

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

ERIC L. WATERS,	:	
Appellant	:	
	:	
v.	:	Teacher Tenure Appeal
	:	No. 07-09
	:	
HARRISBURG SCHOOL DISTRICT,	:	
Appellee	:	

Eric L. Waters (“Mr. Waters”), Appellant, appeals the decision of the Board of Control of the Harrisburg School District (the “District”) terminating his employment with the District.

Findings of Fact

Background

1. The District is a public school district operating pursuant to the Pennsylvania Public School Code, 24 P.S. §1-101 *et. seq.*, and the Education Empowerment Act, 24 P.S. § 17-1701-B *et. seq.*

2. Pursuant to the Education Empowerment Act, the governing body of the District is the Board of Control (the “Board”). 24 P.S. § 17-1701-B *et. seq.*

3. Mr. Waters had been employed by the District for a number of years with his last position being a Building Site Administrator, Assistant Principal/Transition Coordinator. (Transcript, p. 321).¹

4. On May 21, 2009, Mr. Waters called Dr. Botel, the District’s Deputy Superintendent of Schools, to ask if she heard the rumor that Mr. Waters would be the next Superintendent. When Dr. Botel acknowledged that she had heard the rumor, Mr. Waters stated

¹ References to Transcript are to the transcripts of the hearings before the Board.

that he wanted Dr. Botel to continue to work with him and that in the next couple of years they would become very, very good friends. (Transcript, p. 20; SD Exh. 1).²

5. On June 19, 2009, Mr. Waters arrived at the Firehouse Restaurant at approximately 2:30 p.m. for personal reasons. (Transcript, pp. 322, 411-13).

6. Mr. Waters was at the Firehouse Restaurant for approximately one (1) to one and one half (1½) hours and had several drinks with no food or water. (Transcript, pp. 413-14; Waters Exh. 12).

7. At 2:38 p.m. on June 19, Mr. Waters placed a call to Dr. Botel, which was recorded on his phone bill as a one (1) minute call; thus, Mr. Waters either left a message or hung up and then called Dr. Botel's phone again. (Transcript, pp. 324-25; Waters Exh. 1).

8. At 2:39 p.m. on June 19, Mr. Waters again called Dr. Botel's phone and this time he spoke to Dr. Botel for approximately three (3) minutes. Mr. Waters' call to Dr. Botel concerned rumors Mr. Waters had heard that others were making about him being apprehended with drugs in the past and that he was able to skirt this issue because of his father's intervention. (Transcript, pp. 21-22, 323-25; Waters Exh. 12; SD Exh. 1).

9. During the 2:39 p.m. call, Dr. Botel told Mr. Waters that she never heard anything about that and it did not come from her office. (Transcript, pp. 21-22; Waters Exh. 12; SD Exh. 1).

10. At 6:38 p.m. on June 19, Dr. Botel telephoned Mr. Waters and phone bills of Dr. Botel and Mr. Waters show the call lasted five (5) minutes. (Transcript, p. 326; Jt. Exh. 6, Waters Exh. 1).

² References to exhibits are exhibits that were admitted into evidence at the hearings before the Board. Joint Exhibits are identified as "Jt. Exh.". Mr. Waters' exhibits will be identified as "Waters Exh. ____". The District's exhibits will be identified as "SD Exh. ____".

11. Dr. Botel called Mr. Waters at 6:38 p.m. on June 19 because she did not want Mr. Waters to think that she was starting the rumors about him. She left a voice mail message saying that she did not start the rumors about Mr. Waters, she was not a friend of the person who allegedly started the rumors and that she wanted to set the record straight. (Transcript, p. 25; SD Exh. 1).

12. Mr. Waters testified that he spoke to Dr. Botel during the 6:38 p.m. phone call and that she invited him to her house for drinks. (Transcript, p. 326; Waters Exh. 12).

13. Mr. Waters testified that he left immediately after Dr. Botel's phone call to go to her house and at 6:50 he called Dr. Botel saying:

Hey, Julie Botel. This is Eric Waters calling. I'm outside your front door watching chipmunks run through your front yard, as cute as they are. Give me a call when you can. I'll talk to you in a minute. Bye-bye.

(Transcript, p. 37; 417).

14. Mr. Waters testified that even though he had been invited to Dr. Botel's house for drinks during the 6:38 phone call, he, out of respect, called Dr. Botel at 6:50 when he arrived at her house. (Transcript, pp. 327, 420).

15. At approximately 6:50 p.m., Dr. Botel heard someone knock on her front door and when she opened the inside door, Mr. Waters was standing inside the storm door. Mr. Waters grabbed Dr. Botel, kissed her sticking his tongue down her throat, and saying "I just want to f-k you, I want to f-ck you so bad." (Transcript, pp. 26-27; SD Exh. 1).

16. Dr. Botel pushed Mr. Waters away telling him to stop and to behave himself. She also stated she was a sixty-one (61) year old woman and old enough to be his mother. (Transcript, p. 27; SD Exh. 1).

17. Dr. Botel called upstairs to her husband to tell him that Mr. Waters was there. Mr. Botel came down the stairs and Mr. Waters complimented him on his goatee and said he just stopped by to assure them that Dr. Botel's position was secure. Mr. Botel then asked Mr. Waters if he wanted something to drink. (Transcript, pp. 27, 91).

18. When Mr. Botel walked to the kitchen Mr. Waters again grabbed Dr. Botel, kissed her with his tongue in her mouth, and put his hand inside her bra grabbing her right breast. Mr. Waters continued to say "I just want to f--k you . . . is he coming . . . can he see us?" (Transcript, p. 28; SD Exh. 1).

19. Mr. Waters then went into the back yard with Mr. Botel and Dr. Botel called her friend, Mary Nardo, and told her what happened. According to Ms. Nardo, Dr. Botel sounded scared, concerned, and afraid. (Transcript, pp. 30, 131-32, 139-40; SD Exh.1).

20. Subsequent to the phone call to Ms. Nardo, Dr. Botel joined Mr. Botel and Mr. Waters in conversation. Mr. Waters talked about what he would do when he became Superintendent and he said that he wanted Dr. Botel to be the Deputy Superintendent. (Transcript, pp. 30, 333, 422-23).

21. At one point when Mr. Waters was at the Botel's home, Dr. Botel and Mr. Botel were in the hallway when Mr. Waters was outside. At that time Dr. Botel told Mr. Botel not to let her alone with Mr. Waters but she did not explain why because she was afraid of Mr. Botel's reaction while Mr. Waters was still there. (Transcript, pp. 32-33; 94; SD Exh. 1).

22. When Mr. Waters left the Botel's home, Dr. Botel began crying and told Mr. Botel what Mr. Waters had done to her. Dr. Botel was crying and hysterical and went upstairs and lay on the bed for awhile. (Transcript, pp. 34; 94-95; SD Exh. 1).

23. The weekend of June 19, Dr. Botel again spoke to Ms. Nardo about what happened with Mr. Waters and Dr. Botel also told her daughter. (Transcript, pp. 39; 132-35).

24. For several days after the incident with Mr. Waters, Dr. Botel and her husband talked about how to handle the matter because Dr. Botel was concerned about the matter becoming public and concerned that Mr. Waters might be the next Superintendent. (Transcript, pp. 34-35).

25. On June 24, 2009, Mr. Waters was in the Superintendent's office and Dr. Botel asked Mr. Waters to come into her office. Dr. Botel asked Mr. Waters if he remembered what he did on Friday night and he said yes. Dr. Botel told Mr. Waters that she was shaking and was afraid of him and told him that his behavior was inappropriate and inexcusable and he could not behave like that. Mr. Waters said he was so drunk and that his father and Dr. Botel were the only two people in the District that he loved, that it got out of hand and he was sorry. (Transcript, p. 41; SD Exh. 1).

26. On June 26, 2009, Dr. Botel wrote down what happened with Mr. Waters the night of June 19 and emailed it to Bruce Campbell who was the District's labor attorney. The next day Mr. Campbell told her that if she did not tell the Superintendent, Dr. Kohn, that he would tell Dr. Kohn. (Transcript, pp. 41-44; SD Exh. 1).

27. Dr. Botel spoke to Dr. Kohn by phone prior to the July 4th weekend. Dr. Kohn said she had to file charges but Dr. Botel said that her husband had a better way to handle it and they wanted to do it their way. (Transcript, pp. 44-45; 234-35).

28. Dr. Botel and her husband also spoke to Mayor Reed about the incident and Mayor Reed wanted to know why she had not reported the incident. Dr. Botel said her husband had a better way to handle it and that was what she wanted to do. (Transcript, pp. 46-47; 296).

29. Mr. Botel wanted to meet with Mr. Waters, have him admit to what he had done, agree to psychological counseling and have this as a matter between Mr. Holman, the District's Director of Human Resources, Dr. Botel, Mr. Botel and Mr. Waters. Mr. Botel was concerned about Dr. Botel's emotional state of mind and also concerned about Mr. Waters' wife and daughter who were known in the community. (Transcript, pp. 96-97).

30. On July 9, 2009, Mr. Botel called Mr. Waters at about 11:55 a.m. asking that he call because they had to get together. (Transcript, pp. 48-49, 97, 117, 346-47; Waters Exh. 3).

31. Mr. Waters returned Mr. Botel's July 9 call and agreed to meet Mr. Botel at his house at 1:00 p.m. (Transcript, pp. 346-47).

32. Mr. Waters met with Mr. Botel on July 9 at the Botel's house and Mr. Botel told Mr. Waters he knew what he had done to his wife – kissed her with his tongue down her throat, groped her breast and said he wanted to f--k her. Mr. Botel said he wanted Mr. Waters to admit to everything he did and get psychological counseling. Mr. Botel also wanted Mr. Holman to write everything down and if Mr. Waters did not adhere to the provisions of the agreement, charges would be filed against him. Mr. Botel called Mr. Holman, telling him that Mr. Waters agreed to everything and that they would all meet at the District on July 13 at 1:00 to memorialize the agreement. Mr. Waters admits he agreed to meet Mr. Holman and the Botels on July 13. (Transcript, pp. 97-99, 160-61, 461-62).

33. On July 9, Mr. Holman also contacted Mr. Waters and told him that he was investigating the matter that occurred between Mr. Waters and Dr. Botel on June 19 and that he needed to get Mr. Waters' side of the story. (Transcript, pp. 159-60, 185-86, 345-46, 426).

34. On July 10, Mr. Holman again contacted Mr. Waters and explained that he needed to get Mr. Waters' side of the story and he needed Mr. Waters to provide a statement to Mr.

Holman. Mr. Waters said he was unable to meet Mr. Holman that day but agreed to meet with Mr. Holman on Monday, July 13 at 9:00 a.m. (Transcript, pp. 162-63, 352).

35. Mr. Waters sent Mr. Holman, and others, an email on Sunday, July 12 at 7:39 a.m. stating that he was pursuing an administrative position outside of the District and that he had named the four (4) people in the email as references. (Transcript, p. 166; SD Exh. 2).

36. On July 12 at 10:15 p.m., Mr. Waters sent another email to Mr. Holman telling Mr. Holman that Mr. Waters could not meet with Mr. Holman because of previously scheduled appointments and assignments during the month. (Transcript, pp. 166-67; SD Exh. 3).³

37. On July 13 at 8:34 a.m., Mr. Holman sent an email to Mr. Waters stating that in an effort to complete his investigation in an expedient manner it was imperative that they meet that morning. (Transcript, pp. 167-68, 355-56; SD Exh. 4).

38. Mr. Holman also left voice mail messages for Mr. Waters on July 13 but received no responses to the email or the voice mail messages. (Transcript, p. 168).

39. Mr. Waters was concerned when he read Mr. Holman's email of July 13 that stated that Mr. Holman needed to conclude his investigation in an expedient manner and that it was imperative that they meet that morning. Mr. Waters testified that he was not sure what was going on. (Transcript, p. 356).

40. Mr. Waters received several phone calls from Mr. Botel on July 13. In the first call, at approximately 9:30 a.m., Mr. Botel stated that he understood their meetings were off and asked Mr. Waters to call him and that it was urgent. Mr. Waters believed Mr. Botel was referring to the meeting when Mr. Botel had called Mr. Holman on July 9 and said Mr. Waters

³ Mr. Waters had previously been authorized to take vacation the month of July but he had not told Mr. Botel or Mr. Holman this on July 9 when he agreed to meet with them on July 13.

was going to come in and sit down with them on Monday. Mr. Waters did not return Mr. Botel's call. (Transcript, p. 357; Waters Exh. 4).

41. On July 13, Mr. Botel again called Mr. Waters saying he did not understand what happened since Mr. Waters was supposed to have met with them to resolve the matter. Mr. Botel stated that he wanted to help Mr. Waters but that if Mr. Botel or Mr. Holman did not hear from Mr. Waters by Tuesday, July 14, at 12:00 p.m. charges would be filed against Mr. Waters. (Transcript, pp. 357-58; Waters Exh. 5). Mr. Waters did not return the call. (Transcript, p. 101).

42. Mr. Waters testified that he was concerned about Mr. Botel's call stating he would file charges against Mr. Waters on July 14 because until then "whatever allegations that we're currently dealing with had not been brought to light." (Transcript, p. 358).

43. On July 21, Mr. Holman sent Mr. Waters an email stating that the District was attempting to complete its investigation of an alleged incident occurring on June 19 involving his conduct with Dr. Botel. Mr. Holman advised that if Mr. Waters did not contact him and participate in an interview by 4:00 p.m. on July 23, the District would send information to Mr. Waters advising him of its next step. Mr. Waters did not contact Mr. Holman. (Transcript, pp. 359-60; Waters Exh. 11).

44. A letter dated July 24, 2009 was sent to Mr. Waters by First Class and Certified Mail. The copy of the letter sent by Certified Mail was returned as "unclaimed" but Mr. Waters received and read the copy of the letter sent by First Class Mail on July 29. The letter was also sent to Mr. Waters by email on July 28 but he does not recall receiving or opening the email. (Transcript pp. 169-70, 362-64; Waters Exhs. 6, 7, SD Exh. 5).

45. The July 24 letter advised Mr. Waters that he was to respond to the allegations by 4:00 p.m. on July 29 or if he wanted to discuss the matter with Mr. Holman he could call Mr. Holman prior to July 29 at 4:00. (Waters Exh. 6, SD Exh, 5). Mr. Waters did not respond.

46. Although he read the letter on July 29, Mr. Waters did not contact Mr. Holman prior to returning to work on August 3, notwithstanding that Mr. Holman asked to be contacted by 4:00 on July 29. (Transcript, pp. 442-43).

47. The week before Mr. Waters returned to work he chose to contact Mr. Stu Kermes, Mr. Waters' supervisor, but chose not to contact Mr. Holman. (Transcript, p. 443, 469).

48. On August 3, Mr. Waters met with Mr. Holman at approximately 10:15 a.m. When Mr. Holman stated he might need to get Ms. Tapper for the meeting, Mr. Waters stated that he would just like to have the conversation between himself and Mr. Holman. (Transcript, p. 172).

49. At their August 3 meeting, Mr. Waters had a typed statement that he read to Mr. Holman in response to the allegations in the July 24 letter but he did not give Mr. Holman a copy of the written statement. (Transcript, pp. 174-75, 366-67; Waters Exh. 12).

50. On April 7, 1997, Mr. Waters received a "Letter of Warning" from Donald Cooper, who was then the principal of John Harris High School. (SD Exh. 7).

51. The "Letter of Warning" states that Mr. Waters made inappropriate remarks to a student in front of the class.

52. Mr. Waters testified that when he was a long-term substitute in 1997, he had a student who was sitting on the floor in the corner and when he asked her to get into a chair she would not do so and "just kind of sat there huddled up like this." Mr. Waters then "made a reference to her appearing suicidal the way she was sitting there like that." (Transcript, p. 396).

53. Some time after Mr. Waters made his comment to the student about appearing to be suicidal, Mr. Waters learned that the student was suicidal and had been part of a Student Assistance Team. (Transcript, p. 396).

54. By letter dated February 21, 2002, the principal of Rowland School, Evelyn Antonsen, recounted two incidents in which Mr. Waters was involved and advised him that she was recommending that he be suspended without pay. Ms. Antonsen further stated that “if this unacceptable, unprofessional and abuse of power continues, I will recommend other severe consequences.” (SD Exh. 8).

55. Mr. Waters testified that the one incident in 2002 occurred when he saw a female student in a compromising physical embrace with a male student and commented that it was inappropriate and “that was how either of them had their first child.” (Transcript, p. 400).

56. Mr. Waters testified that the second incident of 2002 occurred when he was an Assistant Principal at Rowland School and involved a student who was yelling and screaming and appeared to pose a physical threat. Mr. Waters testified that he was called to the room by the teacher (he believed it was Deb Wire) and after the other students left the room he removed his ring and earrings and said “if you’re so egged on to fight someone, fight me.” (Transcript, pp. 401-03, 466). Mr. Waters explained that he was trying to “deescalate the young man, to bring him down to a less imposing or potentially physical nature.” (Transcript, p. 404).

57. Deb Wire testified that another teacher called Mr. Waters to that teacher’s room because the class was “acting up”. Mr. Waters then took a male student into Ms. Wire’s room, which was empty at the time. When Ms. Wire returned from her planning period she found her classroom was unlocked, which was unusual, and the lights were off. Ms. Wire entered the room and found Mr. Waters in the back of the room with his jacket off, his shirt open, his undershirt

out and his jewelry off. Mr. Waters was with a male student who was crying and said that Mr. Waters wanted to fight him. (Transcript, pp. 482-84).

Procedure

58. By letter dated August 7, 2009, the District provided Mr. Waters with notice of a recommendation that his employment with the District be terminated and advised that a hearing regarding the recommended termination would be held on August 18, 2009. (Jt. Exh. 2.)

59. At the request of Mr. Waters' counsel, a hearing was not held on August 18, 2009. (Jt. Exh. 1). Hearings regarding the recommended termination of Mr. Waters' employment with the District were held on September 1, September 21, and October 5, 2009.

60. The record remained open after the hearing ended on October 5, 2009 in the event that the Board might request additional evidence. The record was closed by stipulation effective October 16, 2009. (Transcript, p. 515).

61. On October 19, 2009, the Board voted by a vote of 5-2 to terminate Mr. Waters' employment with the District.

62. There is no evidence in the record that Mr. Furey and Mr. Roy Christ, Board members, were not the individuals who voted by telephone in favor of Mr. Waters' dismissal from employment with the District.

63. There is no evidence in the record that anyone at the Board meeting on October 19, 2009, challenged whether Mr. Furey and Mr. Christ were the individuals on the telephone who voted in favor of Mr. Waters' dismissal from employment with the District.

Discussion

Mr. Waters' dismissal by the District was pursuant to Section 1122 of the Public School Code, *as amended*, 24 P.S. §11-1122, which provides in pertinent part:

[the] 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 . . .

A tenured professional employee, such as Mr. Waters, may only be dismissed for the reasons set forth in Section 1122 of the Public School Code. *Foderaro v. School District of Philadelphia*, 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. Millville Area School District*, 657 A.2d 119, 121 (Pa. Cmwlth. 1995). In order to uphold Mr. Waters' dismissal, only one of these charges must be established. *Horton v. Jefferson County-DuBois Area Vocational Technical School*, 630 A.2d 481, 483 (Pa. Cmwlth. 1993). After hearing, and a thorough review of the record, the Secretary finds that there is sufficient competent evidence to affirm the District's dismissal of Mr. Waters.

Procedural Issues

Board Voting

Mr. Waters alleges that the vote to terminate his employment was invalid because it was not "publicly cast" as required by the Sunshine Act, 65 Pa.C.S.A. § 705. Mr. Waters argues that during the October 19 vote dismissing him from employment with the District, two people who voted for his dismissal were not at the meeting but were on the telephone. Mr. Waters alleges that Dr. Kohn, the District Superintendent, called the two people before the meeting, did not

identify the phone numbers he called and that the people on the phone were not asked to verify their identities.

The minutes of the October 19 Board meeting state that “Dr. Kohn called Brad Furey and Roy Christ prior to the start of the meeting and they participated via phone.” During the roll call vote, Mr. Christ and Mr. Furey voted when their names were called. There is no evidence in the record that Mr. Christ and Mr. Furey were not the people on the telephone who voted when their names were called during the roll call vote. There is no evidence in the record that anyone at the October 19 meeting either challenged or questioned whether the people on the telephone were actually Mr. Furey and Mr. Christ. There is also no evidence that anyone at the meeting asked that they “verify” that they were Mr. Furey and Mr. Christ. In addition, Mr. Nathan Waters, solicitor for the District and father of the Appellant, Mr. Eric Waters (Transcript, pp. 308, 319), was present at the meeting when the vote regarding his son’s dismissal was taken. However, Mr. Waters also did not challenge or question whether the people on the phone were actually Mr. Furey and Mr. Christ and did not ask that they “verify” who they were.

Mr. Waters acknowledges that the Pennsylvania Supreme Court in *Babac v. Pa. Milk Marketing Board*, 613 A.2d 551 (Pa. 1992), held that a vote by a member by speaker telephone complies with the Sunshine Act’s mandate for publicly cast votes. However, Mr. Waters notes that because the parties in *Babac* had not challenged the identity of the Board members who participated by speaker phone, the Supreme Court did not address that issue.

In the instant case, Mr. Waters has not presented any evidence that the people who participated by telephone during the October 19 meeting were not the identified Board members. Because nobody in attendance at the October 19 meeting, including the Board’s solicitor who is also Mr. Waters’ father, challenged or questioned the identity of the two members on the

telephone during the October 19 meeting, there is no evidence in this matter that the vote was invalid. Thus, Mr. Waters has not provided any evidence to support his contention that the vote was invalid.

Bias of the Board

Mr. Waters also alleges that he was denied due process because of the bias or appearance of bias of the Board. These allegations are based largely on the fact that Mr. Waters campaigned for and supported Linda Thompson to become the Mayor of Harrisburg. Linda Thompson, now Mayor Thompson, defeated the incumbent Mayor, Steven Reed, who had appointed the Board members. In addition, Mr. Waters alleges that Dr. Kohn had personal motivations for supporting Mr. Waters' termination because rumors suggested that Mayor Thompson would replace Dr. Kohn with Mr. Waters as Superintendent and because Dr. Kohn and Dr. Botel are friends.

Pennsylvania case law is clear that the Secretary's review of the dismissal of a professional employee is *de novo*. "[T]he Secretary is vested with the authority to conduct *de novo* review whether he takes additional testimony or merely reviews the official record of the proceedings before the board." *Belasco v. Board of Public Education of the School District of Pittsburgh*, 510 A.2d 337, 343 (Pa. 1986). The Secretary is the ultimate fact finder and determines the credibility of witnesses, the weight of their testimony and the inferences to be drawn therefrom. *Id.* at 342. Since the Secretary decides the case anew, "events occurring procedurally at an earlier stage of the case are irrelevant." *Forest Area School District v. Shoup*, 621 A.2d 1121, 1125 (Pa. Cmwlth. 1993).

Therefore, Mr. Waters' claims that he was denied due process because of the bias or appearance of bias of the Board is not relevant in a *de novo* review. The Secretary has reviewed the record from below, made his own findings of fact, determined the credibility of witnesses,

the weight of their testimony and any inferences to be drawn therefrom. Thus, the Secretary's *de novo* review of the School Board's decision ensures that the requirements of due process have been satisfied. See, *Katruska v. Bethlehem Center School District*, 767 A.2d 1051, 1055 (Pa. 2001).

Substantive Issues

Immorality

Immorality is defined as "a course of conduct as offends the morals of a community and is a bad example to the youth whose ideals a professional educator is supposed to foster and elevate." *Horasko v. School District of Mount Pleasant Township*, 6 A.2d 866, 868 (Pa.1939), cert. denied, 308 U.S. 553 (1939). The District bears the burden of proving that: (1) the underlying acts that it 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. *Palmer v. Wilson Area School District*, TTA No. 5-94.

In the instant case, the District established that the acts alleged to constitute immorality actually occurred. On June 19, 2009, Mr. Waters arrived at the Firehouse Restaurant at approximately 2:30 p.m. (Transcript, pp. 322, 411-13). He remained at the Firehouse for about one to one and one-half hours, had several drinks but no food or water. (Transcript, pp. 413-14; Waters Exh. 12). Mr. Waters called the phone of Dr. Botel, the District's Deputy Superintendent, at 2:38 p.m. but there was no answer. (Transcript, pp. 324-25; Waters Exh. 1). At 2:39 p.m., Mr. Waters again dialed Dr. Botel's phone number and this time he spoke to her for about three (3) minutes. Mr. Waters called Dr. Botel because he learned that there were rumors circulating about him being apprehended with drugs in the past and that he was able to

skirt this issue because of his father's intervention. (Transcript, pp. 21-22, 323-25; Waters Exh. 12; SD Exh. 1). Dr. Botel told Mr. Waters that she had not heard anything about that and that it did not come from her office. (Transcript, pp. 21-22,; Waters Exh. 12; SD Exh. 1).

At 6:38 p.m. on June 19, Dr. Botel telephoned Mr. Waters and the phone bills of both show that the call lasted five (5) minutes. (Transcript, p. 326; Jt. Exh. 6, Waters Exh. 1). Dr. Botel called Mr. Waters' phone and left a voice mail message saying that she did not start the rumors about Mr. Waters, she was not a friend of the person who allegedly started the rumors and she wanted to set the record straight. (Transcript, p. 25; SD Exh. 1).

However, Mr. Waters testified at the Board hearing that he spoke to Dr. Botel during the 6:38 p.m. phone call and that Dr. Botel invited him over to her house for drinks. (Transcript, p. 326; Waters Exh. 12). Mr. Waters further testified that after Dr. Botel's phone call he immediately left to go to her house. At 6:50 p.m. Mr. Waters called Dr. Botel's phone when he was outside of her house and left a message saying:

Hey, Julie Botel. This is Eric Waters calling. I'm outside your front door watching chipmunks run through your front yard, as cute as they are. Give me a call when you can. I'll talk to you in a minute. Bye-bye.

(Transcript, pp. 37, 417).⁴ Mr. Waters testified that even though Dr. Botel invited him to her house just minutes earlier he, out of respect, called her when he was outside of her house.

(Transcript, pp. 327, 420). However, there is no mention of Dr. Botel having invited Mr. Waters to her house for drinks.

At about 6:50 p.m. on June 19, Dr. Botel heard someone knock on her door and when she opened the inside door, Mr. Waters was standing inside the storm door. Mr. Waters then grabbed Dr. Botel, kissed her sticking his tongue down her throat and saying "I just want to f--

⁴ It was not until the next morning that Dr. Botel heard the voice mail message Mr. Waters left at 6:50 p.m. on June 19. (Transcript, p. 36).

you, I want to f--k you so bad.” (Transcript, pp. 26-27; SD. Exh. 1). Dr. Botel pushed Mr. Waters away telling him to stop and to behave himself. She further told him she was a sixty-one (61) year old woman and old enough to be his mother. (Transcript, p. 27; SD Exh. 1).

Dr. Botel called to her husband telling him that Mr. Waters was at their house. Mr. Botel came downstairs and Mr. Waters complimented him on his goatee and said he just stopped by to assure them that Dr. Botel’s position was secure. Mr. Botel then asked Mr. Waters if he wanted a drink. (Transcript, pp. 27, 91). When Mr. Botel walked to the kitchen, Mr. Waters again grabbed Dr. Botel, kissed her with his tongue in her mouth, put his hand inside her bra grabbing her right breast and again said “I just want to f--k you . . . is he coming . . . can he see us?” (Transcript, p. 28; SD Exh.1).

Mr. Waters then went into the back yard with Mr. Botel. Dr. Botel called her friend, Mary Nardo, and told her what had just happened with Mr. Waters. (Transcript, pp. 30, 131-32; SD Exh. 1). According to Ms. Nardo, Dr. Botel sounded scared, concerned, and afraid. (Transcript, pp. 139-40). Subsequently, Dr. Botel joined Mr. Waters and Mr. Botel in conversation. Mr. Waters talked about what he would do when he became Superintendent of the District and stated that he wanted Dr. Botel to be the Deputy Superintendent. (Transcript, pp. 30, 333, 422-23).⁵

At one point when Mr. Waters was at the Botels’ house, Mr. Botel and Dr. Botel were in the hallway when Mr. Waters was outside. At that time, Dr. Botel told Mr. Botel not to let her alone with Mr. Waters but she did not explain why she made this request because she was afraid

⁵ On May 21, 2009, Mr. Waters had called Dr. Botel asking her if she heard the rumors that he would be the next Superintendent of the District. Dr. Botel acknowledged that she heard the rumors and Mr. Waters stated that he wanted Dr. Botel to continue to work with him and that in the next couple of years they would become very, very good friends. (Transcript, p. 20; SD Exh. 1).

of Mr. Botel's reaction when Mr. Waters was still in their house. (Transcript, pp. 32-33, 94; SD Exh. 1).

When Mr. Waters left the Botels' house, Dr. Botel began crying, was hysterical and told Mr. Botel what Mr. Waters had done to her. (Transcript, pp. 34, 94-95; SD Exh. 1). For the next few days after the incident with Mr. Waters, Dr. Botel and Mr. Botel talked about how to handle the matter because Dr. Botel was concerned about the matter becoming public and concerned that Mr. Waters might be the next Superintendent. (Transcript, pp. 34-35). Dr. Botel spoke to Ms. Nardo again that weekend about what had happened with Mr. Waters. Dr. Botel also talked to her daughter about the incident. (Transcript, pp. 39, 132-35).

On June 24, Mr. Waters was in the Superintendent's office and Dr. Botel asked him to come into her office. Dr. Botel testified that she asked Mr. Waters if he remembered what he did on Friday night and he said he did. Dr. Botel told Mr. Waters that she was shaking and afraid of him and that his behavior was inappropriate, inexcusable and that he could not behave like that. Mr. Waters said that he had been so drunk and that his father and Dr. Botel were the only people in the District that he loved, that it got out of hand and he was sorry. (Transcript, p. 41; SD Exh. 1).

Mr. Waters wrote in his statement refuting Dr. Botel's allegations that when Dr. Botel asked him to come into her office on June 24, she said "We were both drinking" and that we work together and that affection like that can never happen again because we work together. Mr. Waters said that he agreed wholeheartedly. (Waters Exh. 12). Mr. Waters testified at his hearing that when Dr. Botel referred to "affection that could not happen again" he thought she was perhaps referring to hugs that occurred on June 19 and that perhaps he had "overstepped some bound." (Transcript, p. 459). However, Mr. Waters also testified at his hearing that Dr. Botel

said that they were both drinking and that “things like that can’t happen”. Mr. Waters testified that “things like that can’t happen” might have meant Mr. Waters spitting in their yard, drinking after hours with them, his use of profanity, or being in the Botels’ company. (Transcript, p. 341).

On June 26, Dr. Botel wrote down what had happened with Mr. Waters and emailed it to Bruce Campbell, the District’s labor attorney. Mr. Campbell told Dr. Botel the next day that if she did not tell the Superintendent, Dr. Kohn, what happened he would do so. (Transcript, pp. 41-44; SD Exh. 1). Prior to the July 4th weekend, Dr. Botel told Dr. Kohn what happened and Dr. Kohn said she had to file charges against Mr. Waters. However, Dr. Botel said that her husband had a better way to handle it and they wanted to do it their way. (Transcript, pp. 44-45, 234-35). When Dr. Botel and Mr. Botel then spoke to Mayor Reed, he also wanted to know why she had not reported the incident and she again explained that they wanted to handle it their way. (Transcript, pp. 46-47, 296). Mr. Botel wanted to meet with Mr. Waters, have him admit to what he did, have him agree to psychological counseling and have this as a matter between Mr. Holman, the District’s Director of Human Resources, Dr. Botel, Mr. Botel and Mr. Waters. (Transcript, p. 97). Mr. Botel wanted to handle the matter his way because he was concerned about Dr. Botel’s emotional state of mind and concerned about Mr. Waters’ wife and daughter, who are known in the community. (Transcript, pp. 96-97).

On July 9 at 11:55 a.m., Mr. Botel called Mr. Waters asking that he call because they had to get together. (Transcript, pp. 48-49, 97, 117, 346-47; Waters Exh. 3). Mr. Waters returned the call and then met Mr. Botel at the Botels’ house at 1:00 p.m. At that meeting, Mr. Botel told Mr. Waters he knew what Mr. Waters had done to Dr. Botel – kissed her with his tongue in her throat, groped her breast and said he wanted to f--k her. Mr. Botel wanted Mr. Waters to admit to everything, get psychological counseling, have Mr. Holman write everything down and if Mr.

Waters did not comply with the agreement, charges would be filed against him. While Mr. Waters was still at the Botels' house, Mr. Botel called Mr. Holman, told him Mr. Waters agreed to everything and that they would all meet at the District on July 13 at 1:00 p.m. to memorialize the agreement. (Transcript, pp. 97-99, 160-61). Mr. Waters admits that on July 9 he agreed to meet with Mr. Holman and the Botels on July 13 to sign an agreement even though he did not know what he was agreeing to. (Transcript, pp. 351, 461-62).

On July 9, Mr. Holman also called Mr. Waters telling him that he was investigating what had occurred between Mr. Waters and Dr. Botel on June 19 and that he needed to get Mr. Waters' side of the story. (Transcript, pp. 159-60, 185-86, 345-46, 426). Mr. Holman again called Mr. Waters on July 10 explaining that he still needed a statement from Mr. Waters and his side of the story. Mr. Waters said he could not meet that day but that he would meet with Mr. Holman on July 13 at 9:00 a.m. (Transcript, pp. 162-63, 352).

However, Mr. Waters sent Mr. Holman two emails on July 12. One was sent at 7:39 a.m. stating that Mr. Waters was pursuing an administrative position outside the District and had named the four (4) people on the email as references. (Transcript, p. 166; SD Exh. 2). At 10:15 p.m., Mr. Waters sent Mr. Holman an email saying he could not meet with Mr. Holman because of previously scheduled appointments and assignments during the month. (Transcript, pp. 166-67; SD Exh. 3). On July 13, Mr. Holman sent an email to Mr. Waters stating that in an effort to conclude his investigation into this matter in an expedient manner, it was imperative that they meet that morning regarding the investigation. Mr. Holman also left voice mail messages for Mr. Waters on July 13. Although Mr. Waters was concerned when he read Mr. Holman's email and testified that he was not sure what was going on, Mr. Waters did not respond to the email or to the voice mail messages. (Transcript, pp. 167-68, 355-56; SD Exh. 4).

Mr. Waters also received several phone calls from Mr. Botel on July 13. At 9:30 a.m., Mr. Botel stated in his message that he understood the meetings were off and asked Mr. Waters to call him and that it was urgent. (Waters Exh. 4). Mr. Botel left another message for Mr. Waters stating that Mr. Waters was supposed to have met with them to resolve the matter and that Mr. Botel wanted to help him but if Mr. Waters did not call Mr. Botel or Mr. Holman by July 14 at 12:00 p.m., charges would be filed against him. (Transcript, pp. 357-58; Waters Exh. 5). Although Mr. Waters was concerned about Mr. Botel's message about filing charges against him, Mr. Waters did not return Mr. Botel's calls. Mr. Waters testified that until then "whatever allegations that we're currently dealing with had not been brought to light." (Transcript, p. 358).

Mr. Holman sent Mr. Waters an email on July 21 stating that the District was attempting to complete the investigation of an alleged incident occurring June 19 involving his conduct with Dr. Botel and that if Mr. Waters did not contact Mr. Holman by 4:00 p.m. on July 23, the District would advise Mr. Waters of its next step. Mr. Waters did not contact Mr. Holman. (Transcript, pp. 359-60; Waters Exh. 11). Mr. Holman sent Mr. Waters a letter, by certified and regular mail, dated July 24 advising Mr. Waters that he was to respond to the allegations by 4:00 p.m. on July 29 or that he could call Mr. Holman to discuss the matter. Although the certified copy of the July 24 letter was returned to the District as unclaimed, on the evening of July 29 Mr. Waters received and read the copy of the letter that was sent by regular mail. However, Mr. Waters did not respond to the letter or call Mr. Holman.⁶ (Transcript, pp. 169-70, 362-64, 442-43; Waters Exh. 6; SD Exh. 5).

Mr. Waters returned to work on Monday, August 3. The week before Mr. Waters returned to work he chose to contact his supervisor, Mr. Stu Kermes, but chose not to contact

⁶ A copy of the letter was also sent by email to Mr. Waters on July 28 but Mr. Waters does not recall receiving or opening the email. (Transcript, pp. 171, 364-65).

Mr. Holman. (Transcript, p. 443). Mr. Waters met with Mr. Holman on August 3. When Mr. Holman stated that he might need to get Ms. Tapper for the meeting, Mr. Waters stated that he would just like to have the conversation between the two of them. Mr. Holman complied with this request so that he could get Mr. Waters' statement. (Transcript, pp. 172). Mr. Waters had a typed statement that was in response to the allegations in the July 24 letter and he read the statement to Mr. Holman but would not give him a copy of the statement. (Transcript, pp. 174-75, 366-67; Waters Exh. 12).

After reviewing Mr. Waters' written statement and all the testimony and exhibits provided at the hearing before the Board, there is sufficient evidence that Dr. Botel's description of the events of June 19 actually occurred. Minutes after the incident occurred, Dr. Botel called her friend, Mary Nardo, and told her what happened. While Mr. Waters was still at her house but not in the same room as Dr. Botel and Mr. Botel, Dr. Botel asked her husband not to let her alone with Mr. Waters. She did not explain this request at the time because she was afraid of what Mr. Botel might do when Mr. Waters was still in their house. As soon as Mr. Waters left their house, Dr. Botel began crying, became hysterical and told her husband what Mr. Waters had done to her.

Although Mr. Waters attempts to portray Dr. Botel's allegations as a means to "get" Mr. Waters, the evidence does not support his position. Dr. Botel testified that when Mr. Waters was at her house on June 19 he told her and Mr. Botel that when he became Superintendent he wanted Dr. Botel to be the Deputy Superintendent. Mr. Waters testified that when he was at the Botel's house on June 19 that if he became "Superintendent that I - - that anyone would be crazy to let go of Dr. Botel" (Transcript, p. 333). Mr. Waters further testified that on June 19 he did not give Dr. Botel or Mr. Botel any reason to think that he was not supportive of Dr. Botel.

(Transcript, p. 423). Thus, there is no evidence to support the theory that Dr. Botel's allegations against Mr. Waters were for the purpose of "getting" Mr. Waters. Mr. Waters' own testimony shows that he was supportive of Dr. Botel and would have wanted her to work with him if he became the District's Superintendent; thus, based on the evidence presented, Dr. Botel had no reason to make-up allegations in order to "get" Mr. Waters or to retaliate against him.

Mr. Waters also claims that until Mr. Botel's call on July 13 when Mr. Botel stated that charges would be filed against him if he did not contact Mr. Botel or Mr. Holman by July 14, "whatever allegations that we're currently dealing with had not been brought to light." (Transcript, p. 358). However, there is credible evidence that Mr. Waters was aware of the allegations made by Dr. Botel against Mr. Waters. Mr. Botel testified that when Mr. Waters came to his house on July 9, Mr. Botel told Mr. Waters that he knew what he had done to his wife and stated specifically what Mr. Waters had done. Mr. Waters testified that Mr. Botel wanted Mr. Waters to meet with the Botels and Mr. Holman on July 13 so Mr. Waters could sign an agreement. Mr. Waters agreed to meet with them on July 13 even though he says he was not sure what he was agreeing to. While Mr. Waters was still at the Botels' house, Mr. Botel called Mr. Holman and said that Mr. Waters agreed to everything and agreed to meet with Mr. Holman, Mr. Botel, and Dr. Botel on July 13 at 1:00 p.m. It is not credible that if Mr. Waters had no idea what Mr. Botel was talking about during their meeting on July 9 and did not know what he was agreeing to that he would agree to meet with Mr. Botel, Dr. Botel and Mr. Holman on July 13 without asking what such a meeting would be about and what he would be agreeing to.

Mr. Holman also contacted Mr. Waters on July 9 and Mr. Holman specifically stated to Mr. Waters that he was investigating the matter that occurred between Mr. Waters and Dr. Botel on June 19. Although Mr. Holman might not have stated the specific allegations, Mr. Waters

knew the investigation was about an occurrence between him and Dr. Botel on June 19. Mr. Waters agreed to meet with Mr. Holman, without the Botels, on July 13 at 9:00 a.m. Again, it is not credible that Mr. Waters did not know what the allegations were or what the investigation was about when he agreed to meet with Mr. Holman on July 13.

On July 12 at 10:15 p.m., Mr. Waters sent an email to Mr. Holman saying that he could not meet with Mr. Holman because of previously scheduled appointments and assignments during the month. Although Mr. Waters had previously been approved to take vacation the month of July, on July 9 Mr. Waters had not told Mr. Holman or Mr. Botel that he was on vacation or that he would have any problems meeting with them on July 13. After receiving Mr. Waters' July 12 email, Mr. Holman sent Mr. Waters an email on July 13 stating that in an effort to conclude his investigation into this matter in an expedient manner, it was imperative that they meet that morning. Mr. Waters did not respond. In addition, Mr. Botel contacted Mr. Waters at least two (2) times on July 13 with the final message informing Mr. Waters that if he did not contact Mr. Botel or Mr. Holman by July 14, that charges would be filed against him. Mr. Waters did not contact Mr. Holman or Mr. Botel by July 14.⁷

In addition, as stated previously, Mr. Waters testified that he was concerned when he received Mr. Holman's email of July 13 that stated it was imperative that they meet that morning regarding Mr. Holman's investigation. Mr. Waters also testified that he was concerned when he heard Mr. Botel's voice mail message on July 13 stating that charges would be filed against him if he did not contact Mr. Botel or Mr. Holman by July 14. So even though Mr. Waters said that

⁷ Notwithstanding additional voice mail messages left for Mr. Waters, as well as emails and a letter, Mr. Waters did not contact Mr. Holman or Mr. Botel after July 12. Mr. Waters did not return any voice mail messages or respond to emails or letters after July 12 even though Mr. Waters' father testified that he had no problem reaching Mr. Waters during the month of July. (Transcript, pp. 313-14).

he was concerned about these two messages, he made no attempt to contact Mr. Holman or Mr. Botel to determine what was being investigated or why charges would be filed against him. If Mr. Waters really did not know what the investigation was about or why charges would be filed against him, it would have not only been reasonable, but prudent, for Mr. Waters to contact Mr. Holman or Mr. Botel to learn what was being investigated and why charges were going to be filed against him. Thus, Mr. Waters' testimony that he did not know what Mr. Holman was investigating or why Mr. Botel would file charges against him is not credible.

On July 21, Mr. Holman again sent Mr. Waters an email stating that the District was attempting to complete its investigation of an alleged incident occurring on June 19 involving his conduct with Dr. Botel. Mr. Holman advised that if Mr. Waters did not contact him and participate in an interview by 4:00 p.m. on July 23, the District would send information to Mr. Waters advising him of its next step. Mr. Waters did not contact Mr. Holman.

Mr. Holman sent Mr. Waters a letter dated July 24 which very specifically stated the allegations made by Dr. Botel against Mr. Waters and advised Mr. Waters to respond to the allegations before 4:00 p.m. on July 29. Mr. Waters testified that he did not receive and read the letter until the night of July 29 and just decided that a response could wait until he returned to work on August 3. The allegations in the July 24 letter were very serious allegations and even though the July 29, 4:00 deadline for response had passed, it is difficult to understand why Mr. Waters would not have contacted Mr. Holman the next day if this was the first time Mr. Waters knew what allegations Dr. Botel had made against him.

It defies logic, and is not reasonable, that when Mr. Waters was told numerous times in voice mail messages, through email and through written correspondence that an investigation was occurring and that a statement was needed from him to tell his side of the story, that he

chose not to make any contact with Mr. Holman until he returned to work on August 3. It also defies logic, and is not reasonable, that when Mr. Waters was told by Mr. Botel that charges would be filed against him on July 14 if he did not contact Mr. Holman or Mr. Botel, that Mr. Waters chose not to make any contact with Mr. Holman or Mr. Botel. It is only logical that a person who does not know what is being investigated or why he needs to provide his side of the story or why charges are going to be filed against him would try to learn what the investigation and/or the charges were about. Thus, the evidence and testimony show that Mr. Waters knew what the investigation was about and knew why Mr. Botel said charges were going to be filed against him. That is why Mr. Waters failed to contact Mr. Holman or Mr. Botel; Mr. Waters did not need to contact either of them to understand what was going on because he knew what was going on.

Thus, the District has provided sufficient evidence to prove that the underlying acts that it claims constitute immorality – Mr. Waters’ actions against Dr. Botel on June 19, 2009 - actually occurred.

Since the District proved that Mr. Waters’ actions against Dr. Botel on June 19 actually occurred, it must be determined if that conduct offends the morals of a community. Determining whether conduct offends the morals of a community is a legal determination. The general rule requires that the District present direct evidence or evidence from which the Secretary can infer that Mr. Waters’ conduct offended the morals of the community. *Palmer v. Wilson Area School District*, TTA No. 5-94. If there are insufficient facts from which the Secretary can determine or infer whether the conduct offends the morals of the community, no legal determination can be made on the issues of immorality. *Id.*

However, there are limited exceptions to this general rule. There is some conduct that is so egregious that its immoral nature transcends geographic or community boundaries. *Id.* Even in the absence of evidence of community standards, courts have expressed a willingness to review legal precedent to determine whether similar conduct has been adjudicated to be immorality. “For example, courts have found that when a professional educator engages in sexual misconduct, it is never morally acceptable. Thus, even if no evidence of community standards is produced in a sexual misconduct case, both the Board and the Secretary can make a finding regarding immorality. See eg. Keating v. Riverside Board of School Directors, 99 Pa. Commonwealth Ct. 337, 342, 513 A.2d 547, 549, appeal denied, 514 Pa. 626, 522 A.2d 51 (1987).” *Palmer v. Wilson Area School District*, TTA No. 5-94, p. 14.

Mr. Waters’ conduct of grabbing Dr. Botel, kissing her with his tongue down her throat and saying he wanted to f--k her clearly constitutes sexual misconduct, which is never morally acceptable. Such conduct is also a bad example to the youth whose ideals a professional educator is supposed to foster and elevate. Thus, Mr. Waters’ conduct constitutes immorality, which is a basis for dismissing him from his employment with the District.

Intemperance

In addition, Mr. Waters’ actions constitute intemperance. Loss of self-control is the main element of intemperance. *Belasco v. Board of Public Education of School District of Pittsburgh*, 486 A.2d 538, 541-42 (Pa. Cmwlth. 1985), *aff’d*, 510 A.2d 337 (Pa. 1986); *Holt v. Muncy Area School District*, TTA No. 12-94, p. 14. Intemperance is also defined as “a loss of self-control or self-restraint, which may result from excessive conduct.” 22 Pa. Code § 237.5.

Mr. Waters went to Dr. Botel’s house, grabbed her, kissed her with his tongue down her throat and stated that he wanted to f--k her. This type of sexual misconduct by Mr. Waters

clearly shows a loss of self-control and self-restraint. Thus, Mr. Waters' conduct constitutes intemperance, which is a basis for dismissing him from his employment with the District.

Prior Incidents

In addition to the incident between Mr. Waters and Dr. Botel on June 19, the District also provided evidence of prior issues regarding Mr. Waters during his employment with the District. One (1) incident occurred in 1997 when Mr. Waters was a long-term substitute. Two (2) other incidents occurred in 2002 when Mr. Waters was an Assistant Principal. Although, at a minimum, these prior events show a lack of sensitivity and a lack of professionalism by Mr. Waters, it is not necessary to analyze these events to determine if they constitute reasons for dismissing Mr. Waters from his employment with the District because the Secretary has found that there is sufficient credible evidence to affirm the District's dismissal of Mr. Waters based on his conduct towards Dr. Botel on June 19, 2009.

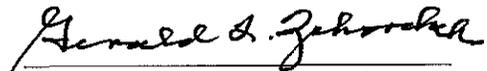
Accordingly, the following Order is entered:

IN THE OFFICE OF THE SECRETARY OF EDUCATION
COMMONWEALTH OF PENNSYLVANIA

ERIC L. WATERS, :
Appellant :
 :
v. : Teacher Tenure Appeal
 : No. 07-09
 :
HARRISBURG SCHOOL DISTRICT, :
Appellee :

ORDER

AND NOW, this 2nd day of January 2010, it is hereby ordered and decreed that the appeal of Eric L. Waters is denied and the decision of the Harrisburg School District to dismiss Eric L. Waters from employment with the Harrisburg School District is affirmed.



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

Date Mailed: 1/21/10