

IN THE OFFICE OF THE SECRETARY OF EDUCATION
COMMONWEALTH OF PENNSYLVANIA

DAVID HANINCHICK :
Appellant :
v : TTA No. 03-17
LEBANON SCHOOL DISTRICT :
Appellee :

OPINION AND ORDER

David Haninchick (“Appellant”) appeals to the Secretary of Education from the decision of the Board of School Directors (“Board”) of the Lebanon School District (“District”) dismissing him from the position of Computer Science Teacher at the Lebanon Middle School (“LMS”).

Findings of Fact

1. Appellant began employment with the District as Computer Science teacher at LMS on or about August 24, 2014. (N.T.¹ 16).
2. Appellant was a Computer Science teacher at LMS for three school years, beginning with the 2014-15 school year and ending with the 2016-17 school year. (N.T. 16).
3. On or about August 14, 2017, Appellant was suspended without pay from his position. (Board Ex. 5).
4. A Statement of Charges and Notice of Termination proceedings dated August 21, 2017, was served upon Appellant and his attorney. (Board Ex. 3; *see also* District Submission No. 8 to PDE dated December 20, 2017).
5. A termination hearing in this matter was held before the Board on October 5, and 12, 2017.

¹ “N.T.” refers to the Notes of Testimony transcribed at the hearing in this matter before the Board.

6. The Board affirmed Appellant's termination, and Appellant thereafter appealed to the Secretary of Education. A hearing was held before the Secretary's hearing officer on January 8, 2018.

Grading Practices

7. At LMS, each teacher is required to post student grades on the District's "PowerSchool" electronic gradebook system within five days after an assignment is collected so that it is accessible to students, parents and the administration. (Board Ex. 1, Section 3; N.T. 20-21).

8. Each year during Appellant's employment at LMS, Principal Dawn Connelly ("Principal Connelly") issued an e-mail to all teachers providing deadline dates by which teachers must finalize and verify all student grades. (Board Ex. 19; N.T. 21).

9. Once the deadline date assigned by Principal Connelly has passed, all grades for the marking period in question become "historical" or final. These final grades form the basis for calculating the marking period grades on student report cards. (N.T. 21).

10. Teachers may not change historical grades without approval from a superior. (N.T. 21).

11. At the end of the school year or semester, a student's grade is based upon averaging all of the marking period grades calculated in PowerSchool. (N.T. 30-31).

12. If a teacher changes a grade in PowerSchool after grades for a marking period have become historical, it will alter the grade calculations within PowerSchool for the affected marking period, as well as the students' report card grade. (N.T. 30-31).

13. If a teacher wishes to change a student's grade after the grade has become historical, the teacher is to request the change to either the Guidance Department or Principal Connelly, and only if approved, the Guidance Department or the Principal changes the grade. (N.T. 22-23).

14. Following every one of the marking periods for three years of employment, Appellant asked to change grades after they became historical. (N.T. 22-23).

15. Appellant changed 12 to 18 historical grades (two or three per marking period) in each of his three school years with the District after the deadline had passed for grades to be finalized. (N.T. 29-30).

16. It was typical for one of Appellant's students or a student's parent to notify LMS that a grade Appellant issued was inaccurate and needed to be changed. Appellant did not self-identify the inaccuracies. (N.T. 26).

17. Appellant's failure to timely enter grades without after-the-fact modifications caused numerous operational challenges for the LMS administration. (N.T. 27).

18. Appellant acknowledged having "entered grades in the wrong student's place" during the 4th and 5th marking periods of the 2014-15 school year. (Board Ex. 33; N.T. 153-54).

19. During the 2014-15 evaluation process, the District addressed its concerns with Appellant's grading practices. Appellant received an evaluation of "Failing" in the category of "Maintaining Accurate Grades" (Board Ex. 18).

20. Appellant acknowledged the following on his evaluation: "I realize that there have been several instances of grade changes. This becomes evident in MP #4 ... and again in MP #5 ... which caused several student grades to be lower than they should have. I will try to devise a way to conquer this to eliminate this from happening in the future." (Board Ex. 18).

21. Appellant's evaluation for the 2016-17 school year again rated him as "Failing" for "Maintaining Accurate Grades." He received the following comment on his evaluation: "On several assignments . . . students were assigned the same grade regardless of the quality of work they submitted." (Board Ex. 17).

