

**IN THE OFFICE OF THE SECRETARY OF EDUCATION  
COMMONWEALTH OF PENNSYLVANIA**

JOHN J. SWEDA	:	
	:	
Appellant	:	
	:	
v.	:	Teacher Tenure Appeal
	:	No. 01-2022
	:	
UPPER BUCKS COUNTY	:	
TECHNICAL SCHOOL	:	
	:	
Appellee	:	

**OPINION AND ORDER**

John J. Sweda (Mr. Sweda) has appealed to the Secretary of Education (Secretary) the decision of the Upper Bucks County Technical School (UBCTS) to discharge him from his employment as a professional employee.

**FINDINGS OF FACT**

1. Mr. Sweda was employed as the executive director of UBCTS for approximately 3-and one-half years. (Sweda Hearing (SH) 2/25/2022 at 125-126)
2. Mr. Sweda is a tenured professional employee. (SH 2/25/2022 at 126)
3. Mr. Sweda’s contract was renewed for three years on July 1, 2021. (SH 2/25/2022 at 27, 31)
4. The UBCTS is operated by the Joint Operating Committee (JOC). (UBCTS Exhibit (Ex.) 19)
5. The JOC placed Mr. Sweda on administrative leave on November 9, 2021. (SH 2/25/2022 at 237; UBCTS Ex. 70)
6. On December 27, 2021, a statement of charges was drafted. (Sweda Ex.2)
7. On January 3, 2022, the statement of charges was adopted by the JOC. (Sweda Ex. 10)

8. Mr. Sweda was discharged on or about April 20, 2022. (Hearing Officer (H.O.) Ex. 1)

**Mr. Sweda's relationship with the former building and grounds supervisor**

9. Mr. Sweda recommended that the JOC hire Mr. William Gerhard (hereinafter referred to as the "former building and grounds supervisor") to maintain the building and grounds at UBCTS. (SH 2/25/2022 at 138)

10. At the time of the former building and grounds supervisor's hire, Mr. Sweda put a provision in place to facilitate the former building and grounds supervisor's success in the position. (SH 2/25/2022 at 138)

11. The contract stated that the supervisor of building and grounds for the Palisades School District could mentor the former building and grounds supervisor on the administrative duties of his job. (SH 2/25/2022 at 138, 139)

12. The former building and grounds supervisor did not believe that he needed the mentorship and refused to request that the help of the supervisor of buildings and grounds for the Palisades School District. (SH 2/25/2022 at 139)

13. UBTCs has a computer program called FMX. (SH 2/25/2022 at 140-141)

14. FMX is a program where teachers can go on their computers for emergency and non-emergency maintenance issues and request repairs. (SH 2/25/2022 at 140-141)

15. The former building and grounds supervisor was not completing his repair work from FMX. (SH 2/25/2022 at 141)

16. The former building and grounds supervisor told the teachers to send him emails instead. (SH 2/25/2022 at 141)

17. Because the former building and grounds supervisor did not use FMX, Mr. Sweda had no idea if the repair work was getting done. (SH 2/25/2022 at 141-142)

18. As of August 27, 2020, the former building and grounds supervisor did not have his repair work completed six days before UBCTS was scheduled to open. (SH 2/25/2022 at 142-144)
19. The former building and grounds supervisor was unable to complete the repair work because he was on vacation. (SH 2/25/2022 at 143-144)
20. Mr. Sweda did the repair work himself. (SH 2/25/2022 at 143-144)
21. No disciplinary action was taken against the former building and grounds supervisor for failing to complete the repair work. (SH 2/25/2022 at 145)
22. The former building and grounds supervisor did not wear a mask in accordance with the making policy in place at UBCTS and had to be told by Mr. Sweda to do so. (SH 2/25/2022 at 146-147)
23. Mr. Sweda verbally corrected the former building and grounds supervisor for allowing an outside contractor to work alone on the roof, for leaving ice and snow on the sidewalks and in the parking lot, which resulted in a slip and fall, for failing to repair a gas burner in the kitchen, and for consistently and repeatedly failing to properly submit purchase orders. (SH 2/25/2022 at 146-154, 172)
24. The former building and grounds supervisor was being considered for demotion and/or a proposed suspension due to his poor work performance. (SH 2/25/2022 at 156)
25. The former building and grounds supervisor yelled and screamed at Mr. Sweda and told him “f\*\*k you asshole.” (SH 2/25/2022 at 156-157, 273)
26. The former building and grounds supervisor’s demotion and/or proposed suspension was changed to a notice of intent to dismiss for neglect of duty because he told Mr. Sweda “f\*\*k you asshole.” (SH 2/25/2022 at 157)

27. The former buildings and grounds supervisor voluntarily quit his employment. (UBCTS Ex. 4)
28. Following his voluntary quit, the former buildings and grounds supervisor wrote to the JOC complaining about Mr. Sweda. (UBCTS Ex. 4)
29. The former buildings and grounds supervisor did not complain to the JOC about Mr. Sweda's behavior prior to his voluntary quit. (UBCTS Ex. 4)

