

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

AMY KOSTOFF	:	
Appellant	:	
	:	
v.	:	Teacher Tenure Appeal
	:	No. 02-22
DELAWARE COUNTY INTERMEDIATE UNIT	:	
	:	
Appellee	:	

OPINION AND ORDER

Amy Kostoff (“Appellant”) appeals to the Secretary of Education from the decision of the Board of Directors of the Delaware County Intermediate Unit (“DCIU”) dismissing her from the position of assistant supervisor in the Low Incidence Program at Marple Education Center (“MEC”).

FINDINGS OF FACT

1. At all times relevant to this appeal, Appellant was an assistant supervisor in the Low Incidence Program at MEC. (N.T. 2/23/22 p. 10-11: 16-2)¹
2. On November 15, 2021, an incident occurred involving two male students in the same bathroom stall at MEC (the “incident”). (N.T. 2/23/22 p.12-13: 20-4)
3. On November 15, 2021, the incident was reported to Angela Shouler, a certified behavioral analyst and service provider at MEC. (N.T. 2/23/22 p. 14: 9-18, 104: 4-15)
4. On November 15, 2021, Shouler learned that during the incident, two students were together in the bathroom with their pants down in the same stall. The

¹ N.T. refers to Notes of Testimony regarding testimony provided at the hearing before DCIU on February 2, 2022.

bathroom contains multiple stalls. The victim was a vulnerable, non-verbal student with disabilities. (N.T. 2/23/22 p.104: 6-15, 16-23)

5. The two students were over 18. Adult Protective Services was in place because both students had significant intellectual disabilities. (NT 49-52: 24-4)
6. Shouler immediately reported the incident to Appellant, who was her supervisor at all relevant times. (N.T. 2/23/22 p.106: 1-11)
7. Shouler spoke to Appellant on the playground at MEC that same afternoon regarding the incident. (N.T. 2/23/22 p. 106: 18-20; 250-1: 20-6)
8. Shouler asked Appellant on the playground if she should obtain witness statements regarding the incident. Appellant responded in the affirmative. (N.T. 2/23/22 p. 106-7: 21-6)
9. Shouler obtained a written statement from one of the witnesses that day. (N.T. 2/23/22 p. 107: 10-14)
10. Pursuant to DCIU administrative directives, Appellant was required (but failed) to report the incident to her supervisor on November 15, 2021, when it was reported to her. (N.T. 2/23/22 p. 23: 9-12)
11. On November 16, 2021, Shouler followed up on her verbal communication with Appellant by sending an email containing a witness statement regarding the incident to Appellant. (N.T. 2/23/22 p.107-108: 23-1, p. 261:19-21)
12. The subject line of the November 16, 2021, email to Appellant was “BC Sexually Inappropriate Behaviors.” (Exhibit ED-1)
13. The witness statement in the email states that the two students (including student BC) were in the same stall with their pants around their ankles; one student was

- on the toilet, and the other on his knees. (Exhibit ED-1)
14. Appellant saw the subject line but did not read the November 16, 2021, email until November 18, 2021. (N.T. 2/23/22 p. 252: 13-15, 18-24)
 15. Shouler assumed Appellant was handling the situation after Shouler reported the incident to her both verbally on the playground on November 15, 2021, and in writing via email on November 16, 2021. (N.T. 2/23/22 p.109: 5-14)
 16. Appellant only contacted her second-level supervisor, Natalie Hess, DCIU's Assistant Director, on November 18, 2021, regarding the incident because of rumors being reported by the school's nurses. (N.T. 2/23/22 p.255: 2-4)
 17. Hess had not been made aware of the incident previously. (N.T 2/23/22 p. 9-10)
 18. Hess did not learn of the incident until Appellant called her on November 18, 2021. (N.T. 2/23/22 p. 12: 9-12)
 19. Hess immediately initiated an investigation after she learned of the incident on November 18, 2021. (N.T 2/23/22 p. 13: 5-8)
 20. Appellant was a mandated reporter at the time of the incident. (N.T. 2/23/22 p. 24: 7-9)
 21. Appellant was aware of mandated reporting of suspected abuse at the time of the incident. (N.T. 2/23/22 p. 244: 17-23)
 22. Appellant failed to report the incident to Adult Protective Services, as mandated, at any time after learning that the incident occurred. (N.T. 2/23/22 p. 263: 5-7)
 23. Appellant received training on child abuse and mandated reporting after she was hired by DCIU in September 2021. (N.T. 2/23/22 p. 248: 4-10)
 24. During DCIU's investigation of the incident, Appellant was interviewed multiple

times because details in her recounting of the events needed to be clarified. (N.T. 2/23/22 p.15:17-24).

