

OFFICE OF THE SECRETARY OF EDUCATION
COMMONWEALTH OF PENNSYLVANIA

JOSEPH LiCAUSI, :
Appellant :
v : TTA No. 02-20
ALLENTOWN SCHOOL DISTRICT, :
Appellee :

OPINION AND ORDER

Joseph LiCausi (“Appellant”) appeals to the Secretary of Education from the decision of the Board of School Directors (“Board”) of the Allentown School District (“School District”) dismissing him from the position of Assistant Principal at the School District’s Union Terrace Elementary School.

FINDINGS OF FACT

1. Appellant began employment with the School District in 2001 as a Social Studies Teacher. He served as a School District Social Studies teacher at Dieruff High School for 10 years and was also a high school wrestling coach for a number of years. (N.T.¹ 287).
2. From 2011 - 2013, Appellant was an Assistant Principal for the School District at William Allen High School. (N.T. 287-288).
3. Appellant was an Assistant Principal for the School District at Harrison-Morton Middle School from 2013 until August of 2019. (N.T. 287-289).
4. In August of 2019, Appellant began working at Union Terrace Elementary School where he served as Assistant Principal. (N.T. 24). Prior to 2019, Appellant had never worked in an elementary school setting. (N.T. 291-292).

¹ “N.T.” refers to the Notes of Testimony taken at Appellant’s local dismissal hearing, which took place on March 10, 2020 before Hearing Officer Marc S. Fisher, Esquire.

5. In 2019, Appellant was trained and certified in CPI, an acronym for Crisis Prevention and Intervention. (N.T. 286).
6. CPI trainees must pass a refresher course every two (2) years to maintain their CPI certification. (N.T. 79-80).
7. CPI emphasizes providing for the care, welfare, safety, and security of everyone involved in a crisis situation. (Exhibit A-3²).
8. CPI uses non-verbal and verbal interventions to de-escalate challenging behaviors. (Exhibit A-3).
9. CPI includes a series of recognizable behavior levels that an individual may experience during a crisis moment and the corresponding staff approaches to de-escalate those behaviors. (Exhibit A-3).
10. CPI requires that physical interventions, including restraints, are only to be used (1) as a last resort, with the least amount of restriction, and (2) when those upon whom a restraint is necessary pose an immediate or imminent threat to harm themselves or others. (Exhibit A-3).
11. At all relevant times, the School District had in place a Special Education Plan Report (“Report”) which was submitted to and approved by the Pennsylvania Department of Education. (N.T. 183-185, Exhibit A-10).
12. The Report indicates that School District staff use appropriate behavior support techniques and adhered to proper CPI training. (Exhibit A-10).
13. At all relevant times, the School District ‘s Policy 417 titled *Disciplinary*

² The School District Administration’s Exhibits presented at the hearing were marked for identification as Exhibits A-1 through A-17. Appellant presented one Exhibit, which was marked as L-1.

Procedures authorized discipline including dismissal of professional staff members who violate School District policies and procedures. (N.T. 234-235; Exhibit A-14).

14. On December 10, 2019, Elizabeth Rhodes was an Emotional Support Teacher at Union Terrace Elementary School. (N.T. 21).

15. On December 10, 2019, Danika Rausch was a behavior management specialist assigned to Union Terrace Elementary School. (N.T. 78).

16. On December 10, 2019, Ms. Rausch was working in Ms. Rhodes' classroom. (N.T. 70, 82-85, Exhibits A-1 and A-2).

17. On December 10, 2019, Student A³ was a seven-year-old special education student in Ms. Rhodes' classroom. (N.T. 24-25, Exhibits A-1 and A-2).

18. On December 10, 2019, Student A was a child with several disabilities including autism, attention deficit/hyperactivity disorder and oppositional defiant disorder. (N.T. 24-25, 66-67, Exhibits A-1 and A-2).

19. On December 10, 2019, Student A had an Individualized Education Plan ("IEP") which included a behavioral plan and a crisis intervention component. (N.T. 24-25 66-67).

The incident in question with Student A on December 10, 2019

20. On December 10, 2019, David Hahn, the Principal of Union Terrace Elementary School was assisting Ms. Rhodes in her classroom with students who were misbehaving. Eight or nine students were in the room that day. (N.T. 65-66, 121. 136-141; Exhibits A-1 and A-2).

³ The names of the involved students are withheld to protect their privacy. Students provided written statements which were presented by the School District as Exhibits, but no students were called as witnesses at the hearings. (N.T. 128, Exhibits A-5 through A-8). The written statements provided by the students are assigned no evidentiary weight and are not used to support any findings of fact.

21. Principal Hahn then left the classroom and went into an area known as the “relaxation room” to assist one or more students with behavior problems. The relaxation room is where students are taken to “cool down” and de-escalate disruptive behaviors. (N.T. 26, 136-141; Exhibits A-1 and A-2).

22. Principal Hahn met Appellant in the relaxation room and directed him to go to Ms. Rhodes’ classroom to support the teachers there. (N.T. 308-309).