22. The District continued to identify improper grading issues in the 5th marking period of the 2016-17 school year. During the school year, the 5th marking period ended on April 20, 2017. As of 4:00 p.m. on April 22, 2017, numerous ungraded student assignments for that marking period existed. Appellant had not entered any grades for some students since late March 2017. (Board Ex. 20; N.T. 132-33).

23. Due to his failure to timely submit grades, Appellant had to engage in a "mad-dash" of grading at the end of the 5th marking period in order to comply with Principal Connelly's demand that all 5th marking period grades be issued and verified by 8:00 a.m. on April 24, 2017. (Board Ex. 19, pg. 2; N.T. 134).

24. Appellant's improper grading of students during the 5th marking period of the 2016-17 school year was addressed in Appellant's May 2017 Performance Improvement Plan. (Board Ex. 12; N.T. 63-64).

25. The Performance Improvement Plan specifically addressed, among other things, the need for Appellant to improve both the timeliness and accuracy of his grading. (Board Ex. 12).

26. Appellant's failures with student grading thereafter became worse and "very inaccurate and haphazard" during the 6th marking period of the 2016-17 school year. (N.T. 31).

27. At the beginning of the 6th marking period of the 2016-17 school year, Appellant acknowledged in an e-mail that "my gradebook is messed up" in explaining why he had been

issuing grades for a student who had been absent from class for 16 straight days. (Board Ex. 35; N.T. 155).

28. All LMS teachers were required to enter student grades for the 6th marking period of the 2016-17 school year and have them issued and verified before 8:00 a.m. on May 30, 2017. (Board Ex. 19 at 1).

29. On May 31, 2017, LMS received an e-mail from the mother of one of Appellant's 7th grade students, stating that her child had an "A" average in Appellant's class, as of May 29, 2017, as reflected in the PowerSchool online system, but that by 8:00 a.m. the following day her child's grade fell essentially overnight in the system from an "A" to a "C". (Board Ex. 21; N.T. 135-136).

30. On May 31, 2017, another one of Appellant's students met with the Guidance Department to express concern that his grade dropped from an "A" to a "C" in Appellant's class overnight as reflected in PowerSchool. (Board Ex. 38; N.T. 160).

31. Assistant Principal Rau investigated why student grades for the 6th marking period apparently had decreased in an unusually precipitous fashion. He learned that the decreased grade averages resulted from Appellant's failure to timely issue and enter grades in PowerSchool. Appellant waited until May 29, 2017, to issue grades on six different assignments well beyond the District's five-day requirement to enter grades in PowerSchool. (Board Ex. 23; N.T. 137-39).

32. Assistant Principal Rau also learned during his investigation that Appellant had issued grades of 33% or 50% to 7th grade students on assignments for the 6th marking period of the 2016-17 school year, even though the students never submitted the assignments for which they were graded. (Board Ex. 23).

33. One of Appellant's students received 50% credit for an assignment that was never turned in, and another received a score of 100% for having simply copied and pasted three questions into an assignment without any substantive response. (Board Ex. 30; N.T. 147-48).

34. On May 31, 2017, the day after the expiration of the deadline to finalize grades for all 6th marking period assignments, Appellant asked the Guidance Department to change grades for seven of his 7th grade students. (Board Ex. 22; N.T. 138).

35. Immediate action had to be taken by the District so that students were not unfairly treated or graded due to Appellant's untimely entries. (Board Ex. 24).

36. Due to the adverse impact Appellant's grading failures had on many students, Principal Connelly sent a letter to all parents of Appellant's 7th grade students stating that the 6th marking period grades in Computer Science were all being converted to a "Pass/Fail" assessment. (Board Ex. 25; N.T. 27-28).

37. Appellant's grading failures during the 6th marking period of the 2016-17 school year occurred immediately following the issuance of Appellant's May 2017 Performance Improvement Plan. The Plan contained a directive to correct prior issues with the timeliness and accuracy of entering student grades. (N.T. 163).

Lesson Plans

38. During Appellant's classroom observation on April 20, 2017, Assistant Principal Rau observed that the content of the lesson plan prepared by Appellant was significantly different than the actual classroom lesson presented on this date. (Board Ex. 52; N.T. 185-186).

