

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

ALBERT J. PAPADA,	:	
Appellant	:	
	:	
v.	:	Teacher Tenure Appeal
	:	No. 04-05
PINE GROVE AREA SCHOOL	:	
DISTRICT,	:	
Appellee	:	

OPINION AND ORDER

Albert J. Papada (“Mr. Papada”) appeals to the Secretary of Education from the decision of the Board of School Directors of the Pine Grove Area School District (“School District”) demoting him from his position as an elementary school principal to a teaching position.

FINDINGS OF FACT

1. In January 1999, the School District hired Mr. Papada to be the principal of its elementary school. (Tr. 7/12/05, p. 33).¹
2. Mr. Papada received “meets expectations” on all of his Performance Evaluations, except for the 1999-2000 school year when his rating was “needs improvement”, which was an unsatisfactory rating. (District Exhs. 10-1-13 and Exh. E-8).²
3. Mr. Papada’s rating on his Performance Evaluation for the 2003-2004 school year was a 4.22, which is a good rating within the category of “meets expectations.” (District Exh. 11).
4. Mr. Papada’s rating on his Performance Evaluation for the 2004-2005 school year was a 3.00, which is the lowest rating in the category of “meets expectations.” (District Exh. 10).

¹ Tr. refers to the Transcript from hearing before the Pine Grove Area School District’s Board of Directors.

² Exh. refers to Exhibits admitted at the hearing before the Pine Grove Area School District’s Board of Directors.

5. In addition to numerical scoring on the Performance Evaluations, there were also anecdotal notes. (District Exhs. 10-13; Exh. E-8).

6. The anecdotal notes in the Performance Evaluations indicate recurring concerns about Mr. Papada's performance, particularly in the areas of discipline and a perception in the community that he was terse and bully-like in his dealings with community members. (Tr. 6/30/05, p. 101; District Exhs. 10 & 11).

7. In addition to the recurring concerns, there were specific incidences identified in the 2004-2005 Performance Evaluation that created concern for the School District and caused a significant decrease in the numerical rating from the 2003-2004 Performance Evaluation. (District Exhs. 10 & 11).

8. The School District's Superintendent, Dr. Mussoline, received a letter from a parent concerned about changes in the elementary school schedule that were not communicated to the parents. (Tr. 6/30/05, pp. 66-68; District Exh. 5).

9. Mr. Mussoline received a complaint from a parent that a Title I teacher took her child from the classroom during a review for a social studies test. (Tr. 6/30/05, p. 86).

10. Mr. Papada suspended two first grade students for one day for jumping off the bathroom sinks. (Tr. 6/30/05, pp. 73-74; District Exh. 6).

11. Mr. Papada created a "Nonexceptional IEP" for a student who did not qualify for the School District's gifted program. (Tr. 6/30/05, pp. 79-81).

12. Mr. Papada changed the early dismissal time for elementary students from 12:10 p.m. to 11:45 a.m. two days before the early dismissal day without Dr. Mussoline's consent. (Tr. 6/30/05, pp. 82-84; District Exh. 9).

13. In February 2005, Mr. Papada yelled at members of the Parent Teacher Organization (“PTO”) about the set-up of a Child Identification Program, screaming that it was his building and it would be set up his way. (Tr. 6/30/05, p. 32; District Exh. 2).

14. On a Committee Assignment sheet sent out by Mr. Papada, there is the phrase “6 PM every Wednesday with no extra pay” beside the Fire Prevention Committee, to which the committee took offense. (Tr. 6/30/05, pp. 52, 54; District Exh. 3).

15. Staff morale at the elementary school was very low because of a lack of communication, a lack of being able to approach the administration and a lack of trust of the administration. (Tr. 6/30/05, p. 43).

16. In February 2005, Dr. Mussoline told Mr. Papada that rumors about Mr. Papada having an inappropriate relationship with his secretary, Mrs. Readinger, were again surfacing and Mr. Papada denied the allegations. (District Exh. 10).

17. In May 2005, the School District found emails between Mr. Papada and Mrs. Readinger that included inappropriate and unprofessional language between a supervisor and a subordinate. (Tr. 6/30/05, pp. 92-96; District Exh. 10).

