

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

<b>JUDITH SARGENT,</b>	:	
	:	
<b>Appellant,</b>	:	
	:	<b>Teacher Tenure Appeal</b>
<b>v.</b>	:	<b>No. 02-08</b>
	:	
<b>SCHUYLKILL VALLEY</b>	:	
<b>SCHOOL DISTRICT,</b>	:	
	:	
<b>Appellee</b>	:	

Judith Sargent (“Ms. Sargent”), Appellant, appeals the decision of the Board of School Directors (“Board”) of the Schuylkill Valley School District (“District”), terminating her employment with the District.

**Findings of Fact**

1. Ms. Sargent was employed as Principal of the Schuylkill Valley Middle School for six years. (Notes of Testimony, page 30).<sup>1</sup>
2. By letter dated June 3, 2008, the Board notified Ms. Sargent that she was being charged with immorality under section 1122(a) of the Pennsylvania School Code. *See* 24 P.S. §11-1122(a). (Sargent Exhibit #1).<sup>2</sup>
3. The notice of charges filed against Ms. Sargent alleged that on February 28, 2008, Ms. Sargent engaged in theft of goods from Redner’s Warehouse Markets. (S. Exh. #1).
4. A two day hearing in this matter was held on June 17 and June 18, 2008.
5. Kip Bowers (“Mr. Bowers”), a Redner’s Warehouse store detective, apprehended Ms. Sargent at the Kenhorst Redner’s Warehouse Market on February 28, 2008. (N.T. 10-12).

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<sup>1</sup> Hereinafter, references to testimony from the June 17, 2008 hearing before the Board will be denoted as “N.T. \_\_\_.”

<sup>2</sup> Hereinafter, citations to any document contained within the Exhibits entered into evidence by Ms. Sargent will be referenced as “S. Exh. # \_\_\_.”

6. Mr. Bowers apprehended Ms. Sargent after he observed Ms. Sargent place cooking oil, Nissley (*sic*) morsels and tuna into her purse. (N.T. 10-12).

7. Mr. Bowers also witnessed Ms. Sargent place medicine into her coat pocket. Initially, Ms. Sargent placed a box of medicine on top of her shopping cart; Ms. Sargent then proceeded to a different aisle where Mr. Bowers observed her open the box of medicine, remove the contents from the box, place the empty box behind toilet tissue and place the pills inside her coat pocket. (N.T. 11-12).

8. Ms. Sargent proceeded to a checkout aisle, where she purchased about \$40.00 worth of groceries, but made no attempt to pay for the items placed into her purse or coat pocket. (N.T. 12).

9. After she passed through the checkout aisle, Mr. Bowers apprehended Ms. Sargent. (N.T. 12).

10. When confronted by Mr. Bowers, Ms. Sargent initially denied having taken anything; when Mr. Bowers presented the empty medicine box, however, Ms. Sargent groaned and agreed to accompany Mr. Bowers to the store office. (N.T. 12).

11. The items Ms. Sargent had not paid for were removed from her purse and from her coat pocket and the Cumru Township police were called. (N.T. 12-13).

12. The total amount of merchandise taken by Ms. Sargent was \$25.61. (N.T. 17).

13. As a result of Ms. Sargent's conduct, she received a summary citation. (N.T. 105-106).

14. On March 1, 2008, Ms. Sargent telephoned Dr. Solomon Lausch, Superintendent of the District, and informed him of her arrest. (N.T. 30-31).

15. Ms. Sargent and Dr. Lausch agreed that Ms. Sargent would be granted a medical leave of absence for the balance of the school year. (N.T. 31-32).

16. Shortly following the events at Redner's Warehouse Markets, Ms. Sargent contacted and became a patient of Dr. Joyce Pottash, a licensed psychologist; Ms. Sargent first saw Dr. Pottash on March 5, 2008. (N.T. 134, 136; S. Exh. #5).

17. Dr. Pottash diagnosed Ms. Sargent as having Major Depressive Disorder, Single Episode, Mild, with atypical features and Adjustment Disorder with Anxiety, acute. (S. Exh. #5).

18. During her medical leave of absence from the District, Ms. Sargent continued to receive treatment from Dr. Pottash. (S. Exh. #5).

19. On June 2, 2008, Ms. Sargent, through Counsel, corresponded with the District, requesting that the District consider the lack of a reasonable accommodation and/or the District's lack of engagement in the interactive process under the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.*, as a reason to defer the District's issuance of a notice of charges against Ms. Sargent.

20. On June 3, 2008, the District, through Counsel, offered to meet with Ms. Sargent to discuss and explore any reasonable accommodations that would enable Ms. Sargent to perform the essential functions of her administrative position. (S. Exh. #1).

21. Ms. Sargent never responded to the District's June 3, 2008 offer.

22. On June 18, 2008, the Board, by a two-thirds vote, determined that the charge of immorality was substantiated by the evidence and Ms. Sargent was discharged from her employment with the District. (E. Exh. #1).

