IN THE OFFICE OF THE SECRETARY OF EDUCATION
COMMONWEALTH OF PENNSYLVANIA

BETH E. SPANGLER	:	
Appellant	:	
	:	
v	:	**TTA No. 02-18**
	:	
SCHOOL DISTRICT OF PHILADELPHIA	:	
Appellee	:	

OPINION AND ORDER

Beth E. Spangler ("Appellant") appeals to the Secretary of Education from the decision of the School District of Philadelphia ("District") School Reform Commission ("SRC") dismissing her from the position of elementary school teacher.

Findings of Fact

1. Appellant began employment with the District on August 31, 2009. (N.T. Vol. 2 [1] at 147; Appellant Exhibit 3 at 1, District Exhibit 1).

2. Appellant was employed by the District for approximately eight years, most recently as an elementary school teacher at Comly Elementary School. (N.T. Vol. 2 at 147).

3. Kate Sylvester, Principal of Comly Elementary School, was Appellant's supervisor at all times relevant to this appeal. (N.T. Vol. 2 at 47-50; 149; Appellant Exhibit 3).

4. Principal Sylvester disciplined Appellant several times during the 2016-17 school year based upon her observation of Appellant's conduct as recorded on "unsatisfactory incident reports." (N.T. Vol. 2 at 50-111; District Exhibit 1-2).

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[1] "N.T." refers to the Notes of Testimony transcribed at the hearing in this matter before the School Reform Commission's appointed hearing officer.

5. On or about November 28, 2016, Principal Sylvester directed Appellant to submit lesson plans each day by 5:00 p.m. starting immediately. (N.T. Vol. 2 at 57-58; District Exhibit 2 at 4, 13).

6. After receiving this directive from Principal Sylvester, Appellant did not timely submit three of her lesson plans for literacy and nine of her lesson plans for math on each of the nine school days subsequent to her receipt of the directive. (N.T. Vol. 2 at 57-58; District Exhibit 2 at 4).

7. On December 8, 2016, Principal Sylvester observed in Appellant's classroom *inter alia* that the instruction Appellant provided during class did not follow the lesson plans she submitted. (N.T. Vol. 2 at 52-68; District Exhibits 1-2).

8. As a result of Appellant's alleged misconduct, Principal Sylvester initiated the District's disciplinary process, wrote an initial "unsatisfactory incident report" and held a disciplinary conference. (District Exhibit 3).

9. On December 8, 2016, Principal Sylvester changed and imposed a more lenient deadline for Appellant to submit her lesson plans. Specifically, she directed Appellant to submit weekly lesson plans (one for math and one for literacy) to her via email by 5:00 p.m. every Friday. (N.T. Vol. 2 at 60-61; District Exhibit 2 at 23, 40).

10. On or about December 12, 2016, Principal Sylvester stressed during a disciplinary conference with Appellant the importance of submitting lesson plans. (*Id.*).

11. By memorandum dated December 13, 2016, Principal Sylvester reiterated to Appellant her directive to submit a weekly lesson plan by 5:00 p.m. every Friday. (*Id.*).

12. Appellant did not submit her weekly lesson plans as instructed. Her December 2016 lesson plans were incomplete and not submitted on time. (N.T. Vol. 2 at 68-73; District Exhibit 3).

13. Due to Appellant's failure to submit lesson plans as instructed, Principal Sylvester wrote another "unsatisfactory incident report" documenting Appellant's repeated failure to submit lesson plans in accordance with her instructions. Appellant was suspended for one day for the infraction and was advised that subsequent misconduct might lead to further disciplinary action, including suspension without pay or termination. (N.T. Vol. 2 at 68-73; District Exhibit 3).

14. On March 31, 2017, Appellant failed to submit her lesson plan again. Principal Sylvester wrote another "unsatisfactory incident report" documenting Appellant's repeated failure to submit lesson plans as directed. (N.T. Vol. 2 at 106-107; District Exhibit 6-7).

15. Principal Sylvester thereafter recommended Appellant's dismissal from employment. (N.T. Vol. 2 at 106-107; District Exhibit 6-7).

16. By letter dated July 11, 2017, the District notified Appellant that it had recommended her dismissal from employment to the SRC and notified Appellant that a hearing on her dismissal was scheduled for July 21, 2017. (Appellant Exhibit 3).