23. When Appellant arrived in Ms. Rhodes’ classroom, indoor recess was ending, and Student A was refusing to clean up his toys. (N.T. 26, 33-34; Exhibit A-1).

24. Ms. Rhodes and Ms. Rausch tried verbal de-escalation techniques to calm Student A who was becoming upset. (N.T. 26, 33-34; Exhibit A-1).

25. Student A tried to leave the classroom, but the exit door was blocked. (N.T. 26, 33-34; Exhibit A-1).

26. Student A returned to his seat, then he stood up and tried to leave again. (N.T. 26, 33-34. Exhibit A-1).

27. Appellant escorted Student A back to his seat. (N.T.26, 33-34, Exhibit A-1).

28. Student A stood up a second time and Appellant put him back in his seat. (N.T. 26, 33; Exhibit A-1).

29. Student A stood up a third time and tried to run around Appellant. (N.T. 26, 33-34. Exhibit A-1).

30. This time, Appellant grabbed Student A’s arm and twisted it around the student’s back and lifted him off the ground. (N.T. 26-27, 33-34. Exhibit A-1).

31. With his right arm, Appellant grabbed Student A's clavicle and throat area and applied pressure to push the student over a desk into a prone position thereby pushing and suppressing the student's chest over and onto a desk. (N.T. 26-27, 33-34, 56; Exhibit A-1).

32. Appellant then stated, "I am not playing around with you. You all think I am playing with you. I am not playing around with any of you." (N.T. 27, 33-34; Exhibit A-1).

33. Approximately four to five minutes after leaving Ms. Rhodes' classroom, Principal Hahn returned there and witnessed Appellant holding Student A in what Principal Hahn described as a "chicken wing"—a term used in the sport of wrestling. (N.T. 118, 141-142).

34. Ms. Rausch witnessed events prior to the hold, as well as the hold itself, confirming Ms. Rhodes' and Principal Hahn's version of the events. (N.T. 78-113).

35. After the hold was released, Student A was escorted from the classroom by Appellant to go to the nurse. The student refused to be seen by the nurse, and Appellant returned him to the classroom. (N.T. 304-305).

36. Student A complained about being hurt in the left shoulder area but was not seen by a medical doctor. Student A had no documented injuries. (N.T. 30, 190; Exhibit A-1).

37. The incident in question, which occurred in the presence of other students, had an impact on them. (N.T. 31-34, Exhibit A-1).

38. Students wondered whether Appellant had been a policeman and attempted to reenact the incident. (N.T. 31-34; Exhibit A-1).

39. In an email sent to Principal Hahn the following day, Appellant stated "I apologize and understand that my technique was not textbook, but I did whatever I could. I was only trying to help the situation and not make things more difficult for everyone." (Exhibit A-4).

40. Dr. Melinda Lucas was the Special Education Facilitator for the School District. Dr. Lucas, who is certified in CPI, had also been a certified trainer of CPI for the School District for more than a decade. (N.T. 177-181).

41. In 2019, Appellant successfully completed a refresher course in CPI, in which Dr. Lucas served as one of the instructors. (N.T.185-186; Exhibit A-1).

42. The refresher course that Appellant completed reviewed the guiding principles of CPI, including proper and improper holds, as well as disengagement skills. (N.T. 209-212)

Procedural History

43. By letter dated January 3, 2020, the School District provided Appellant with Notice of his *Loudermill* hearing, which took place on January 9, 2020.

44. By letter dated January 24, 2020, the School District provided Appellant with a Notice of Charges. The Notice indicated that the School District would recommend to the Board of Directors (“Board”) that Appellant be dismissed from employment. The Notice further indicated that the Board would conduct a dismissal hearing to determine whether it would adopt the recommendation and dismiss Appellant from his position.

45. By letter dated February 27, 2020, the School District provided Appellant with a Second Amended Notice of Charges.

46. On March 10, 2020, Marc Fisher, a hearing officer appointed by the Board, conducted Appellant’s dismissal hearing.

47. Following the dismissal hearing, the Board voted to dismiss Appellant from his position.

48. Appellant timely appealed his dismissal from employment by filing a Notice of Appeal with the Secretary of Education on or about May 29, 2020.

49. By letter dated June 3, 2020, the Secretary of Education appointed Robert Tomaine to act as hearing officer for the present appeal.

50. On or about June 18, 2020, the School District filed an Answer to the Appellant's Notice of Appeal.

51. On September 2, 2020, Appellant's appeal hearing was held before the Secretary of Education's appointed hearing officer.

DISCUSSION

Appellant's dismissal was pursuant to Section 1122 of the School Code, which provides that "[the] only valid causes for termination of a contract . . . with a professional employee shall be immorality; incompetency; . . . intemperance; cruelty; persistent negligence in the performance of duties [and] willful neglect of duties[.]" 24 P.S. §11-1122. A tenured professional employee, such as Appellant, may only be dismissed for the valid causes for termination set forth in Section 1122 of the School Code. *Foderaro v. Sch. Dist. of Philadelphia*, 531 A.2d 570, 571 (Pa. Cmwlth. 1987), *appeal denied*, 542 A.2d 1372 (Pa. 1988).