39. Assistant Principal Rau became concerned that Appellant would submit a lesson plan that was so dissimilar to the lesson actually taught, and this was a reflection upon Appellant's

lack of planning, lack of efficiency and a failure to maximize the benefit of classroom time. (N.T. 185-187).

40. Appellant's need to improve his lesson plans was specifically addressed in his Performance Improvement Plan. (Board Ex. 12).

41. Appellant's Performance Improvement Plan required him to submit his lesson plans in advance for the upcoming week of instruction. (Board Ex. 12).

42. Appellant's Performance Improvement Plan required the following objectives to be covered in lesson plans: "A. Objective 1: Clear structure. B. Objective 2: Learning focused strategies incorporation. C. Objective 3: Aligned goals to standards and assessment." (Board Ex. 12).

43. After receiving the Performance Improvement Plan, Appellant submitted a lesson plan for the following week (May 22-26, 2017) consisting of essentially a series of handwritten notes. The notes were noncompliant with the Plan. (Board Ex. 53; N.T. 52).

44. When his superiors advised Appellant that his submitted lesson plans were not acceptable, he re-submitted yet another set of handwritten notes that were similarly noncompliant. (Board Ex. 53-A; N.T. 52).

45. In one of Appellant's "observation summaries" issued to him in the 2014-15 school year it was noted that the "component areas for growth" included "development of lesson plans to make sure students are engaged" and to "work on lesson plans to get more student engagement." (Board Ex. 18, 18-A & 18-B).

Safety and Security

46. During three years of employment at LMS, the following occurred under Appellant's supervision: (1) 57 incidents of students leaving class without permission; (2) 24

incidents of student actions that caused or could have caused damage to school technology; (3) 13 physical altercations between students in his classroom; and (4) 13 additional dangerous actions by students occurring within his classroom. (Board Ex. 41; N.T. 164-67).

47. The District presented photographic evidence at the hearing before the Board in this matter of four students crowded around a classroom computer and taking a “selfie” with Appellant standing in the background and apparently unaware that anything wrong was occurring. (Board Ex. 45; N.T. 171-172).

48. On another occasion, a student admitted that she had choked another student during Appellant’s class. When asked about the choking incident, Appellant told Principal Connelly he was completely unaware that it had occurred in his classroom. (Board Ex. 43; N.T. 170-171).

49. During his first year of employment with the District, Appellant was offered coaching techniques by LMS administrators. (N.T. 273-278). Despite these efforts, problems continued with Appellant’s unsafe and disorderly classroom; specifically, there was an increase to eight physical altercations between students in his classroom during his final year of employment (Board Ex. 41; N.T. 167).

50. In May 2017, an incident occurred in Appellant’s classroom where a student, twirling his computer mouse in his hand, hit a student next to him in the face. (Board Ex. 44; N.T. 171). Appellant admitted to being completely unaware of the incident which occurred after Appellant received his Performance Improvement Plan. *Id.*

51. In Appellant’s classroom, there were 4 damaged computers (at a cost of approximately \$1,000 each), 13 damaged keyboards and 2 instances of a damaged computer mouse during the 2016-17 school year. (Board Ex. 46; N.T. 165, 173).

Additional Noncompliance with School Policies and Directives

52. District Policy #212 requires that both student and parent receive “ample warning” if the student is going to receive a failing grade. (Board Ex. 67).

53. Thirteen of Appellant’s students had failing grades in the 5th marking period of the 2016-17 school year. Appellant provided no advanced warning to the parents of any of these students that their children were going to receive failing grades. (Board Ex. 26; N.T. 140-42).

54. Assistant Principal Rau addressed Appellant’s violation of District Policy #212 in the written follow-up to Appellant’s classroom observation on or about April 20, 2017, when he stated, “There were 13 students whom Appellant failed during marking period 5. Of the 13, there is no evidence that he contacted any of their families about their child’s progress.” (Board Ex. 16-B; N.T. 143).

55. Appellant repeated his violation of District Policy #212 in the following marking period. Fourteen of his students received failing grades during the 6th marking period of the 2016-17 school year. There is no evidence to support a conclusion that Appellant had made any parent contacts regarding these students. (Board Ex. 26-A; N.T. 143).

