IN THE OFFICE OF THE SECRETARY OF EDUCATION
COMMONWEALTH OF PENNSYLVANIA

ELLIS JONES,	:	
Appellant	:	
	:	
v.	:	**TTA No. 01-11**
	:	
THE SCHOOL DISTRICT OF	:	
PHILADELPHIA,	:	
Appellee	:	

Ellis Jones, ("Mr. Jones"), Appellant, appeals the decision of the School Reform Commission ("SRC") of the Philadelphia School District ("District"), terminating his employment with the District as a professional employee.

FINDINGS OF FACT

1. Mr. Jones was hired as a teacher and professional employee with the District on September 1, 2002. (SDP 116).[1]

2. Mr. Jones was a vocational teacher at Dobbins AVTS for six years until the electronics program was discontinued at Dobbins. (N.T. p. 136).[2]

3. During the 2008-2009 school year, Mr. Jones was assigned to the position of math teacher at Mastbaum AVTS, which is another school within the District, on an emergency certificate.[3] (N.T. pp. 136-39).

4. During the 2008-2009 school year, Mary Dean was the principal of Mastbaum. (N.T. p. 117).

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[1] SDP refers to exhibits submitted by the District and admitted into evidence at the hearing before the SRC Chairman on April 16, 2010.
[2] N.T. refers to Notes of Testimony regarding testimony provided at the hearing before the SRC Chairman on April 16, 2010.
[3] As of the date of the hearing before the SRC, Mr. Jones had become certified in math and technology education for kindergarten through 12th grade. (N.T. pp. 136-37).

5. On or about April 30, 2009, Ms. Dean received a letter signed by three members of City Year Greater Philadelphia ("City Year") and the Project Manager regarding statements made by Mr. Jones in his classroom. (N.T. p. 119; SDP 24-26).

6. After Ms. Dean received the letter from City Year, she asked a school police officer to conduct an investigation by randomly selecting students from a list of Mr. Jones' students and asking them to write a statement about Mr. Jones. (N.T. pp. 17, 34-35, 43, 119; SDP 27, 28, 29, 30-33).

8. After Ms. Dean received the statements from Mr. Jones' students, she conducted an investigatory conference on June 1, 2009, which included Mr. Jones, a Philadelphia Federation of Teachers ("PFT") staffer, Ms. Jones, and Mr. Bywalski, the District's labor relations assistant. (N.T. pp. 119; SDP 41)[4].

9. After the investigatory conference on June 1, 2009, Ms. Dean prepared an unsatisfactory incident report ("SHE-204") and recommended that Mr. Jones' employment with the District be terminated. (N.T. p. 120; SDP 34-35).

10. Mr. Jones sent a letter to Ms. Dean, dated June 15, 2009, regarding the SHE-204. Mr. Jones apologized for his remarks stating he was trying to build trust and rapport with the students and that some remarks were taken out of context and misinterpreted and some were inaccurate and a misrepresentation of what happened in the classroom. Mr. Jones further stated that since he received the concerns from Ms. Dean and City Year members, he immediately changed his approach and apologized multiple times. (N.T. p. 121; SDP 38-39).

[4] Ms. Dean stated in her testimony that her conference summary of June 1, 2009 was exhibit SDP 41. SDP 41 states that a conference was held June 15, 2009, which is apparently a typographical error since no one who testified contested that the conference was held on June 1.

11. On June 24, 2009, James Douglass, Assistant Regional Superintendent, held a second-level conference regarding the SHE-204. In attendance were Mr. Jones, the PFT representative, Ms. Jones, and Mr. Bywalski, the labor relations assistant. Ms. Jones spoke for Mr. Jones and stated that Mr. Jones apologized, that the tactic he used to gain respect of the students was not appropriate, that his comments were taken out of context and that he was dedicated to his students. (SDP 43).

12. After the June 24, 2009 meeting, Mr. Douglass recommended that Mr. Jones be terminated from his employment with the District. (SDP 43).

