IN THE OFFICE OF THE SECRETARY OF EDUCATION
COMMONWEALTH OF PENNSYLVANIA

HAMMOND, DARLA Appellant,	:	
v.	:	TTA No. 01-14
CHESTER UPLAND SCHOOL DISTRICT Appellee	:	

OPINION AND ORDER

Darla Hammond ("Appellant") appeals to the Secretary of Education from the decision of the Chester Upland School District (the "District") to separate her without pay from the position of Principal of Chester Upland High School for an extended period of time.

Findings of Fact

1. Prior to her separation from employment, the Appellant was a tenured, professional employee of the Chester Upland School District. *Petition for Appeal ¶ 24, Answer to Petition ¶ 24, 35.*

2. Appellant was separated from her position as Principal of the Chester Upland High School without pay on March 19, 2012 by Tony Watson, the Acting Superintendent of Schools. *Petition for Appeal ¶ 41, Answer to Petition ¶ 41.*

3. Throughout the pleadings in the matter, the Appellant refers to the separation from employment that is at issue in this case as a" termination" or "tantamount to termination." *Petition for Appeal ¶ 41.* The school district refers to it as a "suspension" and denies terminating the Appellant. *Answer to Petition ¶ 41.*

4. At the time the Appellant filed the present appeal, her separation from employment, which began on or about March 19, 2012, had continued uninterrupted for 29 months. *Petition for Appeal ¶ 41.*

Pre-disciplinary Procedures

5. On or about March 8, 2012, Superintendent Watson questioned the Appellant regarding Chester-Upland High School procedures for administering the PSSA examination to students in 11th grade. *Petition for Appeal ¶ 46-47, Answer to Petition ¶ 46-47.*

6. On March 15, 2012, Superintendent Watson requested that the Appellant meet with him in his office. In attendance at the meeting, which also took place on March 15th, were the Appellant, Superintendent Watson and school district solicitor, Leo Hackett. *Petition for Appeal ¶ 50, Answer to Petition ¶ 50.*

7. At the March 15th meeting Superintendent Watson raised the allegation that Appellant had improperly moved students "from 11th grade into other grades just before the PSSA testing." *Petition for Appeal ¶¶ 52-55, Answer to Petition ¶¶ 52-55.*

8. At the meeting, Appellant denied any wrongdoing and continues to maintain that she has not engaged in any workplace misconduct whatsoever. *Petition for Appeal ¶¶ 52-55.*

9. On March 19, 2012, the Appellant again was called to Superintendent Watson's office. When she arrived there, Superintendent Watson handed her a letter that advised her that she was being suspended without pay. At that time, the Appellant was not provided anything in writing that advised her of the reasons why she was being suspended or that provide her with any indication of when (or if) the suspension would end. Petition for Appeal ¶¶ 60-70; Answer to Petition ¶¶ 60-70.

Post-deprivation Procedures

10. By letter dated August 10, 2012, the school district--after inquiries were made by Appellant's attorney and the Appellant had been separated from employment for several months--offered the Appellant a hearing. *Appellant's Exhibit F.* The letter indicated that the hearing,

which would take place on August 15, 2012, was "related to her continued suspension without pay." *Id.*

11. The August 10th letter was not signed by the president of the Board of School Directors nor attested to by its Secretary. *Appellant's Exhibit F.*

12. The August 10th letter did not indicate any notice of charges against the appellant or specify any reasons for the suspension but noted that "the Superintendent would present the reason(s) for the suspension" at the hearing. *Appellant's Exhibit F.*

13. On August 15, 2012, the suspension hearing did take place before the school district's Board of School Directors. *Appellant's Exhibit G.*

14. To date, the school district's Board of School Directors has not taken a vote or made any findings with regard to this matter, and yet the Appellant has remained separated from employment without pay for more than two years. *Petition for Appeal ¶¶ 134-135; Answer to Petition ¶¶ 134-135.*

Discussion

In *Cleveland Bd. of Educ. v. Loudermill*, the United States Supreme Court held that a public employee with a property interest in his or her job is entitled to a "pre[-]termination opportunity to respond, coupled with post-termination administrative procedures." 470 U.S. 532, 547-48 (1985). Courts have emphasized that, in determining what process is due, the length and finality of the deprivation must be taken into account. *Gilbert v. Homar*, 520 U.S. 924, 932 (1997). In the present matter, because the school district's post-deprivation administrative procedures were insufficient[1] in a situation where an employee has been deprived of her property

[1] The Appellant has challenged both the school district's pre-disciplinary and post-deprivation procedures. The Secretary finds in favor of the Appellant due to the school district's inadequate post-termination procedures. Therefore, the other arguments raised by the Appellant need not be addressed.

right for more than two years without the district specifying when, if ever, that deprivation might end, the district must correct those procedures to comport with all constitutional and Public School Code requirements.