25. Appellant had the authority to unilaterally implement a safety plan but did not do so. (N.T. 2/23/22 p. 89: 1-17)
26. Appellant falsely indicated to Hess during an interview that she put a safety plan in place for BC. (N.T. 2/23/22 p. 24-25: 10-11)
27. Appellant later admitted that she did not put a safety plan in place for BC. (N.T. 2/23/22 p. 261: 22-3)
28. Appellant untruthfully told Hess during an interview that she was not aware of the incident until November 18, 2021. (N.T. 2/23/22 p. 20: 12-15)
29. DCIU Board Policy 352, in effect at all relevant times, stated that staff members must report when they have reasonable cause to suspect that abuse, including sexual abuse, has occurred. (Exhibit ED-7)
30. On November 19, 2021, Appellant was placed on paid administrative leave, pending the investigation. (Exhibit Kostoff-5)
31. By notice dated November 30, 2021, Appellant was directed to appear at a *Loudermill* hearing on December 3, 2021. (Exhibit ED-2)
32. Appellant appeared at the *Loudermill* hearing on December 3, 2021, at which time the findings of the investigation were presented to her. (N.T. 2/23/22 p. 240: 20-21)
33. Per her request, Appellant received the findings in writing and was given the opportunity to respond in kind. (N.T. 2/23/22 p.242: 2-11)
34. Appellant provided a written response to the findings on December 6, 2021.

(Exhibit ED-3)

35. By letter dated December 8, 2021, Appellant was notified of the results of the *Loudermill* hearing, which included consideration of her responses to the charges.

(Exhibit ED-4)

36. On February 2, 2022, the Board approved a Resolution asserting charges against Appellant which, if proven, would support terminating her employment. (Exhibit ED-8)

37. On February 2, 2022, DCIU's Executive Director recommended that the Board terminate Appellant as a professional employee of DCIU, and that a hearing would take place on February 23, 2022, where evidence in support of the charges against Appellant would be presented. (Exhibit ED-5).

38. On February 23, 2022, Appellant's termination hearing was conducted before a committee of the Board.

39. DCIU voted on April 6, 2022, at its regular meeting, to terminate Appellant, a professional employee serving as assistant supervisor.

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).

Commonwealth Court has held that the Court needs to find only one of the grounds for the dismissal valid in order to affirm the dismissal of the appeal of a professional employee. *Horton v. Jefferson County-DuBois Area Vocational Technical School*, 630 A.2d 481, 483 (Pa. Cmwlth. 1993). Appellant argues that DCIU failed to establish grounds for her termination from employment. I disagree. Following a thorough review of the record, I affirm Appellant's dismissal as described further below:

I. Appellant's Willful Neglect of Duties

Willful neglect of duties by a professional employee has been defined by Commonwealth Court as “[A]n intentional disregard of duties by that employee.... [T]here is no requirement of a continuous course of conduct in this charge.” *Williams v. Joint Operating Committee of Clearfield County Vocational-Technical School*, 824 A.2d 1233, 1236 (Pa. Cmwlth. 2003). In interpreting Section 1122 of the School Code, 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, Behavioral Specialist Angela Shouler testified on behalf of DCIU. Shouler spoke to Appellant on the playground right after the incident at issue was reported to her on November 15, 2021. At that time, Shouler and Appellant agreed that witness statements should be obtained regarding the incident. (N.T. 157:23-24). Shouler testified: “I went outside to the playground to report it to Dr. Kostoff. Q: Did you mention the specific incident to Amy on the playground that day? A: Yes.” (N.T. p. 106:18-20, 189:23-24).

Not only did Shouler advise Appellant regarding the incident on November 15, 2021, but she also described it in writing the following day in an email to Appellant with a subject line of “BC Sexually Inappropriate Behaviors.” (Exhibit ED-1). Shouler’s email describes the sexually inappropriate behaviors referenced in the email’s subject line as two students in a bathroom stall “both with their pants down to their ankles. One was on the toilet, the other was on his knees.” (*Id.*). I find Shouler’s testimony, which is supported by the documentation of record, to be credible.

In response, Appellant argues that she was confused by Shouler’s verbal report of the incident on November 15, 2021, and she did not read Shouler’s written report sent to her via email the next day.² As such, Appellant claims that she was unaware of the seriousness of the incident (N.T. 70:17; Exhibit ED-3, p. 1). Appellant’s claim that she was confused by the verbal report simply is not credible. The obvious implication here is that a student under her supervision was performing oral sex upon a non-verbal student with disabilities. I do not believe that Appellant confused such an inappropriate event with some other event occurring that day. I reject the notion advanced by Appellant that this was such a commonplace incident at DCIU that she may have mistaken it for something else happening at school. Appellant’s attempt to explain away her inaction is unpersuasive.

