

5. District teachers are not permitted to physically put their hands on students to restrain them unless they have been “safety care” trained and any teacher may receive such training upon request. (Slater 032)

6. Mr. Slater admitted that he was not “safety care” trained. (Slater 033)

7. In 2015, Mr. Slater received a warning for inappropriate physical contact with students. (Slater 045-046, 047)

8. Later in 2015, because of a separate incident, Mr. Slater received a three-day suspension for inappropriate physical contact with students. (Slater 045-046, 047)

9. Mr. Slater was or should have been aware of the above District policies. (Slater 046)

10. On August 26, 2019, Mr. Slater was assigned to a teaching position at Woodrow Wilson Middle School (school). (Slater 041, 056)

11. The principal was Mr. Slater’s direct supervisor. (Slater 042)

12. Mr. Slater was assigned as an English as a second language (ESOL) teacher and a writing enrichment teacher. (Slater 041, 067)

13. Mr. Slater did not have his own classroom; he went into another teacher’s classroom and taught writing enrichment while the teacher had a preparation period. (Slater 068-069)

14. On December 6, 2019, a substitute teacher was present in the classroom where Mr. Slater was assigned. (Slater 069)

15. On December 6, 2019, an incident occurred between some of the students and Mr. Slater. (Slater 016)

16. This incident occurred when students and teachers were changing classrooms between classes. (Slater 023)

17. At the start of the class period, Mr. Slater entered a classroom. (Slater 070)

18. There were students from the classroom in the hallway. (Slater 070)
19. The students in the classroom were not in their seats. (Slater 070)
20. The students were loud. (Slater 070)
21. A student threw something in Mr. Slater's direction. (Slater 070)
22. TR, a student, was getting things out of his locker. (Slater 026)
23. The bell to begin class had not yet rung. (Slater 070)
24. The classroom phone was disconnected. (Slater 034, 070)
25. SM, another student, was trying to get out of the classroom. (Slater 023)
26. The substitute teacher was trying to get into the classroom. (Slater 023, 034, 193)
27. Mr. Slater yelled in SM's face to let the substitute teacher into the classroom. (Slater 023)
28. SM backed up to let the teacher into the classroom. (Slater 023)
29. The substitute teacher entered the classroom and sat at the desk. (Slater 034)
30. Mr. Slater told the substitute teacher to stay at the desk. (Slater 070)
31. Mr. Slater went across the hall to call the office from another teacher's classroom. (Slater 070)
32. Mr. Slater then returned to the classroom with the substitute teacher at the desk. (Slater 070)
33. Mr. Slater spit on SM. (Slater 023)
34. Mr. Slater choked SM, preventing SM from breathing properly. (Slater 023, 026)
35. Two other students tried to get Mr. Slater off SM. They were AT and TR. (Slater 023)
36. Mr. Slater started hitting the students. (Slater 026)
37. Mr. Slater also received some bruises during the altercation. (Slater 072)

38. A teacher reported into the room and TR let go of Mr. Slater. (Slater 026)
39. The principal and climate manager received a call on a school walkie-talkie regarding the incident. (Slater 025, 035, 038)
40. The principal made sure that the injured students were transported to the nurses' office, and that the classroom was supervised. (Slater 028)
41. The climate manager removed Mr. Slater from the classroom and put him in the climate manager's office. (Slater 038)
42. The nurses did an assessment of the students. (Slater 016)
43. One nurse examined student SM. (Slater 016)
44. SM reported that he had been choked by Mr. Slater (Slater 017)
45. SM had injuries around his neck consistent with being choked. (Slater 017)
46. The nurse filed a report of suspected child abuse regarding SM. (Slater 017)
47. Another nurse examined AT. (Slater 021)
48. AT had scratches on his neck. (Slater 021)
49. The nurse filed a report of suspected child abuse regarding AT. (Slater 021)
50. Under the terms of the District's child abuse policy, child abuse is defined, in part, as intentionally, knowingly, or recklessly causing bodily injury to a child. (Slater 177-180)
51. The principal discussed the situation with the students, with Mr. Slater, and with his supervisor. (Slater 029)
52. On December 10, 2019, Mr. Slater was temporarily reassigned until the investigation was completed. (Slater 029, 073)
53. The school climate manager took signed statements from the students and the teachers involved in the incident. (Slater 030-031)