17. At the hearing on July 21, 2017, Appellant was present and agreed to have the hearing rescheduled. The District was not prepared to proceed at that time. (N.T. Vol. 2 at 35-36).

18. District staff thereafter proposed several dates to the Appellant on which the rescheduled hearing may be held if she was available. (Appellant Exhibit 2).

19. By letter dated November 1, 2017, Appellant's new attorney informed the District that he was not available on any of the dates proposed by District staff and requested that the hearing be held on a date "convenient to the parties and witnesses." (Appellant Exhibit 2).

20. Appellant and the District agreed that the hearings in this matter would resume on December 19, 2017. Appellant objected to the hearing being held before the SRC's appointed hearing officer, Nicholas Garcia, and not the full SRC. (Appellant Exhibit 1).

21. Hearings in this matter took place on December 19, 2017 and March 20, 2018 before Hearing Officer Garcia. Both Appellant and the District were represented by counsel at the hearings. (SRC Exhibits C and D).

22. On or about May 30, 2018, Hearing Officer Garcia issued his proposed adjudication, which recommended Appellant's dismissal from employment.

23. On or about June 21, 2018, the SRC passed a Resolution dismissing Appellant from employment.

24. Thereafter, Appellant timely filed the present appeal with the Secretary of Education. The parties stipulated that this matter would be submitted to the Secretary on Briefs without any additional oral argument, testimony or evidence.

25. On September 7, 2018 and October 5, 2018, Appellant and the District filed their respective Briefs with the Secretary of Education.

Discussion

In her appeal to the Secretary of Education, Appellant raised five issues: (1) whether the SRC is prohibited by law from delegating its hearing duties to a single hearing officer; (2) whether the hearing below was held in a timely fashion; (3) whether evidence of Appellant's teaching performance was properly excluded from evidence or relevant to a disciplinary action based upon

repeated failure to follow the directives of a supervisor; and (4) whether the District met its burden of establishing sufficient grounds for Appellant's dismissal. Each of these issues is addressed below:

I. Delegation to the SRC's Hearing Officer Presiding Alone

Section 696 of the School Code suspends the powers of the School District of Philadelphia Board of School Directors with regard to the "operation, management and educational program" of the District and grants those powers to an SRC. 24 P.S. § 6-696(13). Section 696 affords broad authority to the SRC over the affairs of the District including the power:

> To delegate to a person, including an employe of the school district or a for-profit or nonprofit organization, powers it deems necessary to carry out the purposes of this article, subject to the supervision and direction of the School Reform Commission.

24 P.S. § 6-696(13)

Due to these expansive powers that Section 696 grants to the SRC, Appellant's argument that the SRC cannot delegate hearing functions to a hearing officer presiding alone must fail. Though Appellant is correct that Commonwealth Court has not addressed this precise issue in the context of an SRC hearing, there is no basis to conclude that the Court would not resolve this issue in favor of the District given the above-quoted power of the SRC set forth in the School Code as well as the prior holdings of the Court in the context of disciplinary hearings before a Board of School Directors. Regarding such hearings, Commonwealth Court has held that: "Neither due process nor the [School Code] impel those who finally vote on the status of a teacher to have had direct aural reception of all the evidence." *Acitelli v. Westmont Hilltop Sch. Dist.*, 325 A.2d 490, 494 (Pa. Cmwlth. 1974). Because the Court specifically has held that the typical governing body of a school district (*i.e.* a Board of School Directors) is empowered to vote on a teacher discipline

matter without presiding at the hearing in the matter, I see no reason to impose that duty on the SRC, the governing body of the District at all times relevant to this matter.

Similarly, Appellant's argument that the doctrine of promissory estoppel bars the dismissal action in this matter has no merit. Appellant was not detrimentally impacted by voluntarily choosing to proceed before the SRC's appointed hearing officer in lieu of a labor arbitration process pursuant to the applicable collective bargaining agreement. The Appellant is correct that promissory estoppel applies when "A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding **if injustice can be avoided only by enforcement of the promise.**" *Travers v. Cameron Cty. Sch. Dist.*, 117. 606, 613, 544 A.2d 547, 550-51 (Pa. Cmwlth. 1988) (emphasis added). Appellant is incorrect, however, that the doctrine of promissory estoppel has any relevance to the present matter. Appellant suffered no detriment or injustice as a result of the hearing process. Absent from the record is any evidence to support a conclusion that the Appellant's hearing before the SRC and the Secretary of Education's *de novo* review was detrimental to her or unjust in any way. Appellant received a full and fair review of this matter before the SRC's appointed hearing officer and before the Secretary of Education. Therefore, I find that the principles of promissory estoppel do not apply.