## DISCUSSION

### Ms. Sargent has been afforded due process of law.

Ms. Sargent contends that she should be reinstated to her administrative position within the District because she was denied procedural due process. More specifically, Ms. Sargent contends that: (1) the District failed to provide her a Lauderhill hearing; (2) the District Administration failed to prosecute the case; and (3) the Board adopted a full prosecutorial role in addition to its adjudicatory role, which led to an impermissible commingling of functions.

In *Belasco v. Bd. of Public Educ. of Sch. Dist. of Pittsburgh*, 510 A.2d 337 (Pa. 1986), the Supreme Court of Pennsylvania set forth the proper standard of review for tenure proceedings; in that case, the Court held that the Secretary of Education has a duty and obligation to review tenure proceedings *de novo*. Specifically, the Court held that the Secretary must perform a *de novo* review of the school board's determinations because "[m]inimum requirements of due process demand that a litigant have, at some stage of a proceeding, a neutral fact finder." *Id.* at 343. The Supreme Court of Pennsylvania has also held that the "[t]he protections afforded to an aggrieved professional employee by the requirements of due process [are] provided by the *de novo* review of the proceedings by the Secretary of Education as a neutral factfinder." *Katruska v. Bethlehem Center Sch. Dist.*, 767 A.2d 1051, 1055 (Pa. 2001).

In *Katruska*, the Board of School Directors approved a resolution recommending Katruska's demotion from high school principal to a teaching position. On appeal, Katruska argued that one of the board's members should have not been permitted to hear the case because the board member's wife, a secretary and attendance officer for the school district had testified during the hearing, resulting in a potential bias for that specific board member. *Id.* at 1053. The

Court affirmed Katruska's demotion and, in doing so, noted that the Secretary of Education's *de novo* of the case review cured "any potential for bias." *Id.*

Although Ms. Sargent argues that the Board failed to provide her with adequate due process, it is clear from both *Belasco* and *Katruska* that the Secretary's *de novo* review of the decision of a school board guarantees that all requirements of due process are met, as the Secretary's *de novo* review corrects all due process errors made below. *Id.* at 1056.

**The District has established immorality as required by the Public School Code.**

Section 1122 of the Public School Code, *as amended*, 24 P.S. §11-1122, provides in pertinent part:

[t]he only valid causes for termination of a contract heretofore or hereafter entered into with a professional employee shall be immorality; incompetency...; intemperance; cruelty; persistent negligence in the performance of duties; willful neglect of duties...persistent and willful violation of or failure to comply with school laws of this Commonwealth (including official directives and established policy of the board of directors); on the part of the professional employe....

In order to uphold Ms. Sargent's dismissal, only one of these charges must be established.

*Horton v. Jefferson County-DuBois Area Vocational Technical Sch.*, 630 A.2d 481, 483 (Pa. Commw. Ct. 1993). After a hearing and a thorough review of the record, the Secretary now finds that there is sufficient evidence to uphold the District's dismissal of Ms. Sargent.

Ms. Sargent contends that the District failed to establish immorality as required by the School Code and, therefore, she should be reinstated. *See* 24 P.S. §11-1122(a). Specifically, Ms. Sargent contends that the District failed to establish that she engaged in the underlying acts that the District claims constitute immoral conduct; that her actions offended the morals of the community; and that her actions set a bad example for the students.

Immorality is defined as “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 to elevate.” *Horosko v. Sch. Dist. of Mount Pleasant Twp.*, 6 A.2d 866, 868 (Pa. 1939). In order to prove immorality, the District must establish that: (1) the underlying acts which the District claims constitute immorality actually occurred; (2) such conduct offends the morals of the community; and (3) the conduct is a bad example to the youth whose ideals the educator is supposed to foster and elevate. *Kinniry v. Abington Sch. Dist.*, 673 A.2d 429 (Pa. Commw. Ct. 1996).

In the present case, the District established that the acts alleged to constitute immorality actually occurred, as the evidence presented establishes that Ms. Sargent, while shopping at a Redner’s Warehouse Market, placed cooking oil, chocolate chips and tuna into her purse. The evidence also establishes that Ms. Sargent opened a box of medicine, removed the contents of the box, placed the empty box behind toilet tissue and placed the contents of the box into her coat pocket. Although Ms. Sargent later proceeded through the checkout aisle, paying for other groceries, she made no attempt to pay for the items in her purse and coat. At the hearing before the Board, Ms. Sargent did not deny that she had taken these items without paying for them; instead Ms. Sargent claimed that she did not remember putting the items into her purse and coat pocket because she was experiencing stress in both her personal and professional life.

It has been held that shoplifting falls within the definition of immorality. *Lesley v. Oxford Area Sch. Dist.*, 420 A.2d 764, 766 (Pa. Commw. Ct. 1980). In *Lesley*, the professional employee was discharged from employment because she was observed, and admitted to, shoplifting at the local supermarket. Although the professional employee asserted that she was suffering from temporary mental instability brought on by physical and emotional stresses and, therefore, should not have been terminated from employment, the court upheld the termination

noting: “[t]he circumstances described are mitigating but they cannot eradicate the result or change the complexion of her acts.” *Id.* (quoting *Batrus’ Appeal*, 26 A.2d 121, 124 (Pa. Super. Ct. 1942)). Even if Ms. Sargent cannot remember placing the grocery items into her purse and coat pocket, she engaged in the act of shoplifting, an act constituting immorality. Because Ms. Sargent did engage in the act of shoplifting and because the District does not have the burden of proving intent with respect to a charge of immorality, the Secretary now finds that Ms. Sargent engaged in conduct which constitutes immorality. *See Lenker v. East Pennsboro School District*, TTA 10-90A (1990).