13. On June 25, 2009, Ms. Dean signed the Professional and Temporary Rating Form regarding Mr. Jones, which rated him as satisfactory for the 2008-2009 school year. (N.T. p. 142; Jones -1).[5]

14. By letter dated August 10, 2009, and signed by the District Superintendent and the Chairman of the SRC, Mr. Ellis was told that they would recommend to the SRC that his employment with the District be terminated. The letter stated that the charges against him constituted "a willful violation of or failure to comply with the School Laws of this Commonwealth, and other improper conduct such as to constitute cause pursuant to 24 P.S. Section 11-1122 of the Public School Code of 1949" and that he had a right to request a hearing before the SRC. (SDP 116).

15. In the August 10, 2009 letter, Mr. Jones was told that the District's payroll department would be advised to make the necessary salary adjustments. (SDP 116).

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[5] Jones refers to exhibits submitted by Mr. Jones and admitted into evidence at the hearing before the SRC Chairman on April 16, 2010.

16. Mr. Jones was paid for his employment with the District for the 2008-2009 school year but not after the 2008-2009 school year.

17. Mr. Jones requested a hearing and it was held on April 16, 2010 before the Chairman of the SRC.

18. At the hearing, District counsel stated that the dismissal of Mr. Jones was based on the grounds of immorality. (N.T. p. 10).

19. There is no evidence in the record that, prior to the hearing on April 16, 2010, the SRC had resolved to dismiss Mr. Jones and that it had directed the Chairman and Secretary of the SRC to advise Mr. Jones of his right to a hearing.

20. The August 10, 2009 letter to Mr. Jones stating that the authors would recommend to the SRC that his employment be terminated was not witnessed by the Secretary of the SRC.

21. There is no evidence in the record that the SRC had any knowledge about the charges against Mr. Jones or about the hearing on April 16, 2010, because the hearing was held only before the Chairman of the SRC.

22. The only evidence of the SRC's knowledge of the charges against Mr. Jones and of the hearing held April 16, 2010, was when the SRC resolved on December 15, 2010, to dismiss Mr. Jones, effective August 14, 2009.

DISCUSSION

Standard of Review

Under Section 1131 of the Public School Code of 1949, 24 P.S. § 11-1131, the Secretary has the authority to review a teacher tenure appeal *de novo*. *Belasco v. Board of Public Education*, 510 A.2d 337, 343 (Pa. 1986). In such proceedings, the Secretary is the neutral fact-

finder and may "conduct *de novo* review whether [s]he takes additional testimony or merely reviews the official record of the proceedings before the board." *Id.* at 343. The Secretary has the authority to determine the credibility of the witnesses, the weight of the evidence, and the inferences to be drawn therefrom. *Id.* at 342; *Forest Area School Dist. v. Shoup*, 621 A.2d 1121, 1124 (Pa. Cmwlth. 1993).

Procedural Issue

The School Code provides that before a professional employee can be dismissed, the board of school directors must provide the employee with a detailed written statement of charges upon which the proposed dismissal is based. The written notice, which is to be signed by the president and witnessed by the secretary of the board of school directors, must be sent by registered mail to the employee providing the time and place that the employee will be given an opportunity to be heard before the board of school directors. 24 P.S. § 11-1127. Section 1127 "requires the Board to resolve to demote the employee and to furnish him with a written statement of the charges prior to the hearing." *Patchel v. Wilkinsburg School District*, 400 A.2d 229, 232 (Pa. Cmwlth. 1979); S*ee also, Abington School District v. Pittinger,* 305 A.2d 382 (Pa. Cmwlth 1973).

The hearing must be no sooner than ten (10) days and no later than fifteen (15) days after the written notice; however, it can be postponed, continued or adjourned. 24 P.S. § 11-1127. Section 1129 of the School Code provides that after a hearing, "the board of school directors shall by two-thirds vote of all the members thereof, . . . determine whether such charges or complaints have been sustained and whether the evidence substantiates such charges and complaints, and if so determined shall discharge such professional employe." 24 P.S. § 11-1129.

Courts have repeatedly held that "no dismissal of a tenured professional employee can be valid unless the dismissing school district acts in full compliance with the Code." *West Shore School District v. Bowman*, 409 A.2d 474, 480 (Pa. Cmwlth. 1979); *See also, In Re: Swink*, 200 A. 200 (Pa. Super. 1938). "[W]here dismissal proceedings are undertaken the procedures set forth in the Code are mandatory and must be followed strictly." *Covert v. Bensalem School District*, 522 A.2d 129, 130 (Pa. Cmwlth. 1987).