II. Timeliness of the Hearing Below

Appellant further argues that the District violated Section 1127 of the School Code, 24 P.S. §11-1127, because the hearing was held beyond 15 days of the District's written notice of disciplinary action. (Appellant's Brief at 14-15). I disagree. Commonwealth Court has held that "[o]nce an employee waives the timing requirement under section 1127 of the School Code, the school district is permitted to unilaterally reschedule the hearing date." *Dotterer v. Sch. Dist. of*

Allentown, 92 A.3d 875, 882 (Pa. Cmwlth. 2014). In the present matter, Appellant waived the 15-day hearing deadline and therefore, the District did not violate the timing requirements of section 1127.

The issue of whether an educator waived Section 1127's 15-day hearing deadline was squarely addressed by Commonwealth Court in *Kaczmarcik v. Carbondale Area Sch. Dist.*, 625 A.2d 126 (Pa. Cmwlth. 1993). As in *Kaczmarcik*, the hearing in the present matter was scheduled within the 15-day deadline, and the educator agreed to have it rescheduled. (N.T. Vol 2 at 35-36). In *Kaczmarcik* the Court held that, where the employee agreed to have the hearing rescheduled, he waived any objection to the date the District selected for the rescheduled hearing.

Appellant's waiver in the present matter and agreement to have the hearing rescheduled did not specify a timeframe within which a hearing must be held. Through her attorney, Appellant merely requested that the hearing be held on a date "convenient to the parties and witnesses." (Appellant's Exhibits 1-2). Accordingly, under the Court's holding in *Kaczmarcik*, the SRC's Hearing Officer was not constrained by the School Code to schedule the hearing by any particular date.

Even though he had no legal obligation to do so, Hearing Officer Garcia did as Appellant requested, selected a date convenient for everyone involved, and held the hearing on that date. Thereafter, Appellant erroneously objected to the hearing officer actions in rescheduling the hearing, even though he rescheduled it precisely as Appellant had requested. In accordance with *Kaczmarcik*, the 15-day deadline is set forth in section 1127 was waived when Appellant agreed to reschedule the hearing initially. The Appellant's untimely objection—made after she previously agreed to reschedule the hearing—finds no basis in the law and must be rejected.

III. Performance Evaluations, Assessments or Ratings

Appellant further argues that assessments of her teaching performance were improperly excluded and that the District improperly failed to utilize a rating system to substantiate her dismissal from employment. Again, I disagree. Teaching performance is not at issue in the present matter. Accordingly, there is no reason to consider teacher performance evaluations, assessments or ratings. Any issues regarding Appellant's unsatisfactory (or satisfactory) teaching performance have been made moot by the District's withdrawal of the charge of incompetency, which the District initially lodged against Appellant but later withdrew.

In the present matter, the "Secretary [of Education] is vested with the authority to conduct *de novo* review whether he takes additional testimony or merely reviews the official record of the proceedings [below]." *Belasco v. Bd. of Pub. Educ.*, 510 A.2d 337, 343 (Pa. 1986). At no time in the course of my *de novo* review of this matter have I considered any evidence regarding Appellant's teaching performance. The analysis and conclusions listed herein are based exclusively upon the charge that Appellant failed to follow the directives of her supervisor regarding lesson plans. I have not considered any evidence regarding teaching performance, whether it be proffered by the District or Appellant. I note in particular that the District has submitted a large amount of evidence regarding Appellant's unsatisfactory teaching performance that I have not considered or made a part of this Opinion (*e.g.* Appellant alleged poor grammar/spelling, improper behavioral interventions and misuse of her classroom aide). Since the SRC has clarified that teaching performance is not at issue in this matter and excluded from its review evidence of Appellant's alleged good teaching performance, it is unfair to consider evidence of Appellant's alleged poor teaching performance as well. Accordingly, I have limited

my *de novo* review to evidence of Appellant's alleged persistent negligence for failure to follow her supervisor's directives.