18. The concerns listed on Mr. Papada’s 2004-2005 Performance Evaluation were discussed with Mr. Papada when the incidences occurred so Mr. Papada was aware of the School District’s concerns. (Tr. 7/12/05, p. 100).

19. Mr. Papada’s demotion was effective June 30, 2005, which prevented him from any further administrative pay, and the first payment for professional employees for the 2005-2006 school year was September 8, 2005. (Exhibit D to Mr. Papada’s Petition of Appeal).

DISCUSSION

There is no dispute that Mr. Papada was demoted. However, in his Petition of Appeal, Mr. Papada argues that his demotion was arbitrary and capricious and that it involved a disciplinary suspension.

Demotion

The principles controlling the Secretary's inquiry in demotion cases were enumerated in *Brownsville Area School District v. Lucostic*, 6 Pa. Cmwlth. 587, 297 A.2d 516 (1972). The principles are as follows:

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

Id., 6 Pa. Commw. at 590-91, 297 A.2d at 518.

Case law addressing the issue of demotions of professional employees clearly shows that school districts possess broad discretion in personnel and administrative actions that result in demotions. Courts have been loathe to interfere with a district's exercise of discretion in a demotion case unless the court is satisfied that the petitioner has met his or her heavy burden of proving that the demotion was arbitrary or based upon discriminatory considerations. *Piazza v. Millville Area School District*, 155 Pa. Cmwlth. 176, 624 A.2d 788 (1993).

In determining whether the demoted employee has satisfied his or her heavy burden of proof, the Secretary must perform a *de novo* review of the record. *Belasco v. Board of Public Education of the School District of Phila.*, 510 Pa. 504, 510 A.2d 337 (1986). Accordingly, the Secretary is the ultimate fact finder in appeals involving demotions and is not obliged to give

deference to the school board's findings. *Shumaker v. Baldwin-Whitehall School District*, TTA No. 7-93 at 6. In other words, the Secretary re-decides the case. *Forrest Area School District v. Shoup*, 153 Pa. Cmwlth. 423, 429, 621 A.2d 1121, 1125 (1993); *Bollinger v. Curwensville Area School District*, TTA No. 9-94 at 4.

In the instant case, Mr. Papada has failed to meet the heavy burden of proving that his demotion was arbitrary, discriminatory or founded upon improper considerations. Although Mr. Papada received satisfactory Performance Evaluations, the anecdotal notes on the Performance Evaluations, and the testimony and documents admitted into evidence at the hearing before the Board of Directors support the Board's decision to demote Mr. Papada.

Persistent Negligence in the Performance of Duties

Persistent negligence in the performance of duties is not defined in the Public School Code. However, negligence is defined "as the failure to exercise that care a reasonable person would exercise under the circumstances." *Lauer v. Millville Area School District*, 657 A.2d 119, 121 (Pa. Cmwlth. 1995). Persistent is defined as continuing or constant, thus, "there must be a sufficient continuity and repetition of negligent acts to support a charge of persistent negligence." *Id.* This can occur either as a series of individual incidences or as one incident carried on for a substantial period of time. *Lucciola v. Secretary of Education*, 25 Pa. Cmwlth. 419, 423, 360 A.2d 310, 312 (1976).

The anecdotal notes in Mr. Papada's 2003-2004 Performance Evaluation under School Environment state that he fell short of the target of improvement of the school environment in terms of student discipline, that discipline was still viewed as problematic in the elementary school, and that it was something Mr. Papada needed to work very hard on in data-driven ways in the future. (District Exh. 11). The notes under Executive Decision Making Ability also state

that criticism is leveled against Mr. Papada because of student discipline and the perception that he applies discipline inconsistently. Dr. Mussoline states in the anecdotal notes that this is something for Mr. Papada to look at over the next school year. (District Exh. 11). In the notes under Building Management, Dr. Mussoline states that discipline and capacity building among his staff remain Mr. Papada's biggest challenges. (District Exh. 11).

Under School Environment in his 2004-2005 Performance Evaluation, Mr. Papada's disciplinary decision to suspend a first grade student for one day during the 2004-2005 school year for jumping off the bathroom sink was referenced as being suspect. (District Exh. 10). In addition, Dr. Mussoline testified that the School District's discipline is based on progressive discipline and this was the first time the student was involved in that kind of incident. (Tr. 6/30/05, pp. 74-75). Thus, Dr. Mussoline told Mr. Papada that he thought this was a bad decision. (Tr. 6/30/05, p. 75). The 2004-2005 Performance Evaluation again states under Building Management that Mr. Papada's biggest challenges are discipline and capacity building among his staff. (District Exh. 10).