Commonwealth Court has held that it need only find one of the grounds for the dismissal valid in order to affirm the Secretary's dismissal of the appeal of a professional employee. *Horton v. Jefferson County-DuBois Area Vocational Technical School*, 630 A.2d 481, 483 (Pa. Cmwlth. 1993). Appellant argues that the District failed to establish grounds for his termination from employment. I disagree. Following a review of the record, I find that there is sufficient evidence to sustain the District's dismissal of Appellant on the basis of intemperance and cruelty, as those terms are used in the School Code.

Under the School Code, "intemperance" has been defined as a loss of self-control, which may be inferred from the use of excessive force. *Belasco v. Board of Public Education*, 486 A.2d

538 (Pa. Cmwlth. 1985). “Cruelty” has been defined as the intentional and malicious infliction of physical suffering upon human beings. *Caffas v. Board of School Directors of the Upper Dauphin Area School District*, 353 A.2d 898, 900 (Pa. 1976). A single incident of sufficient severity, such as an assault upon a student, may justify a charge of cruelty. *Landi v. West Chester Area School District*, 353 A.2d 895, 897 (Pa. Cmwlth. 1976).

The evidence presented by the School District demonstrated that, on December 10, 2019, Appellant exhibited a loss of self-control by unnecessarily restraining a seven-year-old child. Danika Rausch witnessed events prior to the improper physical restraint, as well as the restraint itself, confirming Elizabeth Rhodes’ and David Hahn’s version of the events. (N.T. 78-113). I find that the testimony of these three witnesses—two teachers and the school Principal—as well as their written statements made at or near the time of the incident in question credibly described what actually occurred on that day.

The evidence established that Appellant did not use verbal de-escalation techniques and acting contrary to his training and the clear expectations of his employer. He used excessive force by grabbing Student A’s hand, twisting it behind the student’s back, grabbing the student’s clavicle and throat area, and applying pressure to push the student into a prone position with the student’s chest over a desk. Appellant then stated, “I am not playing around with you. You all think I am playing with you. I am not playing around with any of you.” These actions provide more than sufficient evidence in support of Appellant’s dismissal.

Appellant denied that he engaged in any actions that justified his dismissal from employment. He testified that that he grabbed Student A’s arm and that the student then punched him twice with his right hand, so he grabbed both of the student’s hands and placed them behind the student’s back. Appellant testified that he never grabbed the student by his

throat, shoulders and/or clavicle, and he did not apply any pressure on the student. (N.T. 301-302). According to Appellant, he released Student A because he and the student reached an agreement that the student no longer posed a threat to himself or others. (N.T. 302, 309-310). Appellant specifically testified: “I had leaned down and I was right next to [Student A] and I had asked [Student A] that if I let you go, I need to make sure that you are not going to harm yourself, me or anyone else in the classroom. [Student A] **had agreed** and it was at that time that Mr. Hahn had walked in.” (N.T. 302, emphasis added). When asked whether the Principal’s arrival on the scene was related to the release of Student A, Appellant testified: “It had nothing to do with [the Principal’s arrival]. I didn’t even know he walked in.” (N.T. 310).

Appellant’s testimony is not credible and inconsistent with the statements of the other witnesses. There is no credible evidence in the record to support a conclusion that Student A, a seven-year-old child, posed a threat to anyone at any time on the date in question. There is no proof in the record that the student needed to be physically restrained at all on that day.

There can be no reasonable dispute that Appellant knew or should have known the proper protocols and procedures expected by the School District (e.g., CPI) when a child engages in the behaviors exhibited by Student A and that he did not follow protocol. I cannot require the School District to condone Appellant’s conduct by ordering a more lenient personnel action. Appellant’s claims that he physically restrained Student A to protect the teachers and the students in the room are without merit. No reasonable person could conclude that Appellant’s behavior was designed to protect anyone from the seven-year-old child in question or to protect the child from hurting himself. In my view, the punitive measures that Appellant engaged in here were completely unwarranted.

I also reject the arguments advanced by Appellant that (1) the physical restraint at issue in the present matter was justified by Student A's past and/or present misbehavior and (2) Appellant's litigation against the School District—and not his conduct toward Student A—was the true reason for his dismissal. These arguments are also meritless and wholly unsupported by the record. In the present matter, the School District presented sufficient evidence to support the conclusion that Appellant was terminated from employment due to the incident in question with Student A on December 10, 2019—not for any other reason. I see no justification in the record for Appellant to have restrained Student A in the manner that he did. Appellant's actions have no place in the classrooms of this Commonwealth. In my opinion, the termination of Appellant's employment was appropriate under these circumstances.

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JOSEPH LiCAUSI,	:	
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v	:	TTA No. 02-20
	:	
ALLENTOWN SCHOOL DISTRICT,	:	
Appellee	:	

ORDER

AND NOW, this 6th day of November, 2020, the Allentown School District's dismissal of Joseph LiCausi from the position of Assistant Principal is hereby affirmed.



Noe Ortega
Acting Secretary of Education

Date Mailed: November 6, 2020