Commonwealth Court has made clear that disciplinary actions based upon (1) unsatisfactory teaching performance and (2) persistent negligence for repeated failure to comply with a supervisor's directive are two separate and distinct inquiries. The present appeal clearly is the latter. The Court has rejected any notion that a dismissal action based upon persistent negligence for repeated failure to comply with a supervisor's directive is invalid unless performance ratings and evaluations are considered. In rejecting the educator's argument that failure to consider performance evaluations somehow invalidates an action for persistent negligence due to an educator's repeated failure to comply with a supervisor's directives, the Court pointed out that "although a teacher may be dismissed for unsatisfactory performance, dismissal for persistent negligence is also warranted by a teacher's continuous failure to comply with a directive of his supervisors." *Horton v. Jefferson Cty.-Dubois Area Vocational Tech. Sch.*, 630 A.2d 481, 484-85 (Pa. Cmwlth. 1993). The matter now before me is a dismissal based upon persistent negligence for Appellant's failure to comply with a supervisor's directives and not unsatisfactory performance. Therefore, evaluations or ratings of Appellant's work performance—both positive and negative—are irrelevant.

IV. Substantive Grounds for Dismissal

A tenured professional employee such as Appellant may only be terminated from employment for the reasons set forth in Section 1122 of the School Code. *Foderaro v. Sch. Dist. of Philadelphia,* 531 A.2d 570, 571 (Pa. Cmwlth. 1987). Section 1122 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.

24 P.S. § 11-1122.

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*, 157 Pa. Commw. 424, 630 A.2d 481, 483 (Pa. Cmwlth. 1993). Following a thorough review of the record, I find that there is sufficient evidence to sustain the District's dismissal on the basis of her persistent negligence regarding lesson plans.

In the school discipline context, Commonwealth Court defined the phrase persistent negligence as a continuing or constant failure to exercise that care a reasonable person would exercise under the circumstances. *Lauer v Millville Area Sch. Dist.* 657 A.2d 119 (Pa. Cmwlth. 1995). Persistency occurs either as a series of individual incidents or one incident carried on for a substantial period of time. *Gobla v. Board of School Directors of Crestwood Sch. Dist.*, 414 A.2d 772 (Pa. Cmwlth. 1980). The charge of persistent negligence requires a school district to prove that the educator had knowledge of the District's performance expectations and had been warned of the consequences of failing to meet them. *McFerren v Farrell Area Sch. Dist.*, 993 A.2d 344 (Pa. Cmwlth. 2010).

Commonwealth Court has found that failure to maintain lesson plans in accordance with repeated written and oral directives from a supervisor constitute persistent negligence justifying dismissal of a professional employee. *Strinich v. Clairton Sch. Dist.*, 431 A.2d 267, 269 (1981). As in *Strinich*, the educator in the present matter received instructions on multiple occasions from her supervising principal to submit lesson plans by a particular deadline, and she repeatedly failed to do so. For example, in November 2016, Principal Sylvester directed Appellant to submit her

lesson plans to her by 5:00 p.m. on a daily basis. (N.T. Vol. 2 at 57-58.16; District Exhibit 2 at 4, 13). She did not comply with this directive on each of the nine school days subsequent to her receipt of the directive. (N.T. Vol. 2 at 57-58; District Exhibit 2 at 4). In December 2016, Principal Sylvester directed Appellant to submit a weekly lesson plan to her via email by 5:00 p.m. every Friday. (N.T. Vol. 2 at 60-61; District Exhibit. 2). Again, the Appellant did not submit weekly lesson plans as instructed. Her December 2016 and March 2017 lesson plans were incomplete and/or not submitted on time. (N.T. Vol. 2 at 68-69, 106-107; District Exhibit 1-3, 6). I find that Principal Sylvester's testimony, which was corroborated with documentary evidence, credibly established that Appellant failed to submit lesson plans as instructed on numerous occasions.

Based on all of the above, there is sufficient evidence in the record to sustain Appellant's dismissal on the basis of persistent negligence. Accordingly, the following Order is entered:

IN THE OFFICE OF THE SECRETARY OF EDUCATION
COMMONWEALTH OF PENNSYLVANIA

BETH SPANGLER	:	
Appellant	:	
	:	
v	:	**TTA No. 02-18**
	:	
SCHOOL DISTRICT OF PHILADELPHIA	:	
Appellee	:	

ORDER

AND NOW, this 4th day of February 2019, the dismissal of Beth Spangler is hereby affirmed.

Pedro A. Rivera
Secretary of Education

Date Mailed: February 4, 2019