Additionally, Mr. Papada's Performance Evaluation for the 2002-2003 school year also stated, under School Environment, that he still had work to do in respect to creating discipline reporting methods and record keeping documentation. (Tr. 6/30/05, p. 104; District Exh. 12). Mr. Mussoline testified that "discipline remains a common thread, a problem thread for Mr. Papada." (Tr. 6/30/05, p. 104).

It is clear from the anecdotal notes in the above-referenced Performance Evaluations and Dr. Mussoline's testimony that Mr. Papada was aware that student discipline was a problem in the elementary school and a concern of the School District. However, Mr. Papada failed to

correct this problem. (Tr. 6/30/05, pp. 99-100). This constitutes persistent negligence in the performance of duties.

In the 2003-2004 Performance Evaluation under Communication Skills, Mr. Papada was informed that there were parental complaints that he was terse or “bully-like” towards parents. Dr. Mussoline warned Mr. Papada that having this perception in the parental community could have a terrible counteractive effect on the positive things Mr. Papada did in the school to encourage parental involvement. (Tr. 6/30/05, pp. 100-101; District Exh. 11). In the same category in the 2004-2005 Performance Evaluation, Dr. Mussoline stated that the perception remains that Mr. Papada comes across as terse or “bully-like” toward parents. (Tr. 6/30/05, pp. 100-101; District Exh. 10). This perception is supported by the fact that the PTO leaders wrote letters describing a scene where Mr. Papada yelled about how the gym was set up for the Child Identification Program and screamed that it was his building and it would be set up his way. (Tr. 6/30/05, p. 32; District Exh. 2). In addition, the notes under Community Relations in the 2004-2005 Performance Evaluation state that the negative situations with the PTO overshadowed some of the good work Mr. Papada had done to build community relationships. (District Exh. 10).

Again, Mr. Papada did not correct a problem about which he had been informed the year before, which constitutes persistent negligence in the performance of duties.

Incompetency

The Pennsylvania Supreme Court has held that incompetency as a cause for dismissal is to be given broad meaning. *Board of Public Education, School District of Philadelphia v. Soler*, 406 Pa. 168, 172, 176 A.2d 653, 655 (1961). In *Horosko v. Mount Pleasant Township School District*, 335 Pa. 369, 374-75, 6 A.2d 866, 869-70 (1939), the Pennsylvania Supreme Court provided the following definition of incompetency:

The term incompetency has a common and approved usage. The context does not limit the meaning of the word to lack of substantive knowledge of the subjects to be taught. Common and approved usage give a much wider meaning. For example, in 31 C.J., with reference to a number of supporting decisions, it is defined: 'A relative term without technical meaning. It may be employed as meaning disqualification; inability; incapacity; lack of ability, legal qualifications, or fitness to discharge the required duty.' In Black's Law Dictionary, 3rd edition, page 945, and in 1 Bouv. Law Dict., Rawle's Third Revision, p. 1528, it is defined as 'Lack of ability or fitness to discharge the required duty.' Webster's New International Standard Dictionary defines it as 'General lack of capacity of fitness, or lack of the special qualities required for a particular purpose.'

The Court has also interpreted incompetence to include insubordination and lack of frankness, candor and intellectual honesty. *Brownsville Area School District v. Alberts*, 436 Pa. 429, 432, 260 A.2d 765, 767 (1970), *citing*, *Soler*, 406 Pa. at 177, 176 A.2d at 657.

Identified in the 2004-2005 Performance Evaluation under School Environment are additional concerns regarding Mr. Papada's performance as a principal. There were complaints that a new schedule involving special subjects was implemented without fully explaining it to teachers and without communication to the parents. (District Exhs. 5, 10). This was a new schedule Mr. Papada had created with a tutoring block and other special assistance blocks but the schedule was not properly communicated to teachers or parents. This was done unilaterally by Mr. Papada and was presented to the faculty at the beginning of the school year so they did not have a good grasp of it. In addition, there was no communication sent home to the parents about the changes. (Tr. 6/30/05, pp. 67-70).