I. The School District failed to afford the Appellant the required notice and opportunity to be heard.

The School Code provides in relevant part:

> Before any professional employee having attained a status of permanent tenure is dismissed by the board of school directors, such board of school directors shall furnish such professional employee with a detailed written statement of the charges upon which his or her proposed dismissal is based and shall conduct a hearing.
>
> 24 P.S. § 11-1127.

In the present matter, the Appellant, a professional, tenured employee was separated from employment by the school district for more than two years without being furnished with any written notice of the charges upon which her separation was based or a hearing on those charges. At issue in this appeal is whether a school district may separate a tenured professional employee in this manner without providing that employee with a written statement of the charges against her and an opportunity for a hearing on those charges. We hold that a school district has no such authority.

On March 19, 2012, the Appellant, was separated from employment without pay and has not yet been allowed to return to her job. There is no evidence of record to indicate that the separation from employment is anything but a permanent one. Nevertheless, the school district argues that the protections of Section 1127 do not apply here because, in its view, the employee has not been permanently dismissed but merely suspended temporarily. We disagree. We find that the school district has erroneously drawn a distinction between "suspension" and "termination" here where there is no real difference between the two.

In *Hopkins v. Mayor & Council of City of Wilmington,* 600 F.Supp. 542 (D.C.Del. 1984) the court opined:

> The distinctions between suspension and termination are blurred . . . where imposition of the former is for an indefinite period culminating in an assessment of whether termination is in order. Indeed, when suspension deprives one of all the benefits of employment, subject to restitution only if the decision was erroneous, the impact on the individual is essentially indistinguishable from the effect of a decision to terminate an employee subject to reinstatement with back pay upon reversal of that decision. *Id* at 547. *See also Thurston v. Dekle,* 531 F.2d 1264, 1272 (5th Cir.1976), *vacated on other grounds,* 438 U.S. 901 (1978). [internal citations omitted]

We agree with and adopt this rationale. *See, Hammond v. Chester-Upland School District*, 2014 WL 4473726 (E.D. Pa. 2014) (slip opinion). Where, as in the present matter, the purported suspension is "essentially indistinguishable" from a termination, it must be treated as equivalent to a termination for purposes of due process. Accordingly, we find that the Appellant is entitled the protection of Section 1127 and all of the protections of the School Code afforded to a tenured professional employee whom a school district proposes to permanently separate from employment.

II. Where a school district has failed to afford the required hearing as it has here, the proper remedy is remand for a hearing, not reinstatement.

Under Section 1131 of the School Code, a school board must conduct the disciplinary hearing and determine whether the dismissal of a professional employee is warranted. Only after a school board makes a record and renders a determination is the Secretary vested with jurisdiction and authority to conduct a *de novo* review. *Stroudsburg Area School Dist. v. Kelly* 701 A.2d 1000, 1003 (Pa. Cmwlth. 1997). Where a school board has taken a personnel action without affording the required hearing, the remedy on appeal is remand for a hearing, not reinstatement. *Foster v. Board of School Directors of Keystone Oaks School Dist.* 678 A.2d 1214, 1218 (Pa. Cmwlth. 1996).

In the present matter, the Secretary has no jurisdiction to decide the merits of the school district's disciplinary action because the school district has separated the Appellant from her employment for more than two years without affording her the proper notice and hearing in accordance with the Pennsylvania Public School Code. The Secretary finds that the school district has failed to comply with the School Code's due process requirements, which include offering the Appellant a proper notice of the charges against her and a hearing on those charges. Accordingly the following Order is entered:

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ORDER

AND NOW, this 18th day of November 2014, it is hereby ordered that the above-referenced matter is REMANDED to the Chester Upland School District for further proceedings consistent with this Opinion and Order.

Carolyn C. Dumaresq, Ed.D.
Acting Secretary of Education

Date Mailed: November 18, 2014