There is no provision in the School Code that confers on administrative staff, whether a Superintendent or a Principal, the authority to dismiss a professional employee. Thus, the dismissal of a professional employee cannot become effective until after the hearing has taken place. *See, Abington School District v. Pittinger*, 305 A.2d 382 (Pa. Cmwlth 1973); *Tassone v. Redstone Township School District*, 183 A.2d 536 (Pa. 1962).[6]

In *Pittinger*, the professional employee was an assistant principal at a district high school when he was advised by the superintendent that his assignment at the high school would terminate on July 9 and that he would be reassigned to a teaching position for the next school year. On July 7, the professional employee was handed a letter setting forth the understanding of the administrators as to the employee's status as of July 9. On July 14, the employee sent a letter to the superintendent, stating that he considered the new assignment to be a demotion to which he did not give his consent and demanded a hearing. *Pittinger*, 305 A.2d at 383.

After receipt of the employee's letter, the principal of the high school prepared a list of 24 charges as support for the transfer and the superintendent signed the list of charges on

[6] Although *Pittinger* and *Tassone* are cases involving demotions of tenured professional employees, the Court in *Pittinger* stated that "such demotion [of a professional employee] must strictly follow the procedure set forth in Section 1127 for dismissal of professional employes." *Pittinger*, 305 A.2d at 386. In following this procedure, the court in *Tassone* held that a demotion would not become effective until after the hearing took place and, in *Pittinger*, held that administrative staff did not have the authority to demote a professional employee.

September 29. Notice of a hearing before the board of school directors was signed by the president and secretary on September 29; however, counsel for the school board testified that the board did not see the charges until the first hearing on October 11. Hearings held before the board concluded on November 18. The board met December 2 and issued a resolution or adjudication approving the transfer-demotion of the employee. *Id.* at 384.

The school board argued in *Pittinger* that because it was performing a quasi-judicial function, it would not be proper for it to pass upon the demotion before hearing the facts of the case; therefore, it was not necessary for the board to have passed a resolution on the demotion prior to granting the employee a hearing. However, all of the proceedings before September 29, which was the date of the letter signed by the president and secretary of the board granting a hearing, were performed by the administrative staff. Thus, the administrative staff had already accomplished the demotion before the board had notice of it. The Court found neither a specific nor an implied provision in the School Code that would allow board ratification of a demotion directed by administrative staff. *Id.* at 386. The Court held that the action of the board violated the employee's rights under the teacher tenure provisions of the School Code and was void. Therefore, the school district was ordered to reinstate the professional employee to the position of assistant high school principal. *Id.* at 387.

However, a school district can cure a procedural defect made in dismissing a professional employee. "The Board only needed to have passed a resolution that it had sufficient evidence to support its belief, to demote Albrecht by some given date, and therein direct the Secretary and President of the Board to serve notice upon Albrecht of this fact and to advise him of his right to a hearing." *Id.* at 387. Curing such a procedural defect occurred in *Patchel v. Wilkinsburg School District*, 400 A.2d 229 (Pa. Cmwlth. 1979).

In *Patchel*, a professional employee was effectively demoted on May 13, 1976, by improper administrative action. On July 8, the school board reviewed the statement of charges, resolved that the charges warranted a hearing to determine whether the employee should be demoted, and promptly held a hearing. *Patchel,* 400 A.2d at 230. Hearings were held beginning August 23 and ended September 19. The Court held that the board properly followed the procedure outlined in *Pittinger* to cure the defective administrative demotion because the school board in *Patchel* reviewed the statement of charges, resolved to conduct a hearing on the demotion, and promptly did so. Thus, the only period of time when the employee's demotion was ineffective was the time between May 13 and September 19.

The Court distinguished the school board's action in *Patchel* from the board's action in *Pittinger* because, in *Pittinger*, the board did not schedule the hearing and never saw the charges against the employee until the hearing began. The Court found this to be "a clear violation of Section 1127 of the School Code, 24 P.S. § 11-1127, which requires the Board to Resolve to demote the employee and to furnish him with a written statement of the charges prior to the hearing." *Patchel*, 400 A.2d at 232. In addition, the Board in *Pittinger* did nothing to cure the procedural defects when it had an opportunity to do so.