56. Appellant did not provide “ample warning” as required by District Policy #212 in the 2016-17 school year. Instead, he merely issued a message through the District’s online system² at the end of the 6th marking period of that school year to his students who would receive failing grades. He issued this message on the afternoon of Monday, May 29, 2017. Final grades needed to be verified by teachers as of 8:00 a.m. the following morning. (Board Ex. 29; N.T. 144-46).

² The District had an online system in place known as “Schoology” through which teachers may communicate with students electronically. (Board Ex. 29; N.T. 144-146).

57. Appellant disregarded multiple directives during his required work with the District's consultant for the Collin's Writing Program. (Board Ex. 57; N.T. 53-55). In March 2016, Appellant did not bring the correct writing samples with him to a meeting with the consultant as directed. He was directed to bring only Type 3 samples. Instead, he brought incorrect samples having "FCA's [Focus Correction Areas] that didn't fit for his assignment, weren't graded or did not make sense." (Board Ex. 57; N.T. 53-55).

58. Appellant's neglect continued the following school year. In April 2017, Appellant received another reprimand for not bringing the correct Collin's Writing Program samples to his meeting with the same Collins Writing Program consultant. He again provided inadequate writing samples to the consultant with virtually the identical problem from the year before. Specifically, Appellant made the same error in failing to follow the directive of producing Type 3 writings. When he met with the consultant, he failed to produce any Type 3 writings. (Board Ex. 58; N.T. 55-56).

59. In November 2016, Appellant neglected to have his students participate in a motivational activity (known as the "Green Zone") as directed. Appellant apologized for having failed to comply with this directive but offered no explanation for his failure. (Board Ex. 62; N.T. 57).

60. In April of 2016, Appellant failed to timely respond to his superior's request for coverage in scheduling teachers during PSAA testing. Appellant's failure caused LMS to have to scramble and rearrange coverage. (Board Ex. 63-64).

61. In March 2017, Appellant failed to attend a Professional Development session that all teachers in the building were directed to attend. (Board Ex. 66; N.T. 59-62).

Discussion

Appellant's dismissal was pursuant to Section 1122 of the School Code, which provides that "[the] only valid causes for termination of a contract . . . with a professional employee shall be immorality; incompetency; . . . intemperance; cruelty; persistent negligence in the performance of duties [and] willful neglect of duties. . . [.]” 24 P.S. §11-1122. A tenured professional employee, such as Appellant, may only be dismissed for the reasons set forth in Section 1122 of the School Code. *Foderaro v. Sch. Dist. of Philadelphia*, 531 A.2d 570, 571 (Pa. Cmwlth. 1987), *appeal denied*, 542 A.2d 1372 (Pa. 1988). The District dismissed Appellant based on the following two legal grounds: (1) willful neglect of duties and (2) persistent negligence in the performance of duties. Following a thorough review of the record, I find that there is sufficient evidence to sustain the District's dismissal of Appellant on either or both grounds.

I. Willful Neglect of Duties

In interpreting the Teacher Tenure Act, Commonwealth Court has defined “willfulness” as having “the presence of intention and at least some of power of choice.” *Cowdery v. Bd of Educ. of the Sch. Dist. of Philadelphia*, 531 A.2d 1186, 1188 (Pa. Cmwlth. 1987). “Neglect” may be defined as “1: to give little attention or respect to: DISREGARD 2: to leave undone or unattended to especially through carelessness.” *Merriam-Webster's Collegiate Dictionary* 775 (10th Ed. 2001).

In the present matter, the District demonstrated that the Appellant willfully neglected his duties on numerous occasions. There can be no question that the Appellant had knowledge of his responsibilities and that he chose not to perform them adequately. Appellant failed to provide any credible evidence to rebut the District's presentation. In fact, he often acknowledged his own

neglect. Below are a few of the examples presented by the District of Appellant's willful neglect of his duties.

A. Improper Grading Practices

Because of his carelessness, Appellant consistently missed the deadline set by Principal Connelly for issuing grades. Moreover, the grades he did issue were often inaccurate and needed correction after they were to be finalized. Appellant's failure to timely and accurately issue grades, and the operational problems they caused, were well documented. Specific examples of Appellant's improper grading practices include (1) giving 50% credit for assignments that the students never submitted, (2) awarding 100% scores to students who simply pasted the questions as the answers to the assignment without any substantive response and (3) issuing grades in error to a student who was absent from class for extended periods of time (16 consecutive days). Appellant knew the District's expectations regarding grading students, as evidenced by his evaluations and other warnings his superiors issued during his three years of employment. It is unquestionable that Appellant willfully neglected his grading duties. (Board Exhibit 20, 30, 35; NT. 132-33, 147-148, 155).