54. An initial first level investigatory conference was held with the principal. (Slater 031, 042)
55. At the investigatory conference, both the District and Mr. Slater were represented. (Slater 031)
56. Mr. Slater was represented by his union. (Slater 031)
57. The District was represented by a labor relations officer. (Slater 031, 043)
58. Following the first level hearing, the principal prepared a summary of the incident known as a 204 document. (Slater 042)
59. In the 204 document, the principal concluded that Mr. Slater did assault the students in that he put his hands on the students. (Slater 032)
60. The principal recommended that Mr. Slater be terminated because he put his hands on students. (Slater 032, 042)
61. The principal met with Mr. Slater at a 204 conference, at which Mr. Slater was presented with the termination recommendation. (Slater 042, 043)
62. Mr. Slater was also given the opportunity to respond to the termination recommendation. (Slater 042-043)
63. Following the 204 conference, the principal affirmed his recommendation that Mr. Slater be terminated. (Slater 033)
64. On October 1, 2020, a second level conference was held with the interim deputy of the office of employee and labor relations within the office of talent serving as the hearing officer. (Slater 042, 043)
65. Mr. Slater was entitled to union representation at the second level conference. (Slater 043)

66. The District was represented by the labor relations officer. (Slater 043)

67. At the second level conference, Mr. Slater was given notice of the charges against him, an explanation of the charges, and an opportunity to respond to those charges. (Slater 043)

68. After the conference, the hearing officer upheld the recommendation for termination. (Slater 044)

69. Mr. Slater was suspended without pay after the hearing officer upheld the recommendation for termination. (Slater 044, 080, 143, 145-149)

70. The hearing officer has the authority to suspend Mr. Slater without pay. (Slater 052)

71. Mr. Slater's pay was ended on or about November 6, 2020. (Slater 057)

72. On December 10, 2020, prior to the roll call, the District's Board of Education (Board) announced that it had met in executive session on December 3, 2020, to discuss personnel matters and had also met prior to December 10, 2020, to discuss personnel matters. (Slater 312-324)

73. Following the roll call, the Board resolved that there existed sufficient evidence to support the recommendation of the superintendent and/or his designee to terminate Mr. Slater. (Slater 064, 151-152, 312-324)

74. On December 23, 2020, the District sent a letter to Mr. Slater indicating that he was terminated effective December 10, 2020. (Slater 048, 065, 153, 295-296)

75. This letter was unauthorized by the Board. (Slater 048, 153)

76. As a result, on December 23, 2020, the District sent a retraction letter to Mr. Slater. (Slater 048, 297)

77. In January of 2021, the president of the Board and the secretary of the Board sent Mr. Slater two letters containing a statement of the charges, and a notice of right to a hearing. (Slater 048, 154-157, 162-164, 298-304)

78. The letters also indicated that he would be suspended without pay but with health benefits. (Slater 049, 156)

79. By letter dated March 8, 2021, The District indicated that Mr. Rudy Garcia, Esq. would be the hearing officer. (Slater 166-167)

80. The hearing officer held a hearing on Wednesday, March 24, 2021. (Slater 001)

81. The hearing officer issued a recommendation and report on June 24, 2021, indicating that Mr. Slater should be dismissed. (Slater 442)

82. On August 19, 2021, following the roll call, the Board adopted the hearing officer's finding of fact and conclusions of law and held that Mr. Slater was dismissed from his employment. (Slater 325-341)

83. Mr. Slater was discharged for engaging in physically inappropriate conduct towards others and for failing to always treat students in a respectful manner. (Slater 044)

84. Mr. Slater's actions violated the policies of the Board and District's the code of ethics. (Slater 044)

85. Mr. Slater filed an appeal from the Board's decision to the Secretary of Education (Secretary) on July 25, 2020, and a hearing officer was appointed. (Hearing Officer's (H.O.) Exhibit (Ex.) 1)

LEGAL STANDARDS

A tenured professional employee has a property interest in continued employment. *School District of Phila. v Jones*, 139 A.3d 358, 366 (Pa. Cmwlth. 2016). A tenured professional employee may only be dismissed for the reasons set forth in Section 1122 of the School Code, 24 P.S. § 11-1122 (Section 1122). *Foderaro v. Sch. Dist. of Phila.*, 531 A.2d 570, 571 (Pa. Cmwlth. 1987). "It is thus apparent that the legislature intended to protect tenure except for the serious charges listed." *Lauer v.*

Millvale Area Sch. Dist., 657 A.2d 119, 121 (Pa. Cmwlth. 1995).