Another issue arose about a Committee Assignment sheet sent out by Mr. Papada that said "6 PM every Wednesday with no extra pay" beside the Fire Prevention Committee. This challenged staff morale because of the inappropriate comment about extra pay next to the Committee. (District Exh. 10). This notation angered the chairperson of the Committee, Ms. Pribilla, because she felt it was a direct cut to her and the Committee because she had asked if

there was money to buy paper products and drinks for lunch for the volunteers who came into the school to teach fire safety to the children. (Tr. 6/30/05, pp. 50- 54, 76; District Exh. 3). The other members of the Committee were also upset about the comment but Mr. Papada had no explanation about how or why this comment was on the assignment sheet. (Tr. 6/30/05, pp. 54, 76-77).

During the 2004-2005 school year, Mr. Papada also created a “Non Exceptional IEP” for a first grade student who did not qualify for the gifted program. (District Exhs. 8, 10). Teachers from the elementary school showed this document to Dr. Mussoline and were concerned about it because of the non-binding nature of this sort of plan and Mr. Papada’s use of the acronym IEP on the plan. (District Exh. 10). Dr. Mussoline spoke to Mr. Papada about this because the acronym IEP stands for Individualized Education Program and is a legal term that is binding and relates to a special education program developed for students with disabilities. Even though this plan was to mitigate the parents’ anger about their child not qualifying for the gifted program, use of the acronym IEP was improper, a poor choice of words and a poor decision by Mr. Papada. (Tr. 6/30/05, pp. 79-81).

February 18, 2005 was scheduled to be a half-day for students. The School District calendar and newsletters listed 12:10 p.m. as the dismissal time for the elementary students. (District Exh. 9). On February 15, without Dr. Mussoline’s consent, Mr. Papada changed the early dismissal time for the elementary school to 11:45 a.m. (Tr. 6/30/05, pp. 82-84). When Dr. Mussoline learned of this on February 16 he made Mr. Papada switch the dismissal time back to 12:10 because the transportation director only learned of it two days before the day of dismissal and it was too short a period of time for parents who had to plan for child care. (Tr. 6/30/05, pp. 83-84). This is another example of poor decision making by Mr. Papada.

During the 2004-2005 school year there was also a complaint from a parent about her child being removed from the classroom during the review for a social studies test. (Tr. 6/30/05, p. 86). Although students were taken from classrooms by Title I teachers for additional instruction, it should have been clear to teachers that students should not be removed if the classroom teacher was doing something very important in the class at that time. (Tr. 6/30/85, p. 87). As the Title I Coordinator and principal of the elementary school, Mr. Papada should have made certain teachers understood this. (Tr. 6/30/85, p. 87). His failure to do so evidences a lack of leadership.

These examples of poor decision-making and lack of leadership by Mr. Papada constitute incompetency.

Another issue arose in the 2004-2005 school year about an allegedly improper relationship between Mr. Papada and his secretary, Mrs. Readinger. In February 2005, Board members asked Dr. Mussoline if there was “something going on” between Mr. Papada and Mrs. Readinger. (Tr. 6/30/05, p. 89). On February 24, 2005, Dr. Mussoline made Mr. Papada aware that rumors of an inappropriate relationship were again surfacing at the Board level and Mr. Papada denied the allegations. (District Exh. 10). Dr. Mussoline asked the School District’s computer technician to take the computers of Mr. Papada, Mrs. Readinger, and Mrs. Shollenberger, another secretary, and look for certain phrases that would evidence an inappropriate relationship or sexual harassment. (Tr. 6/30/05, pp. 10-12, 91). The technician found emails from 2003 through 2005 between Mr. Papada and Mrs. Readinger on Mrs. Readinger’s school computer that provided such evidence. (Tr. 6/30/05, p. 12; District Exh. 1). The emails between Mr. Papada and Mrs. Readinger contain the following language:

1. Tues.-12/30/03 8:14 a.m. – Mr. Papada - Good morning my dear.

- 9:54 a.m. - Mr. Papada - Hmm you are wonderful!! Thank you. mm, do you think we could work on it late?
2. Wed.-12/31/03 9:09 a.m. – Mr. Papada - Thank you my dear.
9:23 a.m. – Mr. Papada - Hello again my dear goddess.
3. Sat.-1/17/04 8:56 a.m. – Mr. Papada - Good morning gorgeous!
11:04 a.m. – Mr. Papada – What are you doing this afternoon?
11:04 a.m. – Mrs. Readinger – Finish this
11:10 a.m. – Mr. Papada – hmmm ok
11:10 a.m. – Mrs. Readinger – what are your plans?
11:13 a.m. – Mr. Papada – Nothing specific. If I can't see you I will work here. Oh could you send me the student discipline database that I put on the shared file? I am not sure where I put it.
11:14 a.m. – Mrs. Readinger – you can see me
11:25 a.m. – Mr. Papada – Now that sounds great
11:26 a.m. – Mrs. Readinger – where same? when?
11:30 a.m. – Mr. Papada – Sounds good how about 12:30 PM?
11:30 a.m. – Mrs. Readinger – ok
11:33 a.m. – Mr. Papada – See you then!
10:23 p.m. – Mr. Papada - My gorgeous lady, I'm going to slip into that place called dreamland and of course visit you! hmm I love you my dear, talk to you in the morning Smooches!
4. Fri.-2/6/04 8:22 a.m. – Mr. Papada – Good morning my dear
5. Sat.-3/27/04 3:31 p.m. – Mrs. Readinger – psst
3:44 p.m. – Mr. Papada – What are you doing at school?
3:46 p.m. – Mrs. Readinger – What are you doing at home?
3:48 p.m. – Mr. Papada – Waiting for you!
3:50 p.m. – Mrs. Readinger – tease tease tease
6. Wed.- 4/7/04 1:21 p.m. – Mr. Papada – Psst Loosen up the pretty French gown HmMMM
7. Mon.- 4/19/04 4:06 p.m. – Mr. Papada – Hello my dear
8. Sun. - 5/16/04 9:54a.m. – Mr. Papada – Hey I do not have any time left on my card! can you call?
10:27 a.m. – Mrs. Readinger – Sounds like you are on a roll. I'll be leaving here shortly. Plans have changed and

Val no longer needs me! So I guess I will go out for awhile. Don't work too hard!
10:27 a.m. – Mr. Papada – Oh? where are you going?
10:33 a.m. – Mrs. Readinger – north
10:34 a.m. – Mr. Papada – North? Hmmm How far north are you going?
10:38 a.m. – Mrs. Readinger – Beg me and I'll go as far north as I have to!
10:39 a.m. – Mr. Papada – Oh my! can you make it to Hazleton at Damons?
10:48 a.m. – Mrs. Readinger – yes...if I leave now
10:48 a.m. – Mr. Papada – I will look for you around
11:30-11:45 AM

9. Sat.- 8/28/04 5:40 p.m. – Mr. Papada – you are one fabulous goddess!
10. Wed.- 1/19/05 3:31 p.m. – Mr. Papada – That's simply another reason I love you!

Mrs. Readinger testified that it was not unusual for Mr. Papada to call her “my dear” but she did not hear him call the other secretary, Mrs. Shollenberger, “my dear.” (Tr. 7/12/05, pp. 14-15). She also testified that Mr. Papada did not call her “goddess” every day but it was not something that was unique or unusual. Mrs. Readinger explained that she and a co-worker had coined the phrase “goddess of child accounting” when she worked in child accounting and when she moved to the elementary school office she might have said she was the “goddess of child accounting.” (Tr. 7/12/05, pp.16-17). Mrs. Readinger testified that she interpreted Mr. Papada's email on January 17, 2004 at 10:23 p.m. where he said “My gorgeous lady, I'm going to slip into that place called dreamland and of course visit you! hmm I love you my dear, talk to you in the morning Smooches!”, as Mr. Papada just saying things are so much better with her in the office because he used to have nightmares when his previous secretary was there. (Tr. 7/12/05, p. 18). Mrs. Readinger also testified that when Mr. Papada said “I love you” and “smooches” that she interpreted that as his appreciation of the work she did and that he was glad she was there. (Tr. 7/12/05, pp. 18-19). When Mr. Papada and Mrs. Readinger emailed each other on January 17,

2004 and talked about seeing each other at about 12:30 p.m., Mrs. Readinger testified that they did not meet but were simply teasing each other. (Tr. 7/12/05, pp. 20-21). She provided the same explanation for an email exchange on May 16, 2004 that discussed meeting at Damons in Hazelton. (Tr. 7/12/05, pp. 24-26).