In order to discharge a professional employee for immorality, a district must establish that the alleged underlying acts constitute immorality; a district must also establish that the conduct offends the morals of the community and is a bad example to the youth whose ideals the educator is supposed to foster and elevate. *Kinniry v. Abington Sch. Dist.*, 673 A.2d 429(Pa. Commw. Ct. 1996). The determination of what constitutes the community standard is a determination for the Board to make; when a board of school directors finds that a professional employee has engaged in conduct which offends the morals of the community, this finding will be upheld if supported by substantial evidence. *Bethel Park Sch. Dist. v. Krall*, 445 A.2d 1377, 1378 (Pa. Commw. Ct. 1982) (citing *Penn-Delco Sch. Dist. v. Urso*, 382 A.2d 162 (1978)).

In the hearing before the Board, letters of complaints from parents and the testimony of multiple witnesses were presented, all of which established the belief that Ms. Sargent’s conduct offended the morals of the community. Further, at least two witnesses testified that Ms. Sargent’s actions set a bad example for the youth of the community. For example, Dr. Lausch, Superintendent of the District, testified: “[n]early everyone that I’ve spoken to has also stated that they believe what she has done has offended the standards within the community.... (N.T.

33). Dr. Lausch further testified that Ms. Sargent's conduct was in "direct contravention to her obligation to set a good moral example for students." (N.T. 34). Based on these facts, the Secretary now upholds the Board's finding that Ms. Sargent's conduct offended the morals of the community and set a bad example to the youth whose ideals Ms. Sargent was supposed to foster and elevate.

**The District offered to provide a reasonable accommodation to Ms. Sargent.**

Ms. Sargent contends that the District failed to provide her with a reasonable accommodation as required by the Public School Code, 24 P.S. § 11-1122<sup>3</sup>, and the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.* Although Ms. Sargent, through Counsel, contacted the District on June 2, 2008, Ms. Sargent did not explicitly request that the District provide her with an accommodation or engage with her in the interactive process. Instead, Ms. Sargent requested that the District consider the lack of a reasonable accommodation and/or the District's lack of engagement in the interactive process as a reason to defer the District's issuance of a notice of charges against her. (S. Exh. #2).

On June 3, 2008, the District, through Counsel, responded to Ms. Sargent's June 2, 2008 correspondence. The District's response correctly stated that it had not received a request for accommodation from Ms. Sargent other than the sick leave of absence provided to her. The District further offered for the Superintendent to meet with Ms. Sargent to discuss reasonable accommodations that would enable Ms. Sargent to perform the essential functions of her job. (S.

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<sup>3</sup> Section 1122 provides in relevant part that a valid cause for termination of a contract with a professional employee includes "physical or mental disability as documented by competent medical evidence, which after reasonable accommodation of such disability as required by law substantially interferes with the employe's ability to perform the essential functions of his employment . . . ." The District did not terminate Ms. Sargent based on a physical or mental disability, thus, it is not clear that this provision of section 1122 is applicable to this case. In any event, as stated in the body of the decision, Dr. Pottash made no mention of the need for a reasonable accommodation for Ms. Sargent.

Exh. #3). There is nothing in the record before the Secretary to suggest that Ms. Sargent ever replied to the District's response. Moreover, on June 3, 2008, Ms. Sargent's psychologist, Dr. Pottash, notified the District that Ms. Sargent was medically released to return to work, but made no mention of the need for a reasonable accommodation.<sup>4</sup> For these reasons, the Secretary now finds that the District met any obligations it had related to providing Ms. Sargent with a reasonable accommodation.

### CONCLUSION

There are sufficient facts to prove that Ms. Sargent engaged in the theft of goods from Redner's Warehouse Market. Thus, Ms. Sargent's conduct constitutes immorality and her dismissal by the District was justified.

Accordingly, the following Order is entered:

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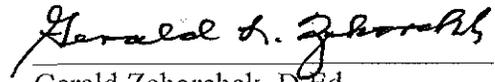
<sup>4</sup> Dr. Pottash did recommend that Ms. Sargent continue treatment, but made no reference to any accommodation which would be necessary for Ms. Sargent to fulfill the duties of her position.

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ORDER

AND NOW, this 7th day of November, 2008, it is hereby ordered and decreed that the appeal of Judith Sargent is denied and the decision of the Board of School Directors of the Schuylkill Valley School District to dismiss Judith Sargent from employment is affirmed.

  
Gerald Zahorchak, D.Ed.,  
Secretary of Education

Date Mailed: 11/07/2008