**Purchase of the Log Splitter**

30. The former building and grounds supervisor indicated that UBCTS contracted to have trees removed from the property. (SH 2/3/2022 at 59)
31. The purchase order for the tree removal company included directions that the wood be left on-site in firewood length pieces. (UBCTS Ex. 64)
32. The former building and grounds supervisor indicated that UBCTS does not have a use for firewood. (SH 2/3/2022 at 60)
33. Mr. Sweda instructed the former building and grounds supervisor to order a log splitter. (SH 2/3/2022 at 62)
34. The requisition form for the log splitter includes both the former building and grounds supervisor's and Mr. Sweda's signatures. (SH 2/25/2022 at 167)
35. The purchasing secretary indicated that only one bid was received for the log splitter. (SH 2/9/2022 at 54)
36. The business manager indicated that three bids were not required for purchasing the log splitter. (SH 2/14/2022 10:24 p.m. at 71)
37. The building and ground maintenance worker for UBCTS did not request that UBCTS purchase a log splitter. (SH 2/3/2022 at 31, 32)

38. The small engine instructor for UBCTS did not request that the school purchase a log splitter.  
(SH 2/9/2022 at 10-11)
39. A log splitter had not been previously used in any academic programming at UBCTS. (SH 2/9/2022 at 11, 23; 2/25/2022 at 166-167)
40. A log splitter was consistent with the curriculum of the small motor class. (SH 2/9/2022 at 11, 23; 2/25/2022 at 166-167)
41. The small motor class watched the assembly of the log splitter. (SH 2/9/2022 at 11, 23)
42. The maintenance mechanic for UBCTS observed that Mr. Sweda used the log splitter on a wood pile that had been harvested and was in the landscape products area. (SH 1/31/2022 at 29)
43. Mr. Sweda acknowledged using the log splitter and taking the logs for his personal use. (SH 2/25/2022 at 166, 248)
44. Mr. Sweda instructed the former building and grounds supervisor to let the staff know that other staff members could do the same. (SH 2/25/2022 at 166)
45. The former building and grounds supervisor delivered the firewood from UBCTS to Mr. Sweda's home. (SH 2/3/2022 at 64-65)
46. The former building and grounds supervisor did not bring this incident to the attention of the JOC until after his separation from employment. (UBCTS Ex. 4)
- Removal of the Paver Bricks**
47. The JOC policy provided for a specific procedure that had to be used to declare *equipment* surplus or obsolete. (SH 2/25/2022 at 231, 232; UBCTS Ex. 22)
48. There were paver bricks on the UBCTS property that were surplus. (SH 2/25/2022 at 164-166)

49. Mr. Sweda indicated that the bricks had previously been offered at multiple surplus auctions, and the bricks were never removed. (SH 2/25/2022 at 164)
50. The paver bricks were not *equipment* within the scope of JOC Policy. (SH 2/25/2022 at 232)
51. Mr. Sweda and the former building and grounds supervisor took paver bricks from the school property for their personal use. (SH 2/3/2022 at 75, 2/25/2022 at 165-166)
52. The former building and grounds supervisor also took the paver bricks to Mr. Sweda's house. (SH 2/3/2022 at 75-76)
53. Mr. Sweda did not ask the former building and grounds supervisor to take the paver bricks to his house. (SH 2/25/2022 at 165, 166)
54. Mr. Sweda also gave paver bricks to a friend. (SH 2/25/2022 at 164)
55. The former building and grounds supervisor took paver bricks to Mr. Sweda's friend's house in a school trailer. (SH 2/3/2022 at 75-76)
56. The former building and grounds supervisor left the school trailer at Mr. Sweda's friend's house over the weekend and picked it back up on Monday morning after the trailer was unloaded. (SH 2/3/2022 at 77)
57. Mr. Sweda's testimony regarding his use of the paver bricks was credible.

**Use of UBCTS Vehicle Fuel**

58. The former building and grounds supervisor alleged that on one occasion Mr. Sweda sought his assistance to use UBCTS fuel tanks to put fuel in Mr. Sweda's personal vehicle. (SH 2/3/2022 at 100)
59. The former building and grounds supervisor further alleged that he gave Mr. Sweda a key for the padlock to the fuel tank area. (SH 2/3/2022 at 75)

60. The former building and grounds supervisor alleged that Mr. Sweda commented that he should not be putting low grade gas from the UBCTS fuel tanks in his personal vehicle, but he needed the fuel. (SH 2/3/2022 at 100)
61. Mr. Sweda denied using UBCTS fuel in his vehicle. (SH 2/25/2022 at 160)
62. Mr. Sweda's vehicle only used high test fuel and he indicated that he would never use low test fuel. (SH 2/25/2022 at 160)
63. Additionally, Mr. Sweda did not need the former building and grounds supervisor to give him a key as he already had keys for all the locks at UBCTS. (SH 2/25/2022 at 161-163)
64. The former building and grounds supervisor did not bring this incident to the attention of the JOC until after his separation from employment. (UBCTS Ex. 4)
65. Mr. Sweda's testimony related to his nonuse of UBCTS fuel was credible.

**Purchase of Spray Cleaning Services**

66. An employee at the Merrick Group approached Mr. Sweda about purchasing spray cleaning services for UBCTS because of the COVID emergency. (SH 2/25/2022 at 176)
67. Initially, Mr. Sweda did not solicit any additional quotes prior to the Merrick Group providing spray cleaning services. (SH 2/9/2022 10:24 p.m. at 54)
68. The business manager agreed that Mr. Sweda originally contracted with the Merrick Group without receiving three bids because of the COVID emergency. (SH 2/14/2022 10:24 p.m. at 23)
69. The Merrick Group charged \$48,400.00 for the spray cleaning services spray per year. (SH 2/3/2022 at 68, 115)