B. Failure to Prepare Proper Lesson Plans

Appellant also knew that appropriate lesson plans needed to be submitted, and he was reminded how to complete them. Notwithstanding this knowledge and instruction, Appellant obstinately submitted handwritten notes that did not resemble the lesson plans outlined in his Performance Improvement Plan. The notes Appellant attempted to pass off as lesson plans were in direct contradiction to the District's directives and instructions previously given to him. They present a striking example of willful neglect. (Board Exhibit 53, 53-A; NT.52, 188).

C. *Failure to provide safety and security in his classroom*

It is undisputed that dangerous student misconduct occurred under Appellant's supervision. This misconduct continued, uncorrected during his three years as a teacher. From Appellant's first observation and throughout his tenure, the District noted that Appellant was failing to ensure the safety of his students. (Board Exhibits 41-45, 51; NT. 34-36, 164-67, 171-72, 178, 273-74, 278). Likewise, despite being advised of his duty to safeguard computer equipment, Appellant neglected to protect equipment from significant damage due to student misconduct. (Board Exhibit 44, 46; NT. 38, 44, 46).

D. *Disregard for Additional School Policies and Directives*

Appellant failed to follow policy and/or directives from his superiors on numerous occasions. For example, District Policy #212 contained a clear directive that teachers were to give "ample warning" to parents regarding the status of failing grades. Appellant failed to provide any such notice in consecutive marking periods, even after an administrator addressed this issue with him. (Board Exhibit 16-B, 26, 67; NT. 140-43). Appellant also failed to follow directives from his superiors in areas such as student writing (*e.g.*, Collins Writing Program") and student activities (*e.g.*, "Green Zone"). He also failed to timely respond to his superior's directive regarding scheduling needs during PSAA testing (Board Ex. 63 & 64) and attendance at a mandatory Professional Development session. (Board Ex. 66; N.T. 59-62). No employer should be required to tolerate the type of disregard for directives and policy that Appellant has exhibited.

II. Persistent Negligence in the Performance of Duties

In the school discipline context, Commonwealth Court has defined the phrase "persistent negligence" as a continuing or constant failure to exercise that care a reasonable person would exercise under the circumstances. *Lauer v Millville Area Sch. Dist.* 657 A.2d 119 (Pa. Cmwlth. 1995). 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 Sch. Dist.*, 414 A.2d 772 (Pa. Cmwlth. 1980). The charge of persistent negligence requires the school board to prove that the educator had knowledge of the school district's performance expectations and had been warned of the consequences of failing to meet them. *McFerren v Farrell Area Sch. Dist.*, 993 A.2d 344 (Pa. Cmwlth. 2010).

The District gave Appellant multiple notices and warnings that he was negligent in the performance of his duties. Appellant's superiors gave him instruction regarding grading, maintaining the classroom, preparing accurate lesson plans and following supervisors' directives. Notwithstanding his knowledge of what was expected, Appellant's job performance problems persisted throughout his employment with the District. Appellant's superiors regularly advised him of his negligence, but he never took any discernable measures toward improvement. Written evaluations, direct consultations with administrators, letters of reprimand, feedback from observations and efforts to coach Appellant are evident throughout his tenure. (Board Ex. 12, 16-B, 17, 35, 52, 53-A; N.T. 143, 163, 185-186). Appellant often acknowledges his negligence but failed to take appropriate steps to improve. (Board Ex. 18, 18-A, 33, 153-155). The record reflects that the same errors continued for the duration of Appellant's employment. I therefore find that Appellant's dismissal on the basis of persistent negligence is indeed warranted.

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

IN THE OFFICE OF THE SECRETARY OF EDUCATION
COMMONWEALTH OF PENNSYLVANIA

DAVID HANINCHICK	:	
Appellant	:	
v	:	TTA No. 03-17
LEBANON SCHOOL DISTRICT	:	
Appellee	:	

ORDER

AND NOW, this 16th day of February 2018, the Lebanon School District's dismissal of David Haninchick is hereby sustained.



Pedro A. Rivera
Secretary of Education

Date Mailed: February 16, 2018