Mr. Jones alleges that his dismissal from employment was not valid because the District did not comply with the provisions of the School Code regarding dismissal of a professional employee. The August 10, 2009 letter setting forth the charges against Mr. Jones was signed by the Chairman of the SRC and the Superintendent of the District. In this letter, the authors stated that they would recommend to the SRC that Mr. Jones' employment with the District be terminated immediately. There was no correspondence signed by the Chairman of the SRC and witnessed by the secretary of the SRC setting forth the charges against Mr. Jones and providing

him with the time and place of a hearing before the SRC. The record does not contain any resolution passed by the SRC that it had sufficient evidence to support its belief to dismiss Mr. Jones by a certain date, and that the Chairman and the Secretary of the SRC were to notify Mr. Jones of this fact and advise him of his right to a hearing. The only SRC document in the record is the December 15, 2010 resolution dismissing Mr. Jones from employment with the District, effective August 14, 2009.

There is no evidence in the record that the SRC, other than the Chairman, had seen or reviewed the charges prior to the hearing on April 16, 2010. There is no evidence that, prior to the hearing on April 16, 2010, the SRC had resolved to dismiss Mr. Jones and had directed the Chairman and the Secretary of the SRC to serve notice on Mr. Jones of this fact and to provide him the right to a hearing. In addition, the hearing was held before the Chairman of the SRC and not the entire SRC; thus, not only is there no evidence that the SRC reviewed the charges prior to the hearing and resolved to dismiss Mr. Jones, there is no evidence that the SRC even knew about the charges or the hearing. The only evidence of the SRC's knowledge of anything regarding Mr. Jones and his dismissal was when the SRC resolved on December 15, 2010, to dismiss him, effective August 14, 2009.

In the August 10, 2009 letter, the SRC Chairman and the Superintendent of the District advised Mr. Jones that they would recommend to the SRC that he be dismissed from his employment with the District immediately. In addition, the letter stated that the payroll department would be advised to make the necessary salary adjustments. The record evidences that Mr. Jones was paid for his employment with the District through the 2008-2009 school year but was no longer employed by the District beyond that school year. Thus, Mr. Jones was dismissed as of, at least, August 10, 2009, without any action by the SRC. The dismissal was a

dismissal by administrative action, not by action of the SRC. The vote by the SRC on December 15, 2010 was a ratification of Mr. Jones' dismissal by the administration, which is not permitted. *See, Pittinger*, 305 A.2d at 386.

The District cited to a number of cases in its brief that it states are samples of cases which held that a school board hearing prior to dismissal or demotion was not required. However, these cases are either distinguishable, not relevant or do not stand for the proposition that a school board hearing is not required prior to dismissal or demotion of a professional employee. Below is a brief discussion of these cases.

- *Kaplan v. Philadelphia School District*, 130 A.2d 672 (Pa. 1957) is about a professional employee who was suspended prior to his dismissal and the issue was whether he was entitled to payment of his salary during the period of suspension. The issue was not whether a pre-dismissal hearing was required.
- In *School District of Philadelphia v. Brockington*, 511 A.2d 944 (Pa. Cmwlth. 1986), an employee was transferred from a position to which she had been improperly assigned because she did not have a supervisory certificate. Thus, the employee was not a professional employee so no pre-demotion hearing or decision was required prior to transferring her from a position to which she had been improperly assigned.
- The issue in the case of *Kinniry v. Abington School District*, 673 A.2d 429 (Pa. Cmwlth. 1996), was not about failure to hold a pre-dismissal hearing. The superintendent recommended to the board of school directors that Kinniry be fired and a letter was sent to him of the charges. A hearing was held before the board and the board fired him. The issues were about an eighteen month delay by the Secretary in issuing his opinion, the

commingling of prosecutory and adjudicatory functions, and whether the district provided sufficient evidence to support a finding of immorality.

