta also testified that he had been in executive sessions of the Board and heard Board members make critical remarks not only about Mr. Furst but also about other administrators and the administration as a whole. The evidence and testimony at the hearings demonstrated that there were strained relations between the Board and the administration. The Board did not renew Dr. McGinley's contract as the superintendent, and after the assistant superintendent resigned, denied her request to assist Mr. Furst with his job duties by either hiring an additional director or providing two supervisors under Mr. Furst. The Board advised Dr. McGinley that when a new superintendent was hired, the Board would decide

how to proceed. Dr. McGinley testified that she was upset about her contract not being renewed and believed that Mr. Rider and Mrs. Matthews were not fair to her. Thus, the strained relations between the Board and administration were evident prior to Mr. Furst making his complaint to Dr. McGinley about Mr. Drago.

Additionally, Dr. McGinley did not discuss the investigation of Mr. Drago with Mr. Reinhart other than to ask if he was aware of an ongoing investigation. Mr. Reinhart testified that he did not know any specifics about what occurred regarding Mr. Drago, did not know that Mr. Furst reported the incident about Mr. Drago and only recalled an article about the inappropriate use of technology. Mr. Reinhart also testified that he was not told by any Board member to transfer Mr. Furst out of central administration. Mr. Simonetta testified that the investigation regarding Mr. Drago had nothing to do with moving Mr. Furst to a principal position from his position as Director T/L, K-12. There is no evidence or testimony refuting the testimony of Mr. Reinhart or Mr. Simonetta on this issue.

There is no evidence of a causal connection between Mr. Furst's reporting of Mr. Drago to Dr. McGinley and the administrative reorganization that resulted in his demotion. From Dr. McGinley's testimony it is evident that there was less than a positive relationship between her and the Board or, at least, certain members of the Board. Mr. Simonetta's testimony indicated the Board did not have a positive attitude towards the administration as a whole.

Notwithstanding this apparent animosity, there is no evidence proving that the recommendation to move Mr. Furst to a principal position was in retaliation for his reporting of Mr. Drago to Dr. McGinley. Thus, Mr. Furst failed to meet his burden of proving that his demotion was arbitrary, discriminatory or founded upon improper considerations.

Conclusion

Mr. Furst has not met his burden of proving that the Board's decision to demote him to a principal position was arbitrary, discriminatory, or founded upon improper considerations.

Additionally, the testimony provided at the hearings before the Board evidences that there was a rational basis for Mr. Furst's demotion.

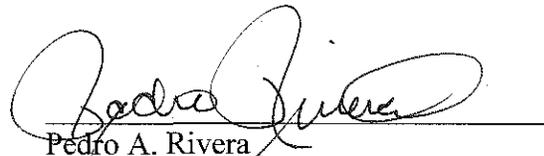
Accordingly, the following Order is entered:

IN THE OFFICE OF THE SECRETARY OF EDUCATION
COMMONWEALTH OF PENNSYLVANIA

STEPHEN T. FURST, :
Appellant :
 :
v. : Teacher Tenure Appeal
 : No. 03-13
EASTON AREA SCHOOL DISTRICT :
Appellee :

ORDER

AND NOW, this 27th day of January, 2016, it is hereby **ORDERED** that because Stephen T. Furst failed to meet his burden of proving that his demotion was arbitrary, discriminatory or founded upon improper considerations, the decision of the Board of School Directors of the Easton Area School District demoting Mr. Furst to a principal position is **AFFIRMED**.


Pedro A. Rivera
Secretary of Education

Date Mailed: January 27, 2016