The purpose of Section 1122 is to provide “the greatest protection possible against dismissal.” *McFerren v. Farrell Area Sch. Dist.*, 993 A.2d 344, 353 (Pa. Cmwlth. 2010) (quoting *Lauer v. Millville Area Sch. Dist.*, 657 A.2d 119, 121 (Pa. Cmwlth. 1995)). “Section 1122 was not intended to provide a school district with an arsenal of weapons to use when it wishes to relieve itself of its contractual obligations to a professional employee.” *Id.* “[T]o dismiss a professional employee protected by contract requires a serious reason, not ‘picayune and unwarranted criticisms.’” *Id.* (quoting *Lauer*, 657 A.2d at 123). In short, the grounds for dismissal listed in Section 1122 must be strictly construed in favor of the professional employee and against the school district. *McFerren v. Farrell Area Sch. Dist.*, 993 A.2d 344, 353 (Pa. Cmwlth. 2010).

The School Code does not define “persistent and willful violation.” See 24 P.S. §§ 11-1101 and 11-1122. However, Pennsylvania courts interpret these terms based on their common and approved usage. *Kinniry v. Abington Sch. Dist.*, 673 A.2d 429 (Pa. Cmwlth. 1996). “Persistent” generally means “continuing” or “constant.” *Lucciola v. Secretary of Educ.*, 360 A.2d 310, 312 (Pa. Cmwlth. 1976). Persistency is shown where the improper conduct is repeated in a series of separate incidents over a substantial period of time. *Horton v. Jefferson County-Dubois Area Vocational Tech. Sch.*, 630 A.2d 481 (Pa. Cmwlth. 1993). The Court has concluded that there must be continuity and repetition of negligent acts to support a charge of persistent negligence. *Lauer v. Millville Area Sch. Dist.*, 657 A.2d 119, 121 (Pa. Cmwlth. 1995).

On the other hand, “[w]illfulness requires the presence of intention and at least some power of choice.” *Horton*, 630 A.2d at 483. While willfulness or intent can often be inferred from the nature of a particular violation, such intent is not to be presumed where facts do not so indicate. *Cowdery v. Bd. of Educ. of Sch. Dist. of Philadelphia*, 531 A.2d 1186 (Pa. Cmwlth. 1987). To dismiss a professional

employee for willful neglect of duties, a district must show that the employee intentionally disregarded his known duties. *Flickinger v. Lebanon Sch. Dist.*, 898 A.2d 62, 67 (Pa. Cmwlth. 2006) (holding that the failure of a principal to immediately respond to the report of a gun in the school was a choice that he made as he knew he was required to respond immediately to a report of a gun and, therefore, his conduct constituted willful neglect of duty as it placed the students in danger) *Williams v. Joint Operating Comm. of the Clearfield City. Vocational-Tech. Sch.*, 824 A.2d 1233 (Pa. Cmwlth. 2003) (holding that assistant director's act of opening bids before the bid submission deadline and discussing the content of the bids with one of the bidders of the project was a willful neglect of duty because doing so was illegal). Thus, a persistent and willful violation of or failure to comply with school laws requires three elements: persistency, willfulness, and a violation of school law. *See Horton*, 630 A. 2d at 430-431.

A school district may dismiss a professional employee for cruelty when a teacher intentionally and maliciously inflicts physical suffering upon a student. *Blascovich v. Bd. of Sch. Dirs. of Shamokin Area Sch. Dist.*, 410 A.2d 407, 408-09 (Pa. Cmwlth. 1980). A district may dismiss a professional employee for intemperance when the employee exhibits a loss of self-control, which may be inferred from the use of excessive force. *McFerren v. Farrell Area Sch. Dist.*, 993 A.2d 344, 360 (Pa. Cmwlth. 2010); *Belasco v. Bd. of Pub. Educ. of Sch. Dist. of Pittsburgh*, 486 A.2d 538, 541-42 (Pa. Cmwlth. 1985), *aff'd*, 510 A.2d 337 (Pa. 1986).