At the very least, Appellant had a duty to ask follow-up questions if she was confused about the incident that was reported to her. Appellant never sought clarification or further information from Shouler or anyone at DCIU. In my view, a responsible administrator would have found out all the facts. Rather than gather additional information to make sure that students

² Appellant admitted that she did see the subject line of the email which read “BC Sexually Inappropriate Behaviors.” (N.T. 252: 13-15, 18-24)

were safe, Appellant tried to pretend nothing happened. She feigned confusion regarding what was told to her on November 15, 2021, when the events in question were communicated to her verbally and did not read the written report of the incident sent to her a day later.

Appellant's lack of attention to this suspected sexual abuse is troubling indeed. Reading work email and promptly reporting suspected sexual abuse to her supervisor and Adult Protective Services were part of Appellant's job duties as assistant supervisor. (N.T. p. 21:9-11). Appellant's disregard of her email does not shield her from culpability. To the contrary, Appellant's failure to attend to her work duties constitutes willful neglect under the School Code. I cannot minimize and do not condone Appellant's attempt to bury her head in the sand regarding a report of suspected sexual abuse. Accordingly, I affirm Appellant's termination due to her willful neglect of duties.

II. Appellant's untruthfulness during the DCIU investigation and her lack of credibility

In *Belasco v. Board of Education of the Sch. Dist. of Pittsburgh*, 510 A.2d 337, 343 (Pa. 1986), the Pennsylvania Supreme Court determined that the Secretary of Education has the authority to review the termination decision *de novo*. The credibility of witnesses and the weight to be accorded their testimony is within the exclusive province of the Secretary. *Rhodes v. Laurel Highlands Sch. Dist.*, 544 A.2d 562 (Pa. Cmwlth. 1988). Additionally, the Secretary is not required to make specific findings as to the credibility of each and every witness where the decision itself reflects which witnesses were believed and upon whose testimony the Secretary relied. *Forrest Area Sch. Dist. v. Shoup*, 621 A.2d 1121, 1125 (Pa. Cmwlth. 1993)

In the present matter, Appellant's credibility must be called into question. Appellant's lack of candor during DCIU's investigation into the incident in question is a prime example of why her testimony should be deemed not credible. For example, Appellant indicated during her

first interview during the investigation that she put a safety plan in place for BC (N.T. 24: 10-17). Appellant later admitted there was no safety plan. (N.T. 261: 22-3). Similarly, Appellant untruthfully indicated during another interview that she was not aware of the incident until November 18, 2021. (N.T. 12-15). To rebut Appellant's false statements in this matter, DCIU presented credible testimony and documentary evidence that Appellant was advised of an incident of suspected sexual abuse in person on November 15 and in writing on November 16 but failed to report the incident to anyone until confronted by school staff three days after she first found out about it. Appellant's attempts to deceive her employer provide additional grounds for her termination.

Dishonesty, such as Appellant has exhibited here, has been held by the courts and the Secretary of Education as a basis for the dismissal of a professional employee. The Pennsylvania Supreme Court observed that educators serve as role models for young children and must be held to an especially high standard of conduct. *See Horosko v. School Dist. of Mt. Pleasant Twp.*, 6 A.2d 866, 868 (Pa. 1939). In the context of educator discipline, courts have consistently held that immoral conduct includes lying, misrepresentations, and false statements. *Riverview School Dist. v. Riverview Educ. Assoc.*, PSEA-NEA, 639 A.2d 974, 978 (Pa. Cmwlth. 1994), *Balog v. McKeesport Area School Dist.*, 484 A.2d 198, 200 (Pa. Cmwlth. 1984); *Bethel Park School District v. Krall*, 445 A.2d 1377 (Pa. Cmwlth. 1982).

Appellant owed a duty of frankness, candor, and professional honesty to her employer. *Board of Public Ed., School Dist. of Philadelphia v. August*, 177 A.2d 809, 406 Pa. 229 (1962). Appellant failed to carry out that duty when she lied about the fact that she had knowledge of the incident in question on November 15 and fabricated a story about putting a safety plan in place to stop incidents such as the one at issue from happening. She attempted to hoodwink her

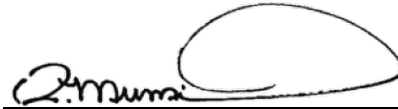
employer into thinking she was engaging in protective measures to keep students safe. In reality, she had neglected her student safety duties and did not even bother to read her email regarding an inappropriate and unsafe situation involving students under her supervision. Appellant's false and misleading statements cannot be tolerated. Accordingly, I affirm Appellant's termination on immorality grounds due to her dishonesty during DCIU's investigation. Accordingly, the following Order is entered.

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DELAWARE COUNTY INTERMEDIATE UNIT	:	
	:	
Appellee	:	

ORDER

AND NOW this 7th day of March 2023, the decision of the Delaware County Intermediate Unit to terminate the employment of Amy Kostoff as assistant supervisor is hereby affirmed.



Khalid N. Mumin, Ed.D.
Acting Secretary of Education

Date Mailed: March 7, 2023