Mr. Papada testified that he called Mrs. Readinger “my dear” to show gratitude and a closeness in working with her and working well with her. Mr. Papada also worked well with Mrs. Shollenberger but did not call her “my dear.” (Tr. 7/12/05, p. 105). Mr. Papada testified that he called Mrs. Readinger “goddess” because he had once said “oh God” and she said “goddess” and it just stuck. (Tr. 7/12/05, p. 106). Mr. Papada testified that he called Mrs. Readinger “gorgeous” as a way of showing his appreciation for her working on a Saturday. (Tr. 7/12/05, pp. 106-07). Mr. Papada testified that his January 17, 2004 email where he said he was going to “slip into dreamland and, of course, visit you” meant he was appreciative of being able to work with Mrs. Readinger and get work done and not have it sabotaged as he claimed occurred with his previous secretary. (Tr. 7/12/05, pp. 108-08). Mr. Papada also testified that the email references about meeting each other were simply he and Mrs. Readinger teasing each other. (Tr. 7/12/05, pp. 111-12).

Mr. Papada’s and Mrs. Readinger’s explanations of the language in their emails are highly questionable. Although Mr. Papada and Mrs. Readinger testified they did not have an affair (Tr. 7/12/05, pp. 8, 87), the language in the emails is not language that is common between a principal and his secretary. The emails clearly evidence unprofessional and inappropriate communications between Mr. Papada and Mrs. Readinger, both of whom are married. (Tr. 7/12/05, p. 112). Mr. Papada was the principal of the school and was to “act as a role model for expected staff behavior by demonstrating leadership, management, and instructional skills.”

(District Exh. 4, No. 10.3). As a leader, he was also evaluated on his executive decision making ability, which included considering the impact of decisions on the total organization. (District Exh. 10, No. 7). Even though only Mr. Papada and Mrs. Readinger knew of the emails and their content until May 2005, the emails evidence inappropriate decision making on the part of Mr. Papada and a lack of leadership or the ability to act as a role model for expected staff behavior. Mr. Papada obviously did not consider the impact on the total organization by his decisions to use inappropriate and unprofessional language in his emails to Mrs. Readinger, such as, calling her my dear, goddess, gorgeous and telling her he loved her and made plans to meet with her. Although the School District stated a charge of immorality against Mr. Papada, and it is presumed that the emails between Mr. Papada and Mrs. Readinger were the basis for that charge, the School District has not proven immorality.

Immorality under section 1122 of the Public School Code is defined as “such a course of conduct as offends the morals of the community and is a bad example to the youth whose ideals a teacher is supposed to foster and elevate.” *Kinnery v. Abington School District*, 673 A.2d 429, 432 (Pa. Cmwlth. 1996). The school district has the burden of proving the three elements of the offense of immorality, which are: that the underlying acts that the district claims constitute immorality actually occurred; that such conduct offends the morals of the community; and, that the conduct at issue is a bad example to the youth whose ideals the educator is supposed to foster and elevate. *Id.*

Because there was no testimony that this conduct, which was the language in the emails, violated the morals of the community, or was a bad example to the youth whose ideals the educator was to foster and elevate, the School District failed to prove that this conduct constituted immorality. *See, Horton v. Jefferson County-Dubois Area Vocational Technical*

School, 157 Pa. Cmwlth. 424, 630 A.2d 481 (1993); *Everett Area School District v. Ault*, 120 Pa. Cmwlth. 514, 548 A.2d 1341 (1988). Nevertheless, Mr. Papada's conduct does constitute incompetence because it was inappropriate and unprofessional and evidences the "lack of the special qualities required for a particular purpose," such as being a principal. *Horosko*, 335 Pa. at 375, 6 A.2d at 870.

For all of the reasons stated above, Mr. Papada failed to prove that his demotion from elementary school principal to physical education teacher was arbitrary, capricious or founded on improper considerations. Thus, his demotion is affirmed.