70. In January 2021, Mr. Sweda told the former building and grounds supervisor to solicit additional quotes from SSC and SERVEPRO for the spray cleaning services because the Merrick Group was increasing its price. (SH 2/3/2022 at 15; 2/25/2022 at 178)
71. SSC quoted the price for the spray cleaning services at \$41,880 per year. (SH 2/3/2022 at 68, 115)
72. SERVEPRO quoted the price for the spray cleaning services at \$67,500 per year. (SH 2/25/2022 at 179, 180)
73. Mr. Sweda decided to remain with the Merrick Group for spray cleaning services because the Merrick Group had the expertise and resources to properly complete the contract. (SH 2/25/2022 at 179, 180)

**Competitive Grant**

74. On November 8, 2021, a competitive grant submission was due from UBCTS. (SH 1/31/2022 at 123-124) The competitive grant contained information required by the Commonwealth of Pennsylvania. (SH 1/31/2022 at 123-124)
75. The grant would have provided equipment to be used in UBCTS program areas. (SH 1/31/2022 at 123-124)
76. Mr. Sweda was responsible for completing the competitive grant. (SH 1/31/2022 at 124)
77. The competitive grant was worth anywhere from \$35,000 to \$55,000. (SH 1/31/2022 at 124)
78. Mr. Sweda did not submit the grant by the November 8, 2021, deadline. (SH 1/31/2022 at 124)
79. UBCTS received an email from the Commonwealth of Pennsylvania stating that the deadline has passed and that it was not able to reopen the competitive grant. (SH 1/31/2022 at 124)



Mr. Sweda admitted that he made a mistake and submitted the wrong grant application when he applied for the competitive grant. (SH 2/25/2022 at 196)

**Security Camera**

80. An administrative assistant witnessed Mr. Sweda and a teacher at UBCTS, Ms. Sinn, together on the external security camera at her desk. (SH 1/31/2022 at 59)
81. Mr. Sweda asked the administrative assistant what cameras she had access to, and she told him that she had access only to the outside cameras. (SH 1/31/2022 at 59-60)
82. After that conversation with Mr. Sweda, the camera at the loading dock where deliveries arrived was turned off by the former building and grounds supervisor. (SH 1/31/2022 at 60)
83. The former building and grounds supervisor's testimony in which he stated that he told the UBCTS technology coordinator to turn off the external security camera by the loading dock where the deliveries arrived because Mr. Sweda wanted the camera off was not credible. (SH 2/3/2022 at 81, 126)
84. Mr. Sweda credibly indicated that he never requested the former building and grounds supervisor or the technology coordinator to disable the external security camera at the loading dock. (SH 2/25/2022 at 202)
85. The camera that was turned off is near the office of the teacher who was often together with Mr. Sweda, Ms. Sinn. (SH 2/3/2022 at 81)
86. Mr. Sweda directed a picnic table be set up in the area covered by the security camera that was turned off. (SH 2/25/2022 at 294)
87. The safety officer was aware that the camera was shut off, but when he tried to get the camera turned back on, his request for assistance was not answered by the technology coordinator. (SH 2/3/2022 at 11-12, 23-24)

88. The safety officer put in two maintenance requests regarding that the camera be turned back on. (SH 2/3/2022 at 128)

89. The technology coordinator acknowledged receiving those requests and intentionally ignoring them because he believed that Mr. Sweda wanted the camera off. (SH 2/3/2022 at 128, 134)

90. The camera was turned back on after Mr. Sweda's last day ay UBCTS. (SH 2/3/2022 at 128)

**Stainless Steel Table**

91. The HVAC and plumbing instructor removed a stainless-steel table that had been formerly used in the culinary program. (SH 1/31/2022 at 86-87)

92. Normally, equipment was not removed from UBCTS for repair. (SH 1/31/2022 at 86-87)

93. The HVAC and plumbing instructor removed the table to revamp it for another program. (SH 1/31/2022 at 88)

94. The HVAC and plumbing instructor returned the table when he was asked to do so. (SH 1/31/2022 at 89-90)

**Profane and/or abusive language at banquet**

95. The JOC policy provides that employees shall not use profane or abusive language. (UBCTS Exhibit 20)

96. If this policy is violated, an employee is subject to progressive discipline up to and including dismissal. (UBCTS Exhibit 20)

97. In April of 2021, Mr. Sweda became angry because there were unlaundered tablecloths on tables for a National Technical Honor Society banquet. (SH 2/3/2022 at 55-56)

98. Mr. Sweda was also angry with the table placement at the banquet because COVID restrictions indicated that people should be in smaller groups. (SH 2/25/2022 at 130)

99. Mr. Sweda used profanity while expressing his displeasure in front of students. (SH 1/31/2022 at 58; 2/25/2022 at 130)
100. Mr. Sweda pulled the tablecloths off the tables and put the tablecloths in the wash. (SH 2/25/2022 at 131)
101. Mr. Sweda admitted to using profanity when he yelled about the tablecloths. Specifically, he dropped an "F-bomb" a couple of times and said that he had to do "everybody's F-ing job." (SH 2/3/2022 at 32, 56)
102. Mr. Sweda also admitting to saying "...what the hell's going on?" (SH 2/25/2022 at 130)
103. The students were surprised by Mr. Sweda's outburst. (SH 2/2/2022 at 33)
104. The administrative assistant escorted the students out of the cafeteria. (SH 1/31/2022 at 32-33, 58)
105. No employee brought Mr. Sweda's use of profane or abusive language to the attention of the JOC prior to the investigation following Mr. Sweda's suspension. (SH, generally)
- Profane or abusive language generally**
106. The maintenance mechanic heard Mr. Sweda talking to the assistant director in a loud voice while using the word "f\*\*king". (SH 1/31/2022 at 31)
107. The administrative assistant heard Mr. Sweda yell at the assistant director using the word "f\*\*k" a couple of times when Mr. Sweda was in the assistant director's office. (SH 1/31/2022 at 56-57)
108. The administrative assistant also stated that Mr. Sweda was very dismissive to the assistant director and spoke to him in a very unprofessional manner. (SH 1/31/2022 at 57)
109. Mr. Sweda was displeased with the assistant director's work performance. (SH 1/31/2022 at 113, 114)