Regarding the procedure to be followed for dismissing a professional employee, the School Code provides as follows:

The only valid causes for termination of a contract heretofore or hereafter entered into with a professional employe shall be immorality; incompetency; unsatisfactory teaching performance based on two (2) consecutive ratings of the employe's teaching performance that are to include classroom observations, not less than four (4) months apart, in which the employe's teaching performance is rated as unsatisfactory; intemperance; cruelty; persistent negligence in the performance of duties; wilful neglect of duties; 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; advocacy of or participating in un-American or subversive doctrines; conviction of a felony or acceptance of a guilty plea or nolo contendere therefor; persistent and wilful 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:

24 P.S. § 11-1122

Before any professional employe having attained a status of permanent tenure is dismissed by the board of school directors, such board of school directors shall furnish such professional employe with a detailed written statement of the charges upon which his or her proposed dismissal is based and shall conduct a hearing. A written notice signed by the president and attested by the secretary of the board of school directors shall be forwarded by registered mail to the professional employe setting forth the time and place when and where such professional employe will be given an opportunity to be heard either in person or by counsel, or both, before the board of school directors and setting forth a detailed statement of the charges.

24 P.S. § 11-1127

After fully hearing the charges or complaints and hearing all witnesses produced by the board and the person against whom the charges are pending, and after full, impartial and unbiased consideration thereof, the board of school directors shall by a two-thirds vote of all the members thereof, to be recorded by roll call, determine whether such charges or complaints have been sustained and whether the evidence substantiates such charges and complaints, and if so determined shall discharge such professional employe. If less than two-thirds of all of the members of the board vote in favor of discharge, the professional employe shall be retained and the complaint shall be dismissed.

24 P.S. § 11-1129

Before any tenured professional employee is dismissed by the school board, the school board must resolve to dismiss the employee and to furnish him with a detailed written statement of the charges upon which his or her proposed dismissal is based and must conduct a hearing before the school board.

24 P.S. § 11-1127; *Vladimirsky v. Sch. Dist. of Phila.*, 144 A.3d 986, 994 (Pa. Cmwlth. 2016); *School Dist. of Phila. v. Jones*, 139 A.3d 358 (Pa. Cmwlth. 2016).

“[W]here a school board undertakes to terminate a contract, dismiss or demote a professional employe, the procedure set forth in the School Code must be strictly followed, and failure on the part of the Board to comply therewith renders an attempted demotion abortive. We can find no provision in the

School Code conferring upon the administrative staff of a school district whether it be the Superintendent or Principal, the authority to demote a professional employee.” *Board of School Directors of the Abington Sch. Dist. v. Pittenger*, 305 A.2d 382, 386 (Pa. Cmwlth. 1973). When a district dismisses a professional employee without full compliance with the School Code, the employee is entitled to reinstatement. *West Shore Sch. Dist. v. Bowman*, 409 A.2d 474, 480 (Pa. Cmwlth. 1979). A professional employee is entitled to a hearing prior to any demotion in status or pay. 24 P.S. § 11-1151; *Burnett v. Sch. Dist. of Phila.*, 166 A.3d 521, 525, (Pa. Cmwlth. 2017).

A suspension of a professional employee is permissible where the teacher’s conduct is potentially harmful to the safety of children. *Board of Ed. of Sch. Dist. of Phila. v. Kushner*, 530 A.2d 541, 542-43 (Pa. Cmwlth. 1987). If a professional employee is suspended, charges are filed, a hearing is held and a *de novo* review is conducted before the Secretary, the professional employee has been provided with all the process that he is due before his termination. *Flickinger v. Lebanon Sch. Dist.* 898 A.2d 62, 66 (Pa. Cmwlth 2006).

Section 1131 of the School Code, 24 P.S. § 11-1131, vests the Secretary with authority to hear appeals brought by professional employees from actions of school boards. The Secretary has the authority to review the school board’s termination decision *de novo*. *Belasco v. Board of Public Educ. of the Sch. Dist. of Pittsburgh*, 510 A.2d 337, 343 (Pa. 1986). 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 every witness where the decision itself reflects which witnesses were believed and upon whose testimony the Secretary relied. *Forest Area Sch. Dist. v. Shoup*, 621 A.2d 1121, 1124 (Pa. Cmwlth. 1993). Furthermore, the Secretary is the ultimate fact finder when, as here, he decides to make findings of fact. *Belasco v. Board of Public Educ. of the Sch. Dist. of*

Pittsburgh, 510 A.2d 337 (Pa. 1986). The Secretary makes findings of fact based on the preponderance of the evidence. *Fisler v. State System of Higher Educ.*, 78 A.3d 30, 47 (Pa. Cmwlth. 2013).