- In *Harris v. School District of Philadelphia*, 624 A.2d 784 (Pa. Cmwlth. 1993), a professional employee was demoted and the demotion was found not to have been arbitrary. There was no issue that the demotion occurred before a hearing.
- The issue in *Reed, et al. v. Juniata-Mifflin Counties Area Vocational-Technical School*, 535 A.2d 1229 (Pa. Cmwlth. 1988), was whether a post-demotion hearing was permitted when two teachers were reduced from full-time to part-time status due to minimum enrollment in their classes. The Court cited to the case of *School District of Philadelphia v. Twer*, 447 A.2d 222 (Pa. 1982), which allowed a post-demotion hearing because it was necessary for the efficient operation of the school. In the *Twer* case, the post-demotion hearing was allowed because there were a significant number of demotions (240) due to financial concerns and the efficient operation of the school would have been hindered by requiring pre-demotion hearings. In Mr. Jones' case, there is no evidence that a pre-dismissal hearing would have jeopardized the efficient operation of the school; thus, the cases of *Reed* and *Twer* are distinguishable.
- In *Sharon City School District v. Hudson,* 383 A.2d 249 (Pa. Cmwlth. 1978), a principal position was eliminated for monetary reasons and the principal was transferred to a teaching position. The Court found that a hearing was held in the normal course and there was no denial of due process.
- In *Black v. West Chester Area School District,* 510 A.2d 912 (Pa. Cmwlth. 1986), an administrative position was eliminated and the employee was demoted to a guidance counselor position. The employee failed to appeal the school board's refusal to give him

a hearing and the Court found that the administrative remedy he failed to pursue was adequate. Thus, this case is not about a pre-demotion hearing.

- The issue in *Swick v. School District of Borough of Tarentum*, 14 A.2d 898 (Pa. Super. 1940), was whether a hearing regarding the dismissal of a professional employee could be continued without the employee's consent. This case was not about the need to provide a hearing before a dismissal.[7]

Based on the dismissal procedures required under the School Code and the relevant case law interpreting those procedures, I have no choice but to find that Mr. Jones' dismissal was in violation of the School Code. Notwithstanding the consequences, I do not have discretion to ignore the District's failure to comply with the applicable provisions of the School Code and relevant case law. Therefore, I am obligated to find that the District's dismissal of Mr. Jones is void and that he shall be reinstated to his position with the District as a professional employee. In addition, Mr. Jones shall be reimbursed any amount of compensation he lost due to his improper dismissal. *See, Arcurio v. Greater Johnstown School District*, 630 A.2d 529 (Pa. Cmwlth. 1993); *Shearer v. Secretary of Education*, 424 A.2d 633 (Pa. Cmwlth. 1981).

Because Mr. Jones' dismissal is void, other issues raised by the parties are beyond the scope of the current proceeding. Therefore, there is no basis for me to consider whether the District provided sufficient evidence to support its dismissal of Mr. Jones on the basis of immorality.

Accordingly, the following Order is entered:

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[7] Two other cases cited by the District could not be found and reviewed because of the District's improper citations. However, as shown above, a review of the cases cited by the District shows that the cases do not repudiate the case law which holds that a hearing before the board of school directors is necessary prior to a demotion or dismissal.

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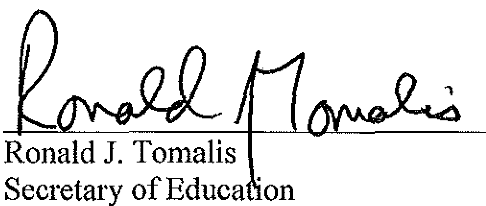
	:	
THE SCHOOL DISTRICT OF PHILADELPHIA	:	
Appellee	:	

ORDER

AND NOW, this 13th day of September 2011, based on provisions of the School Code and case law interpreting those provisions, Mr. Jones proved that the School District of Philadelphia failed to follow proper procedures in dismissing him from employment as a professional educator. Therefore, pursuant to the School Code and relevant case law, I am obligated to reverse the decision of the School Reform Commission of the School District of Philadelphia. As a consequence, Mr. Jones shall be reinstated to his position as a professional employee and shall be reimbursed any amount of compensation that he lost due to his dismissal.



Ronald J. Tomalis
Secretary of Education