110. Mr. Sweda would drop "F-bombs" and direct profanity towards the assistant director about once a month. (SH 1/31/2022 at 114; 2/3/2022 at 141)
111. When the assistant director asked Ms. Sinn about two special education students in the culinary program, Mr. Sweda accused the assistant director of berating Ms. Sinn and putting her on the spot. (SH 1/31/2022 at 116)
112. After a committee meeting about closing the culinary program, Mr. Sweda spoke to the assistant director about the meeting. During that discussion, which took place in the assistant director's office, Mr. Sweda began yelling at the assistant director. (SH 1/31/2022 at 119-120)
113. Mr. Sweda asked the assistant director "what the f\*\*k are you doing" and "why do you have a hard-on" for the culinary instructor. (SH 1/31/2022 at 120)
114. The assistant director heard Mr. Sweda make insulting comments about other employees after an in-service day. (SH 1/31/2022 at 120)
115. Mr. Sweda called an employee a meathead. (SH 1/31/2022 at 120)
116. The assistant director heard Mr. Sweda use the phrase "f\*\*king lesbian" regarding an unknown individual after an in-service day. (SH 1/31/2022 at 122)
117. The safety officer heard Mr. Sweda yell, curse and use the "F" word while in his office. (SH 2/3/2022 at 9)
118. The safety officer had no idea who or what he was yelling at because the door was closed. (SH 2/3/2022 at 8-9)
119. The former building and grounds supervisor stated that Mr. Sweda would raise his voice to him approximately once a week, and that he would use the "F-bomb" at him from time to time. (SH 2/3/2022 at 54-55, 142)

120. The former building and grounds supervisor heard Mr. Sweda say “[W]hat the f\*\*k are you doing,” or [T]his is your f\*\*king problem.” to the assistant director. (SH 2/3/2022 at 57)

121. The purchasing secretary heard Mr. Sweda yell “f\*\*k you” repeatedly at the assistant director on many occasions. (SH 2/9/2022 at 60)

122. The business manager testified that she heard Mr. Sweda using profanity towards the assistant director in Mr. Sweda's office. (SH 2/14/2022 10:24 p.m. at 19)

123. The human resources manager heard Mr. Sweda yell at the assistant director and use the word “f\*\*k.” (SH 2/3/2022 at 141)

**Relationship between Mr. Sweda and Ms. Sinn**

124. The administrative assistant testified that she would see Ms. Sinn and Mr. Sweda come into school at the same time, and that she would see Mr. Sweda bring Ms. Sinn coffee and lunch on occasion. (SH 1/31/2022 at 60-63)

125. The administrative assistant testified that Ms. Sinn would enter Mr. Sweda's office a couple of times a day. (SH 1/31/2022 at 63)

126. The healthcare specialist saw Mr. Sweda and Ms. Sinn together several times a day walking either in the hallway or outside along the sidewalk to go to the annex building or into the main building. (SH 2/9/2022 at 44)

127. The healthcare specialist also saw Mr. Sweda and Ms. Sinn eating lunch at the picnic table multiple times, usually about once or twice a week. (SH 2/9/2022 at 45)

128. The healthcare specialist saw Mr. Sweda carry flowers into school one day, and as she was leaving, she saw Mr. Sweda walking Ms. Sinn to her vehicle carrying the same flowers. (SH 2/9/2022 at 45)

129. The safety officer has seen Ms. Sinn and Mr. Sweda eating lunch together. (SH 2/3/2022 at 19)
130. Multiple witnesses testified that they saw Mr. Sweda interact with Ms. Sinn more than any other staff member. (SH 2/3/2022 at 22-23, SH 2/3/2022 at 144)
131. Mr. Sweda helped Ms. Sinn with her master's degree homework during school hours. (SH 2/14/2022 6:47 p.m. at 31-38)
132. Ms. Sinn helped Mr. Sweda edit correspondence from Mr. Sweda to the Union. (SH 2/14/2022 6:47 p.m. at 45; UBCTS Ex. 45)
133. Mr. Sweda forwarded complaints from one employee to another employee to Ms. Sinn, even though Ms. Sinn was not either employees' supervisor. (SH 2/14/2022 6:47 p.m. at 49)
134. Mr. Sweda admitted that he and Ms. Sinn were friends. (SH 2/25/2022 at 205)
135. Mr. Sweda admitted that he helped Ms. Sinn with her master's degree assignments. (SH 2/25/2022 at 205)
136. Ms. Sinn stated that there was no romantic relationship between her and Mr. Sweda. (SH 2/14/2022 6:47 p.m. at 75)
137. The UBCTS does not have a policy prohibiting a personal relationship between a supervisor and a subordinate employee. (SH, generally)
138. No current employee filed a harassment complaint regarding the personal relationship between Mr. Sweda and Ms. Sinn. (SH, generally)
139. UBCTS has not alleged that Mr. Sweda's relationship with Ms. Sinn interfered with the performance of Mr. Sweda's job duties. (SH, generally)