DISCUSSION

I. Mr. Slater received due process of law

In November of 2020, Mr. Slater was suspended from his employment because of the charges against him. In December of 2020, after hearing the charges against Mr. Slater, the Board voted by roll call that there existed sufficient evidence to support a recommendation of his termination and directed the Board secretary and president to advise Mr. Slater of the resolution and a right to a hearing. In January of 2021, the president of the Board and the secretary of the Board sent Mr. Slater two letters containing a detailed written statement of the charges against him, and a notice of right to a hearing.

Due process requires that Mr. Slater be given a detailed written statement of the charges upon which his proposed dismissal is based as well as notice of the charges against him and an opportunity to be heard. 2 Pa. C.S. § 504; *McCoy v. Lincoln Intermediate Unit No. 12*, 391 A.2d 1119 (Pa. Cmwlth. 1978). The effective date of dismissal cannot be earlier than the date of the school board's resolution. *Neshaminy Sch. Dist. v. Neshaminy Federation of Teachers*, 84 A.3d 391 (Pa. Cmwlth, 2014). Further, in *School Dist. of Phila. v. Jones*, 139 A.3d 358, 369 (Pa. Cmwlth. 2016), Commonwealth Court held that when a district states that a professional employee is to be terminated and ceases to pay that employee, the employee is not suspended but dismissed. Additionally, Mr. Slater cannot be suspended until he has been afforded notice of the charges, an explanation of the charges and an opportunity to respond to the charges. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542-43 (1985).

Following Mr. Slater's second level conference with the District, I conclude that Mr. Slater was properly suspended in November of 2020. A suspension is permissible where the teacher's conduct is potentially harmful to the safety of children. *Kushner* at 451-542. At the second level conference prior

to his suspension, Mr. Slater received notice of the charges, an explanation of the charges, and an opportunity to respond to the charges. *Cleveland Bd. of Edu., supra*. Following his suspension, Mr. Slater received his statement of the charges signed by the president and secretary of the Board and a hearing limited to the statement of the charges. Following the hearing, a roll call of the Board was taken prior to his termination, and the Board voted to terminate Mr. Slater. I have conducted a *de novo* review. Mr. Slater has been provided with all the process that he is due. *Flickinger, supra*.

II. Credibility

I find Mr. Slater not credible in all respects regarding his description of the incidents that lead to his dismissal and the procedure used to terminate his employment. To the extent that Mr. Slater's testimony is contradicted by students' testimony at the hearing, I find the students' statements credible. Because the students' testimony is credible, I conclude that the students' testimony can support findings of fact as a matter of law. More specifically, I find SM's testimony to be credible that Mr. Slater yelled at SM, that SM permitted the substitute teacher to enter the room, that Mr. Slater left the room, and that Mr. Slater returned to the room and continued to act aggressively towards SM thereby provoking SM. (Slater 023).

III. The District established sufficient grounds for dismissal pursuant to the Public School Code.

Mr. Slater was dismissed for immorality; incompetency; cruelty; persistent negligence in the performance of duties; and persistent and willful violation of (or failure to comply with) school laws of this Commonwealth, including official directives and established policy of the Board, by violating the District's policy against physically aggressive behavior towards students. (Slater 443) I conclude that the District's argument is supported by credible evidence. I conclude that Mr. Slater did persistently and deliberately act in a physically aggressive manner towards students and did violate the

District's policy. (Slater 017, 020-021, 023-026) Mr. Slater acted persistently in that he had previously been warned and suspended for inappropriate physical contact with students in the past. (Slater 045-046, 047) I find that Mr. Slater did persistently and willfully physically touch students in an aggressive manner. (Slater 035) I further find that Mr. Slater intended to hurt the students, acted out of anger, and tried to be physically aggressive towards the students. (Slater 023, 026)

I accept as credible the students' testimony regarding the incident in question. I find sufficient support in the record for the allegation that Mr. Slater persistently and willfully violated and/or failed to comply with the school laws of the Commonwealth, including the official directives and established policy of the Board. I also conclude that Mr. Slater was intemperate and cruel. By the preponderance of the evidence, I conclude that the District has met its burden of proof. I affirm the District's decision to terminate Mr. Slater's employment as a tenured professional employee pursuant to Section 1122 of the Public School Code. Accordingly, the following order is entered:

