

5. Gia Tatone (Ms. Tatone) was sworn in as a member of the Board in December 2011 and was appointed by the Board president to be the chairperson of the Board's education committee. (N.T. Vol. II, pp. 235-36).

Charge #1

6. The Board president advised Ms. Tatone that Mr. Zollars was the District administrator assigned to the Board's education committee. (N.T. Vol. II, p. 239).

7. Dr. Milanovich was not told that Mr. Zollars was the administrator assigned to work with the Board's education committee regarding curriculum and Dr. Milanovich told Ms. Tatone that Dr. Milanovich would be the person in charge of the curriculum. (N.T. Vol. II, pp. 325-26). Administration directors were told to report to the Superintendent and that she would communicate with Board members. (N.T. Vol. II, pp. 393-94).

8. However, Dr. Milanovich told Ms. Tatone that if she had any questions about the middle school curriculum or course of studies she should direct them to Melissa Heasley (Ms. Heasley). (N.T. Vol. II, p. 263, 303, 307-08; Exh. E-C²).

9. When Ms. Tatone emailed Mr. Zollars and Dr. Milanovich on April 18, 2012 asking if they had anything to add to the Board's Education Committee agenda, Mr. Zollars advised that he sent a draft agenda to Dr. Milanovich and she would need time to review it. Mr. Zollars further stated that he did not feel comfortable sending the draft agenda to others without Dr. Milanovich's review and approval. Dr. Milanovich was copied on these emails and she did not provide a response or advise Mr. Zollars that he should send the draft agenda to Ms. Tatone. (Exhs. D-9 through D-12).

² Exh. ___ refers to exhibits admitted into evidence at the hearings before the Board on April 11 or May 10, 2013 (the transcript incorrectly identifies the dates of the hearings at April 11 and May 10, 212).

10. Dr. Milanovich believed Mr. Zollars' response to Ms. Tatone's April 18, 2012 email was an appropriate response. (N.T. Vol. II, p. 307).

11. Dr. Milanovich believed Ms. Tatone's direct communications with people who reported to Dr. Milanovich was an issue and stated she would prefer for Ms. Tatone to deal directly with her and that she would get any information requested by Ms. Tatone. (N.T. Vol. II, p. 306-07).

12. At a middle school curriculum night on April 25, 2012, Ms. Tatone asked Mr. Zollars to contact her and Mr. Zollars stated that he would meet, correspond by email or call. (N.T. Vol. II, pp. 244, 261).

13. On May 16, 2012, Ms. Tatone told Mr. Zollars that she did not have anything that would be presented at the May 21 workshop and Mr. Zollars referred her to the building principal, Ms. Heasley. When Ms. Tatone asked if he had 30 minutes the next morning to talk, Mr. Zollars stated that he had a conference call, was busy and would be gone after that so it would be best for her to speak to Ms. Heasley because it was her project and she had all the information on it. Ms. Tatone stated that she would do that and would copy him on the email. (N.T. Vol. II, pp. 245, 354-55).

14. On May 17, 2012, Ms. Tatone sent Mr. Zollars an email stating that even though he asked her to speak to Ms. Heasley she felt that as director of curriculum it would be more appropriate for him to speak to Ms. Heasley and then tell Ms. Tatone what would be presented at the following workshop. (N.T. Vol. II, pp. 253-54).

15. In response to Ms. Tatone's May 17, 2012 email to Mr. Zollars she received a reply that he was out of the office until May 22, 2012. (N.T. p. 254; Exh. D-13).

16. Ms. Tatone reported to Dr. Zurchin, through email, of her conversation with Mr. Zollars on May 16, that he had referred her to Ms. Heasley with her questions and on May 17 in response to her email to Mr. Zollars she learned he was out of the office until May 22, 2012. Ms. Tatone noted her disappointment that Mr. Zollars had not told her he would not be available for the workshop. (N.T. Vol. II, pp. 255-56; Exh. D-14).

17. Approximately one week prior to May 17, 2012, Dr. Milanovich and Dr. Zurchin had approved vacation time for Mr. Zollars for May 17 (1/2 day), May 18 and May 21. (N.T. Vol. II, pp. 350-52; Exhs. E-K, E-L).

18. Although Dr. Zurchin and Dr. Milanovich had preapproved Mr. Zollars' vacation, Dr. Zurchin did not tell Ms. Tatone that Mr. Zollars was on an approved vacation from May 17 through May 21. (N.T. Vol. II, p. 276).

19. Dr. Zurchin replied to Ms. Tatone's May 17 email advising that she should forward her questions to Ms. Heasley and that Dr. Zurchin would address this with Mr. Zollars. (N.T. Vol. II, p. 256; Exh. D-15).

20. Mr. Zollars did not receive Ms. Tatone's email of May 17 until May 21 and attempted to respond through his phone; however, only a blank response was sent. (N.T. Vol. II, pp. 357-58).

21. On May 22, 2012, Mr. Zollars sent an email to Ms. Tatone apologizing for the response he tried to send on May 21 that was sent without any text and stating that it sounded as though everything worked out. (N.T. Vol. II, p. 359; Exh. E-E).

22. Ms. Tatone responded to Mr. Zollars' email on May 23, 2012, stating that she was sure Dr. Zurchin would address this situation. (Exh. E-F).

23. After receipt of Ms. Tatone's May 23 email, Mr. Zollars responded to her that he found out what was going on, that he thought everything was ok for the education committee workshop and he was sorry that he misunderstood. He also asked if she would be willing to meet for a cup of coffee to get away from distractions and talk for a few minutes. Ms. Tatone did not agree to meet with Mr. Zollars. (N.T. Vol. II, pp. 258, 359-60; Exh. E-F).

24. Ms. Heasley made the presentation to the Board on May 21, 2012 and the District was not harmed by the fact Mr. Zollars was on vacation. (N.T. Vol. I, p. 76; Vol. II, p. 308).

25. Dr. Milanovich would not have recommended to the Board that Mr. Zollars's employment be terminated because of not meeting with Ms. Tatone. (N.T. Vol. II, p. 309).

Charge #2 and #3

26. Ms. Heasley met with Mr. Zollars and her math department chairperson about the middle school project and transition, particularly with math revisions. Then in late summer or early fall of the 2011-2012 school year, Ms. Heasley told Dr. Milanovich that she was apprehensive about Mr. Zollars' foresight regarding the project and thought it would be better if she worked with her department heads to do the middle school curriculum revisions. (N.T. Vol. I, pp. 206-07).

27. On September 30, 2011, Mr. Zollars asked Ms. Heasley and Barry Balaski to send him a copy of their monthly departmental chair meetings because he had to attend those meetings. There is no evidence that Ms. Heasley provided Mr. Zollars with a schedule at that time. (N.T. Vol. II, pp. 208, 364; Exh. D-6).

28. In October 2011, when Dr. Zurchin was making her rounds of schools, she met with Ms. Heasley and when discussing the building project and curriculum revisions Dr. Zurchin asked how Mr. Zollars fit into it and whether he attended department head meetings. When Ms.

Heasley said he did not attend department head meetings on a regular basis Dr. Zurchin stated she thought it was important that he attend. Ms. Heasley said if Dr. Zurchin wanted him to attend he could do so. (N.T. Vo. I, pp. 189-90).

29. On December 6, 2011, Mr. Zollars again asked Ms. Heasley for a copy of the middle school meeting schedules and stated that he would try to make at least one of her 7:00 a.m. meetings each week. (Exh. D-2).

30. On December 9, 2011, Ms. Heasley sent Mr. Zollars a copy of the calendar for her monthly meetings. (N.T. Vol. I, p. 193; Exh. D-7).

31. Ms. Heasley remembers Mr. Zollars being at a middle school department head meeting between September 2011 and May 2012; Mr. Zollars estimated that he attended two or three middle school department head meetings. (N.T. Vol. I, pp. 220, 367).

32. Dr. Milanovich had tasked Ms. Heasley with developing the middle school curriculum and Ms. Heasley worked directly with Dr. Milanovich on that project. (N.T. Vol. II, pg. 316).

33. During a telephone call in approximately December 2011, Ms. Heasley became angry that Mr. Zollars wanted to attend another Wednesday meeting when he had missed the department head meeting. When Mr. Zollars explained to Dr. Milanovich what happened with Ms. Heasley, Dr. Milanovich told him that Ms. Heasley has a lot on her plate and that he should back off and give her some space. (N.T. Vol. II, pp. 368-69, 315-16).

34. Mr. Zollars interpreted Dr. Milanovich's statement to back off and give Ms. Heasley some space to mean he should leave Ms. Heasley alone, not interfere with what she was doing and not go to middle school meetings. (N.T. Vol. II, p. 369).

35. Dr. Milanovich believed that by telling Mr. Zollars to back off and give Ms. Heasley space that he would have backed off from what was happening at the middle school, including department head meetings. (N.T. Vol. II, p. 316).

36. Although Dr. Zurchin gave Mr. Zollars a directive to attend department head meetings and later Dr. Milanovich told him to back off and give Ms. Heasley some space, Dr. Milanovich was not aware of the directive given to Mr. Zollars by Dr. Zurchin. Had Dr. Milanovich been aware of this, they could have discussed it and ironed it out. (N.T. Vol. II, p. 328).

37. Dr. Milanovich would not have recommended to the Board that Mr. Zollars be terminated for attending only two or three department head meetings. (N.T. Vol. II, p. 320).

Charge #4

38. On May 15, 2012, Mr. Zollars sent an email to Ms. Heasley, Kim Prevost (Ms. Prevost) and Caroline Johns (Ms. Johns) and copied Dr. Zurchin and Dr. Milanovich. Mr. Zollars identified some meeting dates regarding the Math Curriculum Review and Adoption and noted at the end that he should be included in all discussions and plans regarding curricular review and adoptions and made aware of all related issues or plans. The email ended with a statement that "To do otherwise could have the appearance of willful exclusion on your part." (Exh. E-B).

39. Dr. Zurchin believed Mr. Zollars' May 15, 2012 email was inappropriate, unprofessional and threatening and she testified that she spoke to Ms. Heasley, Ms. Prevost and Ms. Johns about the email. (N.T. Vol. I, pp. 93, 98).

40. Ms. Prevost, Assistant Director of Curriculum, testified that she did not speak to Dr. Zurchin or Dr. Milanovich about Mr. Zollars' May 15 email. (N.T. Vol. I, p. 158). She stated that she was intimidated by the email. (N.T. Vol. I, p. 156).

41. Dr. Milanovich testified that she believed Ms. Prevost was upset by the email and that Ms. Prevost is a hypersensitive person and exhibited extremely inappropriate conduct specifically towards Mr. Zollars. (N.T. Vol. II, pgs. 318-19).

42. Ms. Prevost testified that she and Mr. Zollars had some major disagreements in the past. (N.T. p. 167).

43. Ms. Johns, Principal of Allard Elementary and director of instruction for the District, testified that she did not feel threatened by Mr. Zollars' May 15 email but thought it inappropriate because there was no intent to exclude him from a conversation she had with Ms. Prevost. (N.T. Vol. I, p. 181). Ms. Johns did not discuss Mr. Zollars' email with Dr. Zurchin or Dr. Milanovich. (N.T. Vol. I, p. 182).

44. Ms. Heasley testified that she did not find Mr. Zollars' May 15 email to be threatening but found it inappropriate because if she tried to do something behind his back she would be wrong for doing that and she did not know why she was included on the email. She further testified that she just read the email and left it alone. (N.T. Vol. I, pp. 223-24).

45. Dr. Milanovich did not discuss the email with Mr. Zollars and, to her knowledge, nobody in the administration spoke to Mr. Zollars about the email until Dr. Zurchin raised it in the meeting she had with him on May 24. Dr. Milanovich would not recommend that Mr. Zollars be terminated for sending his May 15 email. (N.T. pp. 319-20).

Charge #5

46. Dr. Zurchin sent Mr. Zollars a memo requesting that he attend a meeting, which occurred on May 24, 2012. The purpose of the meeting was to discuss his responsibilities as director of curriculum. (N.T. pp. 41-42; Exh. D-4).

47. Mr. Zollars attended the May 24 meeting with Dr. Zurchin and asked Mr. Haslett of the Moon Area Administrative Association and the director of pupil services to attend the meeting with him as his Act 93 representative. (N.T. pp. 42, 45, 131).

48. At one point during the meeting, Mr. Haslett noticed that Mr. Zollars had a cell phone in his hand although he did not think anything of it. However, when he glanced over later, he believed Mr. Zollars was recording the meeting. Mr. Haslett did not caucus with Mr. Zollars outside of Dr. Zurchin's office to tell him he was not permitted to record the meeting without permission. (N.T. Vol. I, pp. 131-32). Instead, Mr. Haslett stopped the meeting and stated to Dr. Zurchin that he had to step outside his role as Mr. Zollars' representative and ask Mr. Zollars if he was recording the conversation. (N.T. Vol. I, pp. 125-26).

49. When asked by Mr. Haslett if he was recording the meeting, Mr. Zollars stated that he was but that he did not know he could not record without permission and that he would delete it. Mr. Zollars indicated at the meeting that he was deleting the recording. (N.T. Vol. I, pp. 46-47, 126-27, 134-35, 343).

50. After learning Mr. Zollars was recording the meeting, Dr. Zurchin said she would have given him permission to record or could have had someone take shorthand at the meeting had he asked. (N.T. Vol. I, pp. 47, 101-02, 135, 344).

51. Mr. Zollars started recording the meeting when Dr. Zurchin would not tell him if Dr. Milanovich knew about the meeting and the possible courses of action she was describing,

which included an improvement plan and moving him from the central office to the middle school so he might work better with Ms. Heasley. (N.T. Vol. II, pp. 341-42). Mr. Zollars wanted to preserve the conversation for Dr. Milanovich's awareness. (N.T. Vol. II, pp. 341-42).

52. The meeting had been in progress for approximately twenty to twenty-five minutes before Mr. Haslett asked whether Mr. Zollars was recording. (N.T. Vol. I, p. 127). Mr. Zollars recorded approximately two minutes and two seconds of the meeting. (N.T. Vol. II, p. 342).

53. When Mr. Zollars was confronted about recording the meeting, he immediately deleted the recording on his phone and the meeting ended shortly thereafter. (N.T. pp. 47, 101, 342-44).

54. Christopher Hatty (Mr. Hatty) was the Director of Information Technology at the District and in late May 2012 Mr. Zollars went to his office and asked to check his cell phone because it was not syncing his email accounts together. (N.T. Vol. I, p. 140).

55. Mr. Hatty did not recall Mr. Zollars specifically asking him to check his cell phone for any audio recordings but he recalls a discussion about audio recordings and did not discover any audio recordings when checking the cell phone for the syncing issue. (N.T. Vol. I, pp. 141, 144).

56. Mr. Zollars testified that Mr. Hatty told him there were no recordings on his phone when he was checking it in May 2012 for syncing issues. (N.T. Vol. II, p. 345).

57. Dr. Milanovich believed that Mr. Zollars should not have recorded the May 24, 2012 meeting with Dr. Zurchin and Mr. Haslett and had he done that in a meeting with her she would have stopped the meeting and had a conversation with him about it. (N.T. Vol. II, p. 292).

However, Dr. Milanovich would not recommend Mr. Zollars be terminated for recording part of the meeting. (N.T. Vol. II, pp. 321-22).

58. As his direct supervisor, Dr. Milanovich evaluated Mr. Zollars and from the 2007-2008 through the 2010-2011 school years Dr. Zollars received exceptional evaluations except for the 2010-2011 school year when he was evaluated as exceeding expectations. (N.T. Vol. II, P. 294-95; Exhs. G-I).

59. Dr. Milanovich advised Mr. Zollars that she also would be giving him a good evaluation for 2011-2012 and she wrote him a glowing letter of recommendation in June 2012. (N.T. Vol. II, pp. 296-97; Exh. J).

60. By letter dated June 5, 2012, which Dr. Milanovich was directed to sign, Mr. Zollars was advised of a *Loudermill* hearing on June 12, 2012, to address issues related to Ms. Tatone, failure to attend department head meetings, inappropriate conduct towards colleagues and the audio-taping of the meeting with Dr. Zurchin and Mr. Haslett. (N.T. Vol. II, pp. 297-98; Exh. JX-1).

61. A Notice of Hearing and Statement of Charges dated October 22, 2012, was issued to Mr. Zollars followed by an Amended Statement of Charges. (Exhs. JT-3 and 4).

62. By letter dated October 31, 2012, Mr. Zollars was notified of his suspension without pay pending results of the formal hearing before the Board. (Exh. JT-2). Hearings before the Board were held on April 11 and May 12, 2013.

63. On November 11, 2013, the Board passed a resolution adopting the adjudication of the Board-appointed hearing officer as the decision of the Board supporting the termination of Mr. Zollars' employment with the District.

64. On December 18, 2013, Mr. Zollars filed with the Acting Secretary of Education a Petition for Appeal from the adjudication of the Board.

DISCUSSION

The District's dismissal of Mr. Zollars 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. Zollars 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), *appeal denied*, 542 A.2d 1372 (Pa. 1988). "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), *appeal denied* 675 A.2d 1253 (Pa. 1996). In order to uphold Mr. Zollars' 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).

In the Amended Statement of Charges, the District stated that Mr. Zollars had engaged in conduct constituting immorality, incompetency, willful neglect of duties, and persistent negligence in the performance of duties and identified, in five-numbered paragraphs, the particular conduct that was the basis of the amended charges.

After hearing, and a thorough review of the record, I find that there is insufficient evidence to sustain the District's termination of Mr. Zollars.

Immorality

In its Adjudication, the Board concluded that Mr. Zollars engaged in multiple acts of deception in the course of his employment and that such conduct constituted immorality. The Board stated that Mr. Zollars was deceptive with Ms. Tatone in failing to inform her that he was unavailable for the May 21, 2012 workshop and the reason why. Additionally, it was noted in the Amended Statement of Charges that Mr. Zollars intentionally tried to conceal his failure to attend department head meetings although being directed to do so by Dr. Zurchin. However, the District has not provided sufficient evidence that Mr. Zollars' conduct relating to Ms. Tatone or to attendance at department head meetings constitutes immorality.

On May 16, 2012, Ms. Tatone told Mr. Zollars that she did not have anything that would be presented at the May 21 workshop and Mr. Zollars referred her to the building principal, Ms. Heasley. When Ms. Tatone asked if he had 30 minutes the next morning to talk, Mr. Zollars stated that he had a conference call, was busy and would be gone after that so it would be best for her to speak to Ms. Heasley because it was her project and she had all the information on it. Ms. Tatone stated that she would do that and would copy him on the email. (N.T. Vol. II, pp. 245, 354-55).

However, rather than following through and contacting Ms. Heasley, Ms. Tatone, on May 17, 2012, sent Mr. Zollars an email stating that even though he asked her to speak to Ms. Heasley she felt that as director of curriculum it would be more appropriate for him to speak to Ms. Heasley and then tell Ms. Tatone what would be presented at the workshop. (N.T. Vol. II, pp. 253-54). In response to her May 17, 2012 email she received a reply that Mr. Zollars was out of the office until May 22, 2012. (N.T. p. 254; Exh. D-13). Ms. Tatone then conveyed her disappointment to Dr. Zurchin that Mr. Zollars had not told her he would not be available for the

workshop. (N.T. Vol. II, pp. 255-56; Exh. D-14). Dr. Zurchin replied to Ms. Tatone's May 17 email advising that she should forward her questions to Ms. Heasley, as Mr. Zollars had also advised her to do, and that Dr. Zurchin would address this with Mr. Zollars. (N.T. Vol. II, p. 256; Exh. D-15).

Approximately one week prior to May 17, 2012, Dr. Milanovich and Dr. Zurchin had approved vacation time for Mr. Zollars for May 17 (1/2 day), May 18 and May 21. (N.T. Vol. II, pp. 350-52; Exhs. E-K, E-L). Although Dr. Zurchin and Dr. Milanovich had preapproved Mr. Zollars' vacation, Dr. Zurchin did not tell Ms. Tatone that Mr. Zollars was on an approved vacation from May 17 through May 21. (N.T. Vol. II, p. 276). Having approved Mr. Zollars' vacation, Dr. Zurchin and Dr. Milanovich knew he would not be available for the workshop on May 21.

In addition, Dr. Milanovich had told Ms. Tatone that Dr. Milanovich would be the person in charge of the curriculum and that if Ms. Tatone had any questions about the middle school curriculum or course of studies she should direct them to Ms. Heasley. (N.T. Vol. II, p. 263, 303, 307-08, 325-26; Exh. E-C). Ms. Heasley made the presentation to the Board on May 21, 2012 and the District was not harmed by the fact that Mr. Zollars was on vacation. (N.T. Vol. I, p. 76; Vol. II, p. 308).

The evidence does not support the District's allegation that Mr. Zollars was being deceptive with Ms. Tatone by not telling her he would not be available for the workshop and the reason why. When Ms. Tatone stated that she did not have anything for the workshop and asked if he could meet with her on May 17, he told her he could not meet with her because of a scheduled conference call and that he would then be gone. Mr. Zollars told her that it would be best for her to speak to Ms. Heasley because it was her project and she had all the information on

it. Additionally, Ms. Tatone had been told by Dr. Milanovich that she should contact Ms. Heasley with any questions about the middle school curriculum or course of studies. Thus, even though Ms. Tatone had been told by Dr. Milanovich to contact Ms. Heasley about middle school curriculum questions and Mr. Zollars advised her to do the same on May 16, Ms. Tatone failed to contact Ms. Heasley and instead complained to Dr. Zurchin about Mr. Zollars and his failure to tell her he would not be at the workshop.

Although Mr. Zollars did not tell Ms. Tatone about his vacation or that he would not be at workshop, he directed her to the appropriate person who could provide her with the information she was seeking. Just because Ms. Tatone changed her mind and decided not to ask Ms. Heasley for the information, after she told Mr. Zollars she would do so, does not mean that Mr. Zollars' conduct towards Ms. Tatone was deceptive. In addition, when Ms. Tatone complained to Dr. Zurchin, Dr. Zurchin also told her to contact Ms. Heasley, and it was only then that she did so. Ms. Heasley made the presentation at the workshop on May 21, 2012 and the District was not harmed by the fact Mr. Zollars was on vacation and not at the workshop. (N.T. Vol. I, p. 761 Vol. II, p. 308).

It also was noted in the Amended Statement of Charges that Mr. Zollars intentionally tried to conceal his failure to attend department head meetings although being directed to do so by Dr. Zurchin. The evidence does not support this allegation.

Ms. Heasley met with Mr. Zollars and her math department chairperson about the middle school project and transition, particularly with math revisions. Then in late summer or early fall of the 2011-2012 school year, Ms. Heasley told Dr. Milanovich that she was apprehensive about Mr. Zollars' foresight regarding the project and thought it would be better if she worked with her department heads to do the middle school curriculum revisions. (N.T. Vol. I, pp. 206-07).

On September 30, 2011, Mr. Zollars asked Ms. Heasley and Barry Balaski to send him a copy of their monthly departmental chair meetings because he had to attend those meetings. There is no evidence that Ms. Heasley provided Mr. Zollars with a schedule at that time. (N.T. Vol. II, pp. 208, 364; Exh. D-6).

In October 2011, when Dr. Zurchin was making her rounds of schools, she met with Ms. Heasley and when discussing the building project and curriculum revisions Dr. Zurchin asked how Mr. Zollars fit into it and whether he attended department head meetings. When Ms. Heasley said he did not attend department head meetings on a regular basis Dr. Zurchin stated she thought it was important that he attend. Ms. Heasley said if Dr. Zurchin wanted him to attend he could do so. (N.T. Vol. I, pp. 189-90). At the end of October 2011, Dr. Zurchin directed Mr. Zollars to attend department head meetings. (N.T. Vol. I, pp. 23-24, 26).

On December 6, 2011, Mr. Zollars again asked Ms. Heasley for a copy of the middle school meeting schedules and stated that he would try to make at least one of her 7:00 a.m. meetings each week. (Exh. D-2). On December 9, 2011, Ms. Heasley sent Mr. Zollars a copy of the calendar for her monthly meetings. (N.T. Vol. I, p. 193; Exh. D-7). Sometime in December 2011, Dr. Zurchin asked Mr. Zollars how the department head meetings were going and he responded that he was working on it. (N.T. Vol. I, p. 26).

Ms. Heasley remembers Mr. Zollars being at a middle school department head meeting between September 2011 and May 2012; Mr. Zollars estimated that he attended two or three middle school department head meetings. (N.T. Vol. I, pp. 220, 367).

Dr. Milanovich had tasked Ms. Heasley with developing the middle school curriculum and Ms. Heasley worked directly with Dr. Milanovich on that project. (N.T. Vol. II, pg. 316). In approximately December 2011, during a telephone call, Ms. Heasley became angry at Mr.

Zollars when he wanted to attend another Wednesday meeting since he had missed the department head meeting. When Mr. Zollars explained to Dr. Milanovich what happened with Ms. Heasley, Dr. Milanovich told him that Ms. Heasley has a lot on her plate and that he should back off and give her some space. (N.T. Vol. II, pp. 368-69, 315-16). Mr. Zollars interpreted Dr. Milanovich's statement to mean he should leave Ms. Heasley alone, not interfere with what she was doing and not go to middle school meetings. (N.T. Vol. II, p. 369). Dr. Milanovich believed that by telling Mr. Zollars to back off and give Ms. Heasley space that he would have backed off from what was happening at the middle school, including department head meetings. (N.T. Vol. II, p. 316).

Although Dr. Zurchin previously had directed Mr. Zollars to attend department head meetings, Dr. Milanovich was not aware of this when she directed Mr. Zollars to back off and give Ms. Heasley some space. Had Dr. Milanovich been aware of what Dr. Zurchin had directed, they could have discussed it and ironed it out. (N.T. Vol. II, p. 328). Although it would have been prudent for Mr. Zollars to have told Dr. Milanovich about Dr. Zurchin's directive so that any conflict between Dr. Zurchin's directive and Dr. Milanovich's directive could have been discussed and resolved, his failure to do so does not evidence that he intentionally tried to conceal his failure to attend department head meetings. Dr. Milanovich was his direct supervisor; thus, it was reasonable for Mr. Zollars to believe that her directive superseded Dr. Zurchin's prior directive to attend department head meetings.

The Board also concluded that Mr. Zollars' conduct of secretly recording part of the meeting with Dr. Zurchin and Mr. Haslett on May 24, 2012, constitutes immorality. At the request of Dr. Zurchin, Mr. Zollars met with Dr. Zurchin on May 24, 2012, and asked Mr. Haslett of the Moon Area Administrative Association and the director of pupil services to attend

the meeting with him as his Act 93 representative. (N.T. pp. 42, 45, 131). Dr. Zurchin testified that the purpose of the meeting was to discuss Mr. Zollars responsibilities as director of curriculum. (N.T. pp. 41-42; Exh. D-4).

At one point during the meeting, Mr. Haslett noticed that Mr. Zollars had a cell phone in his hand although he did not think anything of it. However, when he glanced over later, he believed Mr. Zollars was recording the meeting. Mr. Haslett did not caucus with Mr. Zollars outside of Dr. Zurchin's office to tell him he was not permitted to record the meeting without permission. (N.T. Vol. I, pp. 131-32). Instead, Mr. Haslett stopped the meeting and stated to Dr. Zurchin that he had to step outside his role as Mr. Zollars' representative and ask Mr. Zollars if he was recording the conversation. (N.T. Vol. I, pp. 125-26). The meeting had been in progress for approximately twenty to twenty-five minutes before Mr. Haslett asked whether Mr. Zollars was recording. (N.T. Vol. I, p. 127). When asked by Mr. Haslett if he was recording the meeting, Mr. Zollars stated that he was but that he did not know he could not record without permission and that he would delete it. Mr. Zollars had recorded approximately two minutes and two seconds of the meeting. (N.T. Vol. II, p. 342). Mr. Zollars indicated at the meeting that he was deleting the recording and the meeting ended shortly thereafter. (N.T. Vol. I, pp. 46-47, 101, 126-27, 134-35, 342-44).

After learning Mr. Zollars was recording the meeting, Dr. Zurchin said that she would have given him permission to record or could have had someone take shorthand at the meeting had he asked. (N.T. Vol. I, pp. 47, 101-02, 135, 344). Mr. Zollars testified that he started recording when Dr. Zurchin would not tell him if Dr. Milanovich knew about the meeting and the possible courses of action she was describing, which included an improvement plan and moving him from the central office to the middle school so he might work better with Ms.

Heasley. (N.T. Vol. II, pp. 341-42). Mr. Zollars wanted to preserve the conversation for Dr. Milanovich's awareness. (N.T. Vol. II, pp. 341-42).

Although Mr. Haslett testified that Mr. Zollars had the phone against his leg, apparently trying to conceal that he was recording, Mr. Haslett saw the phone at one point and did not think anything of it; thus, he was able to see the phone and did not notice anything unusual. Then at another point Mr. Haslett saw that the phone was recording. Had Mr. Zollars intended to conceal the fact he was recording the meeting, he could have concealed the face of the phone from Mr. Haslett. Obviously, Mr. Haslett was able to see the face of the phone on at least two separate occasions; therefore, the evidence does not support the conclusion that Mr. Zollars was being deceptive in recording part of the meeting.

Christopher Hatty (Mr. Hatty) was the Director of Information Technology at the District and in late May 2012 Mr. Zollars went to his office and asked to check his cell phone because it was not syncing his email accounts together. (N.T. Vol. I, p. 140). Mr. Hatty did not recall Mr. Zollars specifically asking him to check his cell phone for any audio recordings but he recalls a discussion about audio recordings and did not discover any audio recordings when checking the cell phone for the syncing issue. (N.T. Vol. I, pp. 141, 144). Mr. Zollars testified that Mr. Hatty told him there were no recordings on his phone when he was checking it in May 2012 for syncing issues. (N.T. Vol. II, p. 345).

Dr. Milanovich believed that Mr. Zollars should not have recorded the May 24, 2012 meeting with Dr. Zurchin and Mr. Haslett and had he done that in a meeting with her she would have stopped the meeting and had a conversation with him about it. (N.T. Vol. II, p. 292). However, Dr. Milanovich would not recommend that Mr. Zollars be terminated for recording part of the meeting. (N.T. Vol. II, pp. 321-22).

The Board determined that Mr. Zollars engaged in multiple acts of deception in the course of his employment and that such conduct constitutes immorality. However, for the reasons noted above, the evidence does not support the Board's conclusions that Mr. Zollars was deceptive when he failed to specifically advise Ms. Tatone that he would be on vacation and not attending the May 21 workshop or that he attempted to deceive Dr. Zurchin and Dr. Milanovich about his failure to regularly attend department head meetings. Dr. Zurchin and Dr. Milanovich both approved Mr. Zollars vacation days and knew he would not be available for the May 21 workshop. Although it might have been beneficial for him to have specifically provided Ms. Tatone with that information, it was not an act of deception that he did not do so because he told her that the project was Ms. Heasley's and that Ms. Tatone should talk to her about it.

The testimony presented does not evidence that Mr. Zollars was being deceitful to Dr. Zurchin and Dr. Milanovich about not regularly attending department head meetings. It may have been prudent for Dr. Zollars to have advised Dr. Milanovich that Dr. Zurchin had directed him to attend department head meetings after Dr. Milanovich told him to give Ms. Heasley some space. However, since Dr. Milanovich was his direct supervisor, it was reasonable for Mr. Zollars to believe the Dr. Milanovich's directive superseded Dr. Zurchin's directive.

The Board also concluded that Mr. Zollars' conduct of secretly recording part of the meeting with Dr. Zurchin and Mr. Haslett constitutes immorality. Mr. Zollars testified that he did not know that he needed advance permission in order to record the meeting. Although Mr. Haslett and Dr. Zurchin believed he should have known that he needed permission to record the meeting, there is no evidence to dispute Mr. Zollars' testimony that he did not know. When told he could not record the meeting without prior notice, Mr. Zollars immediately deleted the two minutes and two seconds of the meeting that he had recorded. In addition, Mr. Haslett saw Mr.

Zollars' phone at one point and did not see anything unusual; but later noticed the phone was recording. If Mr. Zollars was attempting to conceal the recording he could have kept the face of the phone from Mr. Haslett's view.

Immorality has been defined by courts as conduct that "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." *McFerren v. Farrell Area School District*, 993 A.2d 344, 353 (Pa. Cmwlth. 2010), *appeal denied* 12 A.3d 372 (2012), *quoting Horosko v. School District of Mt. Pleasant Township*, 6 A.2d 866, 868 (Pa. 1939). "To establish immorality, a school district must prove three elements: (1) that the alleged immoral act actually occurred; (2) that the act offends the morals of the community; and (3) that the act sets a bad example for students [citation omitted]. The moral standards of the community will not be presumed; they must be proved by substantial evidence [citation omitted]. Immoral conduct is something more serious than unprofessional conduct." *McFerren*, 993 A.2d at 354.

Deciding whether conduct offends the morals of a community is a legal determination. The general rule requires that a school district present direct evidence or evidence from which the Secretary can infer that a professional educator's 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.*

It was the District's burden to present evidence of the morals of the community and evidence that Mr. Zollars' conduct offended those morals. *McFerren*, 993 A.2d at 356. The District did not provide any evidence of the morals of the community and the morals of the community cannot be presumed. The District also did not provide evidence that Mr. Zollars'

conduct offended the morals of the community or that his conduct set a bad example for students. Although it may have been prudent for Mr. Zollars to have told Ms. Tatone he would not be at the May 21 workshop, the District has not provided any evidence of the morals of the community or that any such morals were offended by his failure to provide Ms. Tatone with that information. It also might have been prudent for Mr. Zollars to have told Dr. Milanovich about Dr. Zurchin's directive for him to attend department head meetings. However, again, the District has not provided any evidence of the morals of the community or that any such morals were offended by his failure to provide this information to Dr. Milanovich. Finally, the evidence does not support that Mr. Zollars was trying to conceal his recording of part of the meeting on May 24, 2012, and the District has not provided any evidence of the morals of the community or that any such morals were offended by Mr. Zollars beginning to record part of the meeting.

Thus, the District failed to provide direct evidence that Mr. Zollars' conduct constitutes immorality and there is not sufficient evidence from which one could infer that Mr. Zollars' conduct offends the morals of the community. Therefore, the District failed to meet its burden of proof and Mr. Zollars' dismissal based on the grounds of immorality cannot be sustained.

Persistent Negligence in the Performance of Duties and Willful Neglect of Duties

To prove a charge of persistent negligence in the performance of duties, "a school district must prove (1) persistency in the form of numerous incidents of the same misconduct and (2) knowledge that the conduct in question was wrong and that its repetition could lead to discipline or discharge." *McFerren*, 993 A.2d at 358. "For negligent performance of a duty, the district must specifically advise the employee of that duty" *Id.* In addition, the negligent performance must be serious, not picayune. *Id.*

In its Adjudication, the Board states that Mr. Zollars demonstrated a continuing failure and refusal to comply with directives from Dr. Zurchin to attend necessary meetings, which constitutes persistent negligence in the performance of duties and willful neglect of duties. Near the end of October 2011, Dr. Zurchin directed Mr. Zollars to attend department head meetings. On September 30, 2011, Mr. Zollars had asked Ms. Heasley and Barry Balaski to send him a copy of their monthly departmental chair meetings because he had to attend those meetings. There is no evidence that Ms. Heasley provided Mr. Zollars with a schedule at that time. (N.T. Vol. II, pp. 208, 364; Exh. D-6). On December 6, 2011, Mr. Zollars again asked Ms. Heasley for a copy of her monthly department head meetings, which she provided on December 9, 2011. In December when Dr. Zurchin asked Mr. Zollars how the department head meetings were going he told her he was working on it. (N.T. Vol. I, p. 26).

Thereafter, in December 2011, after Ms. Heasley got angry with Mr. Zollars, Dr. Milanovich told him that Ms. Heasley had a lot on her plate and that he should back off and give her some space. Mr. Zollars understood this to include not attending department head meetings. Dr. Milanovich believed that by telling Mr. Zollars to back off and give Ms. Heasley space that he would have backed off from what was happening at the middle school, including department head meetings.

As noted previously, it might have been prudent for Mr. Zollars to have told Dr. Milanovich that Dr. Zurchin had previously directed him to attend department head meetings so that any conflict between the two directives could have been discussed and resolved. However, Dr. Milanovich was his direct supervisor and when she directed him to give Ms. Heasley some space, it was reasonable for him to believe that her directive superseded Dr. Zurchin's prior directive that he attend department head meetings. The District failed to prove that after Dr.

Milanovich directed Mr. Zollars to give Ms. Heasley some space, that he had any knowledge that his failure to attend department head meetings was wrong and that its repetition could lead to discipline or discharge. Therefore, the District failed to meet its burden of proof and Mr. Zollars' dismissal based on the grounds of persistent negligence in the performance of duties cannot be sustained.

The Commonwealth Court has stated that "willful neglect of duties by a professional employee may also be defined as an intentional disregard of duties by that employee. We note that there is no requirement of a continuous course of conduct in this charge" *Williams v. Joint Operating Committee of Clearfield County Vocational-Technical School*, 824 A.2d 1233, 1236 (Pa. Cmwlth. 2003). The District alleges that Mr. Zollars' failure to meet with Ms. Tatone and his failure to attend department head meetings constitute a willful neglect of duties.

On May 16, 2012, Ms. Tatone told Mr. Zollars she did not have anything that would be presented at the May 21 workshop. Mr. Zollars referred her to Ms. Heasley telling Ms. Tatone that it was Ms. Heasley's project and she could provide her with all the information about it. Ms. Tatone asked if Mr. Zollars could meet with her for 30 minutes on May 17 and Mr. Zollars told her he had a conference call, was busy and would be gone after that so it would be best for her to speak to Ms. Heasley. Mr. Zollars not only advised that he was busy with other duties; but provided Ms. Tatone with the name of the person who had the information she was seeking. This conduct does not evidence an intentional disregard of duties by Mr. Zollars, especially since Dr. Milanovich also had told Mr. Tatone to contact Ms. Heasley with any questions about the middle school curriculum or course of studies.

The District has also not provided sufficient evidence that Mr. Zollars' failure to attend department head meetings constituted a willful neglect of duties. As noted above, in December

2011, Dr. Milanovich directed Mr. Zollars to back off from Ms. Heasley and give her some space. Mr. Zollars believed that this directive included not attending department head meetings and Dr. Milanovich testified that after issuing this directive she believed Mr. Zollars would have backed off from what was happening at the middle school, including department head meetings. Additionally, it was reasonable for Mr. Zollars to believe Dr. Milanovich's directive superseded Dr. Zurchin's directive because Dr. Milanovich was his direct supervisor. Therefore, the District failed to meet its burden of proof and Mr. Zollars' dismissal based on the grounds of willful neglect of duties cannot be sustained.

Incompetency

The Pennsylvania Supreme Court has held that incompetency as a cause for dismissal is to be given broad meaning. *Board of Public Education, School District of Philadelphia v. Soler*, 406 Pa. 168, 172, 176 A.2d 653, 655 (1961), *certiorari denied* 82 S. Ct. 1555 (1962). In *Horosko v. Mount Pleasant Township School District*, the Pennsylvania Supreme Court provided the following definition of incompetency:

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

335 Pa. 369, 374-75, 6 A.2d 866, 869-70 (1939), *certiorari denied* 60 S. Ct. 101 (1939).

The Court has also interpreted incompetence to include insubordination and lack of

frankness, candor and intellectual honesty. *Brownsville Area School District v. Alberts*, 436 Pa. 429, 260 A.2d 765 (1970), *citing*, *Soler*, 406 Pa. at 177, 176 A.2d at 657. The District alleges that Mr. Zollars failed and refused to follow directives from superiors, failed to communicate effectively with his superiors, co-workers and Ms. Tatone and that such conduct constitutes incompetency. The District further alleges that Mr. Zollars intentionally deceived Dr. Zurchin and Mr. Haslett by secretly recording part of the meeting with them on May 24, 2012, and that such conduct constitutes incompetency. However, the District has not provided sufficient evidence to support an allegation of incompetency.

The issues pertaining to the directive given to him by Dr. Zurchin and the communications with Ms. Tatone have been fully addressed above. Mr. Zollars' conduct pertaining to these two issues does not support his dismissal on the grounds of incompetency. As stated previously, it may have been prudent for Mr. Zollars to have informed Dr. Milanovich about Dr. Zurchin's directive to attend department head meetings, after Dr. Milanovich directed him to give Ms. Heasley some space; but his failure to do so does not constitute incompetency because it was reasonable for him to believe Dr. Milanovich's directive superseded Dr. Zurchin's direct since Dr. Milanovich was his direct supervisor. He also could have specifically told Ms. Tatone that he would be on vacation on May 21, 2012; but his failure to do so was not deceptive and does not constitute incompetency because he told Ms. Tatone to contact Ms. Heasley who was the appropriate person and had the information she wanted. Mr. Zollars' recording of part of the May 24, 2012 meeting with Dr. Zurchin and Mr. Haslett also does not constitute incompetency since the evidence does not prove that Mr. Zollars was being deceptive in doing so. Mr. Haslett was able to see that Mr. Zollars had a cell phone and did not think anything of it;

later he saw that it was recording. If Mr. Zollars was trying to be deceptive in recording, he could have kept the face of the phone from Mr. Haslett's view.

The other issue raised by the District as a basis for dismissal is an email Mr. Zollars sent to Ms. Heasley, Ms. Johns and Ms. Prevost on May 15, 2012, with Dr. Milanovich and Dr. Zurchin copied on the email. Apparently the District also believes this communication with his co-workers constitutes incompetency. Dr. Zurchin testified that she believed the email was inappropriate, unprofessional and threatening and that she spoke with Ms. Heasley, Ms. Johns and Ms. Prevost about the email. (N. T. Vol. I, pp. 93, 98). However, these three employees testified that they did not speak to Dr. Zurchin about the email. (N.T. Vol. I, pp. 158, 182, 223-24). Also, Dr. Zurchin never spoke to Mr. Zollars about the email prior to meeting with him on May 24, 2012. (N.T. Vol. II, p. 375).

Ms. Heasley testified she thought the email was inappropriate and did not know why she was included on the email and Ms. Johns testified she thought it was inappropriate because she had not intended to exclude him from a conversation she had with Ms. Prevost. (N.T. Vol. I, pp. 181, 223-24). Ms. Prevost testified that she felt intimidated by the email but also testified she and Mr. Zollars had some major disagreements in the past. (N.T. Vol. I, pp. 156, 167). In addition, Dr. Milanovich testified that Ms. Prevost was a hypersensitive person and exhibited extremely inappropriate conduct especially towards Mr. Zollars. (N.T. Vol. II, p. 318-19). Nevertheless, one possibly inappropriate email does not constitute incompetency. The District failed to meet its burden of proof and Mr. Zollars termination based on the grounds of incompetency cannot be sustained.

For all of the above-stated reasons, the District failed to provide sufficient evidence to support its termination of Mr. Zollars.³ Accordingly, the following Order is entered:

³Dr. Milanovich, as Mr. Zollars' direct supervisor, evaluated him as exceptional from the 2007-2008 through the 2009-2010 school years. She evaluated him as exceeding expectations for the 2010-2011 school year. Dr. Milanovich would have provided him with another good evaluation for the 2011-2012 school year and wrote him a glowing letter of recommendation in June 2012. Although an employee who has had exceptional evaluations over the years could engage in conduct that would justify termination; that is not the case with Mr. Zollars as the District failed to meet its burden of proof to support its termination of Mr. Zollars.

IN THE OFFICE OF THE SECRETARY OF EDUCATION
COMMONWEALTH OF PENNSYLVANIA

JEFFREY T. ZOLLARS, :
Appellant :
v. :
MOON AREA SCHOOL DISTRICT, :
Appellee :

ORDER

AND NOW, this 24th day of February 2015, Mr. Zollars' appeal is GRANTED and he shall be reinstated to his position as a professional employee and shall be reimbursed any amount of compensation he lost due to his termination.


Pedro A. Rivera
Acting Secretary of Education

Date Mailed: February 24, 2015