Disciplinary Suspension

Mr. Papada argues that he was subjected to a disciplinary suspension because he was not paid for the months of July and August 2005. Mr. Papada further argues that "the manner in which he was 'demoted' was an attempt to conceal the fact that he was not going to be paid any salary for two months and the 'demotion' was a de facto disciplinary suspension without discharge." (Appellant's Brief, pp. 21-22). The School District argues that the issue of a disciplinary suspension was not presented at the demotion hearing and cannot be considered in the demotion matter. In addition, the School District argues that such a matter should have been handled through the Grievance Procedure in the Collective Bargaining Agreement as opposed to the demotion hearing. (Appellee's Brief, pp. 14-15).

Notwithstanding Mr. Papada's arguments that he was subjected to a *de facto* disciplinary suspension over which he believes the Secretary has jurisdiction, case law is clear that the Secretary does not have jurisdiction over suspensions of professional employees. In *Rike v. Secretary of Education*, 508 Pa. 190, 194, 494 A.2d 1388, 1390 (1985), the Pennsylvania Supreme Court stated:

School boards are local agencies, 2 Pa.C.S.A. §101, and jurisdiction of appeals therefrom is vested generally in the courts of common pleas, 42 Pa.C.S.A. §933(a)(2). The Public School Code provides exceptions to this appellate jurisdiction of common pleas court for decisions of school boards dismissing or demoting tenured teachers, 24 P.S. §§11-1131, 11-1151, and for disputes over accumulated sick leave. 24 P.S. §11-1154. In these cases, jurisdiction of the appeals is vested in the Secretary of Education. *Id.* As Rike was given a disciplinary suspension without pay or other benefits for the remainder of the school year, appeal of the Board's adjudication was not within the jurisdiction of the Secretary.

Thus, the Secretary does not have jurisdiction over Mr. Papada's allegation that he was subjected to a disciplinary suspension.

However, in the event this decision is appealed and an appellate court would hold that the Secretary had jurisdiction over the alleged disciplinary suspension, the Secretary will, in the interests of judicial economy, address the merits of the issue.

Mr. Papada was notified by letter dated July 19, 2005 that the Board of School Directors voted unanimously to uphold the administration's recommendation to demote him from an elementary principal to a classroom teacher. (Exh. C to Petition of Appeal). By letter dated July 26, 2005, the School District's counsel informed Mr. Papada's counsel that since Mr. Papada's demotion was effective June 30, 2005, he was no longer eligible to receive administrative pay after June 30, 2005. (Exh. D to Petition of Appeal). The payment schedule for administrators during the 2004-2005 school year was from July 1, 2004 through June 30, 2005. (Administrator Act 93 Contract). In addition, professional employees were paid from September 1, 2004 through August 31, 2005 for the 2004-2005 school year. (Agreement Between the Board of Directors of the Pine Grove Area School District and the Pine Grove Area Education Association). So professional employees who received payments in July and August of 2005 were still being paid for the 2004-2005 school year. Payment for professional employees for the new school year of 2005-2006 would not begin until September 2005. Thus, Mr. Papada would

begin receiving pay as a professional employee on September 8, 2005, which would be the first payment issued to professional employees for the 2005-2006 school year. (Exhibit D to Petition of Appeal).

Mr. Papada was paid as an administrator during the 2004-2005 school year. He received full pay as a principal for the 2004-2005 school year. When he was demoted, effective June 30, 2005, he became subject to the payment schedule for professional employees for the 2005-2006 school year. Thus, the failure to receive any payment during July and August of 2005 was because he had already been paid for his work during the 2004-2005 school year, which was as an administrator. Mr. Papada would not be eligible for pay as a professional employee until September 1, 2005 and would then be paid through August 2006 for the 2005-2006 school year. Therefore, the School District's failure to pay Mr. Papada during July and August 2005 does not constitute a disciplinary suspension.

Conclusion

Mr. Papada failed to meet his heavy burden of proving that the Board's decision to demote him was arbitrary, discriminatory or founded upon improper considerations. In addition, there was no disciplinary suspension imposed upon Mr. Papada.

Accordingly, we enter the following:

ORDER

Appellant, Albert J. Papada, failed to meet his burden of establishing that his demotion was arbitrary, discriminatory or founded upon improper considerations. The decision of the Board of School Directors of the Pine Grove Area School District is affirmed.

/s/
Gerald L. Zahorchak, D.Ed.
Secretary of Education

Date mailed: February 17, 2006