**Age Discrimination Complaint**

140. A building and grounds maintenance employee filled out a harassment complaint form against Mr. Sweda in October of 2021 because he believed that Mr. Sweda wanted him to leave. (SH 2/3/2022 at 34)

141. The former building and grounds supervisor told the building and grounds maintenance employee that Mr. Sweda wanted to pile so much work on him that he would become fed up and leave. (SH 2/3/2022 at 34)

142. Mr. Sweda did not instruct the former building and grounds supervisor to pile work on the building and grounds maintenance employee. (SH 2/25/2022 at 167)

**Auto cluster**

143. Mr. Sweda established an auto cluster. (SH 2/25/2022 at 132)

144. The employees were concerned about “E-WALKS,” which is a best practice tool adopted by UBCTS. (SH 2/25/2022 at 134)

145. The employees complained that they had to call the parents of all their students within the first week of school. (SH 2/25/2022 at 134)

146. Calling the parents during the first week of school was a best practice. (SH 2/25/2022 at 134)

147. One employee complained about not getting credit for his National Occupational Competency Testing Institute (NOCTI) material. (SH 2/25/2022 at 135)

148. The employee showed Mr. Sweda the NOCTI material. (SH 2/25/2022 at 135)

149. Mr. Sweda gave the employee credit for his NOCTI material. (SH 2/25/2022 at 135)

150. At the auto cluster meeting, the employees were using profanity. (SH 2/9/2022 at 13; 2/25/2022 at 133-134)

151. Mr. Sweda permitted subordinate employees to use profane language. (SH 2/25/2022 at 133-134)

152. Additionally, as “blue collared guys,” Mr. Sweda alleged it was appropriate for a subordinate employee to yell at him and for Mr. Sweda to yell at a subordinate employee. (SH 2/25/2022 at 137)

153. The small engine instructor stated that he "wasn't feeling the love" from Mr. Sweda. (SH 2/9/2022 at 15)

154. Mr. Sweda responded with "[W]hat, do I have to f\*\*king kiss you to show you the love?" (SH 2/9/2022 at 15)

155. When the small engine instructor said he "wasn't feeling the love," he was referring to what he believed was a toxic environment. (SH 2/9/2022 at 18-19)

156. UBCTS's dismissal of Mr. Sweda was justified because of his use of profane or abusive language.

**Profane or abusive language discipline of a subordinate employee**

157. The purchasing secretary engaged in a verbal altercation with her supervisor the business manager. (SH 2/9/2022 at 61)

158. The purchase manager slammed the door to her office and told her supervisor to “f\*\*k” you. (2/9/2022 at 61)

159. The purchasing secretary was given a day off without pay because she slammed the door and told her supervisor “f\*\*k” you. (SH 2/9/2022 at 62)

160. The purchasing secretary's discipline was approved by the secretary's supervisor, the human resources manager, and Mr. Sweda. (SH 2/9/2022 at 62)



**Former building and grounds supervisor's resignation**

161. On November 8, 2021, the former building and grounds supervisor voluntarily quit his employment. (UBCTS Ex. 4)
162. The former building and grounds supervisor's resignation letter contained allegations that were unfavorable to Mr. Sweda. (UBCTS Ex. 4)
163. On November 9, 2021, Mr. Sweda was placed on paid administrative leave. (UBCTS Ex. 70)

**Contacts during the investigation**

164. The JOC retained special counsel to perform an independent investigation of certain matters regarding his employment. (UBCTS Ex. 70)
165. Mr. Sweda was aware that he was not to contact anyone from UBCTS during his investigation. (SH 2/25/2022 at 238)
166. Mr. Sweda admitted that he contacted the technology coordinator during the investigation. (SH 2/3/2022 at 129; 2/25/2022 at 284)
167. Specifically, the technology coordinator indicated that Mr. Sweda contacted him during the investigation to talk about the school climate. (SH 2/3/2022 at 129)
168. Mr. Sweda admitted that he contacted the HVAC and plumbing instructor during the investigation. (SH 1/31/2022 at 90; 2/25/2022 at 284)
169. Mr. Sweda admitted that he contacted Ms. Sinn during the investigation. (SH 2/25/2022 at 283-284)

**Disciplinary action**

170. On or about December 16, 2021, Mr. Sweda received a letter indicating that he could be subject to discipline up to and including discharge. (UBCTS Ex. 64)

171. The letter indicated that during the investigation Mr. Sweda's initial verbal statements were not totally correct. (UBCTS Ex. 64)
172. Mr. Sweda agreed that his initial verbal responses were occasionally inaccurate. (SH 2/25/2022 at 282)
173. Following the investigation, on or about December 27, 2021, a statement of charges was drafted. (Sweda Ex. 2)
174. The statement of charges was made available to the public. (Sweda Ex. 2, 5-7)
175. As a result of the statement of charges, Mr. Sweda was placed on an unpaid suspension beginning on December 27, 2021. (Sweda Ex. 2, 5)
176. A special meeting of the JOC was held on January 3, 2022. (Sweda Ex. 2)
177. The date of the special meeting and the agenda for the meeting were posed in accordance with the Sunshine Act. 65 Pa. C.S. § 709 (c.1). (Sweda Ex. 2, 10)
178. Members of the public commented on Mr. Sweda's alleged actions at the special meeting. (SH 1/18/2022 at 10, 21)
179. After reviewing the statement of charges against Mr. Sweda and listening to the public comments, the JOC voted by roll call to approve the statement of charges and directed the JOC's secretary and president to advise Mr. Sweda of the resolution and a right to a hearing. (Sweda Ex. 10, 11)
180. Mr. Sweda requested a private hearing pursuant to Section 1126 of the Pennsylvania Public School Code, 24 P.S. § 11-1126. (Sweda Ex. 7)
181. The request for a private hearing was granted. (SH 1/18/2022 at 22, 29-30)
182. All parties were given a full and fair opportunity to testify over the course of six days. (SH, generally)

183. Following the hearing, the JOC concluded that Mr. Sweda would be dismissed for dishonesty and for a persistent and willful violation of or failure to comply with school laws of this Commonwealth, including official directives and established policy of the JOC, by violating the JOC's policies. (H.O. Ex. 1)

### **CONCLUSIONS OF LAW**

1. Mr. Sweda's actions regarding his supervision of the former building and grounds supervisor does not rise to the level of justification for Mr. Sweda's dismissal.
2. Mr. Sweda's actions regarding his use of the log splitter did not violate any UBCTS policies and, therefore, does not rise to the level of justification for Mr. Sweda's dismissal.
3. Mr. Sweda's actions regarding the use of the paver bricks does not rise to the level of justification for Mr. Sweda's dismissal.
4. It was not credibly established that Mr. Sweda took UBCTS fuel and, therefore, this cannot be used as a basis for Mr. Sweda's discharge.
5. Mr. Sweda's actions regarding his use of the spray cleaning services does not rise to the level of justification for Mr. Sweda's dismissal.
6. Because Mr. Sweda did not act inappropriately regarding the removal and the return of the stainless-steel table, this cannot be used as a basis for his discharge.
7. Mr. Sweda's mistake in submitting an incorrect grant application did not rise to the level of justification for Mr. Sweda's dismissal.
8. It was not established that Mr. Sweda requested that the security camera be turned off and, therefore, this cannot be used as a basis to justify Mr. Sweda's dismissal.

9. Mr. Sweda's actions regarding the building and grounds maintenance employee were appropriate and, therefore, do not rise to justification for Mr. Sweda's dismissal.
10. Mr. Sweda relationship with Ms. Sinn does not rise to the level of justification for his dismissal.
11. Mr. Sweda's actions towards the purchasing secretary were appropriate and do not rise to the level of justification for his dismissal.
12. Mr. Sweda's contact with UBCTS employees during the investigation does not rise to the level of justification for his dismissal.
13. UBCTS was justified in dismissing Mr. Sweda because of his use of profane or abuse language.

### **LEGAL STANDARDS**

A tenured professional employee has a property interest in continued employment. *School District of Phila. v Jones*, 139 A.3d 358, 366 (Pa. Cmwlth. 2016). A tenured professional employee may only be dismissed for the reasons set forth in Section 1122 of the School Code, 24 P.S. § 11-1122 (Section 1122). *Foderaro v. Sch. Dist. of Phila.*, 531 A.2d 570, 571 (Pa. Cmwlth. 1987). "It is thus apparent that the legislature intended to protect tenure except for the serious charges listed." *Lauer v. Millvale Area Sch. Dist.*, 657 A.2d 119, 121 (Pa. Cmwlth. 1995).

The only valid causes for termination of a contract heretofore or hereafter entered into with a professional employe shall be immorality; incompetency; unsatisfactory teaching performance based on two (2) consecutive ratings of the employe's teaching performance that are to include classroom observations, not less than four (4) months apart, in which the employe's teaching performance is rated as unsatisfactory; intemperance; cruelty; persistent negligence in the performance of duties; wilful neglect of duties; physical or mental disability as documented by competent medical evidence, which after reasonable accommodation of such disability as required by law substantially interferes with the employe's ability to perform the essential functions of his employment; advocacy of or participating in un-American or subversive doctrines; conviction of a felony or acceptance of a guilty plea or nolo contendere therefor; persistent and wilful 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.

The purpose of Section 1122 is to provide “the greatest protection possible against dismissal.” *McFerren v. Farrell Area Sch. Dist.*, 993 A.2d 344, 353 (Pa. Cmwlth. 2010) (quoting *Lauer v. Millville Area Sch. Dist.*, 657 A.2d 119, 121 (Pa. Cmwlth. 1995)). “Section 1122 was not intended to provide a school district with an arsenal of weapons to use when it wishes to relieve itself of its contractual obligations to a professional employee.” *Id.* “[T]o dismiss a professional employee protected by contract requires a serious reason, not ‘picayune and unwarranted criticisms.’” *Id.* (quoting *Lauer*, 657 A.2d at 123). In short, the grounds for dismissal listed in Section 1122 must be strictly construed in favor of the professional employee and against the school district. *McFerren v. Farrell Area Sch. Dist.*, 993 A.2d 344, 353 (Pa. Cmwlth. 2010).

The School Code does not define “persistent and willful violation.” See 24 P.S. §§ 11-1101 and 11-1122. However, Pennsylvania courts interpret these terms based on their common and approved usage. *Kinniry v. Abington Sch. Dist.*, 673 A.2d 429 (Pa. Cmwlth. 1996). “Persistent” generally means “continuing” or “constant.” *Lucciola v. Secretary of Educ.*, 360 A.2d 310, 312 (Pa. Cmwlth. 1976). Persistency is shown where the improper conduct is repeated in a series of separate incidents over a substantial period of time. *Horton v. Jefferson County-Dubois Area Vocational Tech. Sch.*, 630 A.2d 481 (Pa. Cmwlth. 1993). The Court has concluded that there must be continuity and repetition of negligent acts to support a charge of persistent negligence. *Lauer v. Millville Area Sch. Dist.*, 657 A.2d 119, 121 (Pa. Cmwlth. 1995).

On the other hand, “[w]illfulness requires the presence of intention and at least some power of choice.” *Horton*, 630 A.2d at 483. While willfulness or intent can often be inferred

from the nature of a particular violation, such intent is not to be presumed where facts do not so indicate. *Cowdery v. Bd. of Educ. of Sch. Dist. of Philadelphia*, 531 A.2d 1186 (Pa. Cmwlth. 1987). To dismiss a professional employee for willful neglect of duties, a district must show that the employee intentionally disregarded his known duties. *Flickinger v. Lebanon Sch. Dist.*, 898 A.2d 62, 67 (Pa. Cmwlth. 2006) (holding that the failure of a principal to immediately respond to the report of a gun in the school was a choice that he made as he knew he was required to respond immediately to a report of a gun and, therefore, his conduct constituted willful neglect of duty as it placed the students in danger) *Williams v. Joint Operating Comm. of the Clearfield City Vocational-Tech. Sch.*, 824 A.2d 1233 (Pa. Cmwlth. 2003) (holding that assistant director's act of opening bids before the bid submission deadline and discussing the content of the bids with one of the bidders of the project was a willful neglect of duty because doing so was illegal). Thus, a persistent and willful violation of or failure to comply with school laws requires three elements: persistency, willfulness, and a violation of school law. *See Horton*, 630 A. 2d at 430-431.

Before any tenured professional employee is dismissed by the school board, the school board must resolve to dismiss the employee and to furnish him with a detailed written statement of the charges upon which his or her proposed dismissal is based and must conduct a hearing before the school board. 24 P.S. § 11-1127; *Vladimirsky v. Sch. Dist. of Phila.*, 144 A.3d 986, 994 (Pa. Cmwlth. 2016); *School Dist. of Phila. v. Jones*, 139 A.3d 358 (Pa. Cmwlth. 2016).

If a professional employee is suspended, charges are filed, a hearing is held and a *de novo* review is conducted before the Secretary, the professional employee has been provided with all the process that he is due before his termination. *Flickinger v. Lebanon Sch. Dist.* 898 A.2d 62, 66 (Pa. Cmwlth 2006).

Section 1131 of the School Code, 24 P.S. § 11-1131, vests the Secretary with authority to hear appeals brought by professional employees from actions of local school entities. The Secretary has the authority to review the school board's termination decision *de novo*. *Belasco v. Board of Public Educ. of the Sch. Dist. of Pittsburgh*, 510 A.2d 337, 343 (Pa. 1986). The credibility of witnesses and the weight to be accorded their testimony is within the exclusive province of the Secretary. *Rhodes v. Laurel Highlands Sch. Dist.*, 544 A.2d 562 (Pa. Cmwlth. 1988). Furthermore, the Secretary is the ultimate fact finder when, as here, he decides to make findings of fact. *Belasco v. Board of Public Educ. of the Sch. Dist. of Pittsburgh*, 510 A.2d 337 (Pa. 1986). The Secretary makes findings of fact based on the preponderance of the evidence. *Fisler v. State System of Higher Educ.*, 78 A.3d 30, 47 (Pa. Cmwlth. 2013).

## **DISCUSSION**

### **I. Mr. Sweda received due process of law**

On November 9, 2021, Mr. Sweda was placed on paid administrative leave for the JOC investigate Mr. Sweda's conduct. (UBCTS Ex. 70) Following the investigation, on or about December 27, 2021, a statement of charges was drafted. As a result, Mr. Sweda was placed on an unpaid suspension beginning on December 27, 2021.

A special meeting of the JOC was held on January 3, 2022. The date of the special meeting and the agenda for the meeting were posed in accordance with the Sunshine Act, 65 Pa. C.S. § 709 (c.1). Members of the public commented on Mr. Sweda's alleged actions at the special meeting. (SH 1/18/2022 at 10, 21)

After reviewing the statement of charges against Mr. Sweda and listening to the public comments, the JOC voted by roll call to approve the statement of charges and directed the JOC's secretary and president to advise Mr. Sweda of the resolution and a right to a hearing. 24

PS. § 11-1127. Mr. Sweda requested a private hearing pursuant to Section 1126, 24 P.S. § 11-1126. The request for a private hearing was granted.

Due process requires that Mr. Sweda be given a detailed written statement of the charges upon which his proposed dismissal is based as well as notice of the charges against him and an opportunity to be heard. 2 Pa. C.S. § 504; *McCoy v. Lincoln Intermediate Unit No. 12*, 391 A.2d 1119 (Pa. Cmwlth. 1978). Additionally, Mr. Sweda cannot be discharged until he has been afforded notice of the charges, an explanation of the charges and an opportunity to respond to the charges. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542-43 (1985). Mr. Sweda received notice of the charges, an explanation of the charges, and an opportunity to respond to the charges. *Cleveland Bd. of Edu., supra*. Further, pursuant to the Sunshine Act, the statement of charges was posted prior to the hearing. 65 Pa. C.S. § 709 (c.1).

Mr. Sweda received his statement of charges signed by the president and secretary of the JOC and a hearing limited to the statement of charges. Following the hearing, a roll call of the JOC was taken prior to his termination, and the JOC voted to terminate Mr. Sweda.

On appeal, Mr. Sweda argues that he was denied due process of law because his name was made public when the UBCTS placed the statement of charges against him on its public agenda prior to his private hearing and prior to the issuance of the JOC's decision. (H.O. 1).

In *Highlands School District v. Rittmeyer*, 243 A.3d 755 (Pa. Cmwlth. 2020), the Commonwealth Court held that the trial court did not err by reversing the decision of the Office of Open Records (OOR), which allowed the newspaper staff writer's request for the names of two school district employees, because there was no conflict between the School Code (24 P.S. § 11-1127) and the Right-to-Know Law (65 Pa. Stat. Ann. § 67.708(b)(7)(viii)). The Court concluded that the School Code indicated the right of an employee to receive adequate due



process but contained no language whatsoever mandating public disclosure of the identity of an employee subject to the initiation of the disciplinary process. *Id.* at 763. Additionally, the Court concluded that there was no conflict between the Sunshine Act (65 Pa. C.S. §§ 703, 708) and the Right-to-Know Law (65 Pa. Stat. Ann. § 67.708(b)(7)(viii)) because no provision of the Sunshine Act mandated disclosure of an employee’s identity prior to final action. However, the Court did not conclude that the board’s disclosure of the employee’s identity was prohibited. *Id.*, *generally*.

Mr. Sweda also argues that the disclosure of his identity subjected him to bias. (H.O. Ex. 1) However, as the Acting Secretary, I have conducted a *de novo* review of the record. I conclude that Mr. Sweda has been provided with all the process that he is due. *Flickinger, supra*. I also conclude that the JOC’s disclosure of Mr. Sweda’s name at the time that the statement of charges was issued, does not violate due process of law.

## **II. Credibility**

I find Mr. Sweda credible in all respects regarding his admissions regarding his use of profane or abusive language directed to other employees. To the extent that the employees’ testimony at the hearing indicate that on other occasions Mr. Sweda used profane or abusive language directed to other employees, I find the employees’ statements credible. (UBCTS Ex. 4)

Because Mr. Sweda’s and the employees’ testimony is credible, I conclude that their testimony can support findings of fact as a matter of law. More specifically, I find the employees’ testimony to be credible that Mr. Sweda yelled and addressed employees with profane or abusive language when he regularly used the “F-bomb” (SH 1/31/2022 at 31, 113, 114; 2/3/2022 at 32, 54-55, 57, 141, 142) and when he told employees “[W]hat, do I have to

f\*\*king kiss you to show you the love?", [W]hat the f\*\*k are you doing," [T]his is your f\*\*king problem," "f\*\*k", "f\*\*king" and "f\*\*k you." (SH 1/31/2022 at 56-57, 120; 2/3/2022 at 57, 141; 2/9/2022 at 15, 60)

### **III. The JOC established sufficient grounds for dismissal pursuant to the School Code.**

Mr. Sweda was dismissed for dishonesty, which has been interpreted as a form of immorality. I conclude that the JOC did not establish that Mr. Sweda was dishonest. Mr. Sweda was also discharged for a persistent and willful violation of or failure to comply with school laws of this Commonwealth, including official directives and established policy of the JOC, by violating the JOC's policy against profane or abusive language. I conclude that the JOC's argument that Mr. Sweda used profane or abusive language in violation of JOC's policy is supported by credible evidence. I conclude that Mr. Sweda did persistently and deliberately violate the employer's policy by repeatedly using profane or abusive language in the presence of employees (SH 2/3/2022 32, 54-55, 57) and directed to employees. (SH 1/31/2022 at 56-57, 120; 2/9/2022 at 15, 60)

Additionally, Mr. Sweda previously warned and suspended a subordinate employee for the use of profane or abusive language in the presence of and/or directed to an employee when the employee told her supervisor "f\*\*k" you. (SH 2/9/2022 at 61) Further, Mr. Sweda recommended that another employee be dismissed when the employee told Mr. Sweda "f\*\*k you." (SH 2/25/2022 at 156-157) I conclude that Mr. Sweda was aware of the JOC policy against profane or abusive language because he was willing to enforce this policy against two subordinate employees. Mr. Sweda did not have good cause for his use of profane or abusive language in violation of the JOC's policy.

I find sufficient support in the record for the allegation that Mr. Sweda violated and/or

failed to comply with the school laws of the Commonwealth, including the official directives and established policy of the JOC. By the preponderance of the evidence, I conclude that the JOC has met its burden of proof to show that Mr. Sweda should have been dismissed.

Although I have concluded that Mr. Sweda's profane or abusive language justified his dismissal, I also concluded that the other alleged offenses do not justify his dismissal.

I affirm the JOC's decision to terminate Mr. Sweda's employment as a tenured professional employee pursuant to Section 1122, 24 P.S. § 11-1122, of the School Code.

Accordingly, the following Order is entered:

**IN THE OFFICE OF THE SECRETARY OF EDUCATION  
COMMONWEALTH OF PENNSYLVANIA**

JOHN SWEDA	:	
	:	
Appellant	:	
	:	
v.	:	Teacher Tenure Appeal
	:	No. 01-2022
	:	
UPPER BUCKS COUNTY	:	
TECHNICAL SCHOOL	:	
	:	
Appellee	:	

**ORDER**

AND NOW this 28th day of February, 2023, the Acting Secretary affirms the Joint Operating Committee's decision to dismiss John Sweda, a tenured professional employee.




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Khalid N. Mumin, Ed. D.  
Acting Secretary of Education

Date Mailed: February 28, 2023