

OFFICE OF THE SECRETARY OF EDUCATION
COMMONWEALTH OF PENNSYLVANIA

HUGO PRIETO, :
Appellant :
v. : TTA No. 04-20
SCHOOL DISTRICT OF PHILADELPHIA, :
Appellee :

FILED
2021

OPINION AND ORDER

Hugo Prieto (“Appellant”) appeals to the Secretary of Education from the decision of the Board of School Directors (“School Board”) of the School District of Philadelphia (“District”) dismissing him from the position of chemistry teacher.

FINDINGS OF FACT

1. At all relevant times, Appellant was a professional employee of the District. (N.T.¹ 8).
2. Appellant worked as a chemistry teacher at the District’s Samuel Fels High School during the 2018-2019 school year. (N.T. 8:5-11).
3. In December 2018, an incident occurred in Appellant’s classroom during which male students who did not belong in that classroom fought with other students. (N.T. 16:24-17:11).
4. Appellant was instructed not to let students into his classroom who did not belong there. He was instructed that if such students entered the classroom, he was to call for assistance. (N.T. 17:12-24).

¹ “N.T.” refers to the Notes of Testimony taken at the hearing before the District’s Board of School Directors.

5. On December 7, 2018, three students who were not enrolled in Appellant's class entered his room at the start of class, sat in the back of the room talking to friends, and refused to leave when Appellant directed them to do so. (N.T. 91:20-92:16).

6. Appellant called the District's main office, and the office used a walkie-talkie system to seek assistance. (N.T. 91:20-92:16).

7. Assistant Principal Albert Sniezevage ("Sniezevage") heard Appellant's call for assistance on his walkie-talkie and proceeded to Appellant's classroom. (N.T. 8:12-24).

8. When Sniezevage entered the room, Appellant identified the students who did not belong in his class. (N.T. 9:6-10). Immediately thereafter, Sniezevage began to usher the students out of the classroom. (N.T. 9:6-10:8).

9. At that point in time, Appellant became angry, picked up a hardbound, chemistry textbook from the floor and threw it at one of students who was exiting the room. (N.T. 11:6-17).

10. The book hit the student in the lower back near the waistline. (N.T. 11:19-23).

11. The student became agitated and shouted an expletive at Appellant. (N.T. 12:5-10).

12. Sniezevage stepped between the student and Appellant and tried to get the student to calm down. Sniezevage said: "Please don't do this. I saw what [Appellant] did. I saw him hit you with the book. Let it go. I'll handle it." (N.T. 12:11-19).

13. The student attempted to get past Sniezevage to fight Appellant. Sniezevage attempted to restrain the student and ordered Appellant to leave the room. (N.T. 12:23-13:13, 18:13-23, 29:6-9).

14. At that time, Appellant could have exited either of the classroom's two doors without passing the student, but he did not leave the room. Sniezevage had the student blocked

in one corner of the room away from Appellant at the time. (N.T. 12:23-13:13, 18:13-23, 29:6-9).

15. The student then was able to elude Sniezevage and confront Appellant. Appellant and the student began to exchange punches in the classroom. (N.T. 13:9-21).

16. Sniezevage was able to get between the student and Appellant, and he again attempted to calm the student. Sniezevage ordered Appellant to leave the room several times. (N.T. 13:22-14:9).

17. Appellant walked slowly toward a door in the front of the classroom only after being ordered to do so by Sniezevage. (N.T. 13:22-14:9).

18. The student then broke free from Sniezevage and confronted Appellant in the front of the classroom. Appellant put his hands up in an offensive fighting stance and he and the student exchanged punches again. (N.T. 14:10-21, 29:12-30:1; SDP-13).

19. The fight at the front of the classroom was recorded by a student on a cell phone video camera. (N.T. 25:10-15, 27:10-20; Exhibit SDP-13).

20. As the cell phone video shows, the student threw punches at Appellant, and as the student retreated backward, Appellant threw punches and began offensively advancing rather than allowing the fight to end. (N.T. 14:22-15:4; Exhibit SDP-13).

21. Thereafter, Sniezevage and another student were able to step between Appellant and the student he was fighting. Sniezevage repeatedly ordered Appellant to leave the room, during the incident saying, "You've got to get out of here, man. Get out of the room. You've got to get out of the room." (N.T. 31:21-32:2).

22. Appellant then stepped into a storage room in the front of the classroom and closed the door. (N.T. 14:22-15:17, 101:22-102:7; Exhibit. SDP-13).

23. After the fight ended, Sniezevage used his walkie-talkie to call for assistance.
24. The school's principal, Lillian Izzard ("Izzard"), was among those who responded to the walkie-talkie call at that time. N.T. 15:22-16:10.
25. As Izzard entered the room, the student who had been fighting admitted to striking Appellant. Izzard escorted the student to her office so that the student could be questioned by school police. (N.T. 63:3-19). The student was suspended for his actions that day. (N.T. 64:13-14).
26. On the day of the incident, Sniezevage memorialized what he had witnessed in a written statement. (N.T. 19:16-20:22; Exhibit SDP-1).
27. Sniezevage also prepared a Form 204 Unsatisfactory Incident report. (N.T. 22:19-24:5; Exhibit SDP-2).
28. School safety officers interviewed Appellant on the day of the incident. (N.T. 33:1-18).
29. An investigatory conference was held on January 3, 2019. The following individuals attended: Appellant, Edward Olsen of the Philadelphia Federation of Teachers, Sniezevage, and District Labor Relations Specialist Hector Figueroa. (N.T. 34:9-35:2; Exhibits SDP-3, SDP-4).
30. The initial investigatory conference was followed by a second-level conference on April 15, 2019. (N.T. 42:9-16).
31. District Policy 317 provides: "When engaged in assigned duties, district employees shall not participate in activities that include but are not limited to the following: 1. Physical or verbal abuse, or threat of harm, to anyone." (N.T. 67:12-68:7; Exhibit SDP-11).

32. On April 25, 2019, the District's Board of Education approved a resolution that there was sufficient evidence to issue a Statement of Charges and recommend disciplinary action be taken against Appellant. (Jt. Exhibit 1).

33. A Statement of Charges was then issued, and Appellant was suspended without pay and advised of his right to a Board hearing if he so chose. (Jt. Exhibit 1).

34. The Board hearing was held on August 25, 2020. Appellant appeared at the Zoom video-conference hearing and was represented by counsel.

35. Counsel for both the District and Appellant had a full opportunity to call and question witnesses, cross-examine the other party's witnesses, introduce evidence, and object to evidence offered by the opposing party.

36. Following the Board hearing, both parties submitted briefs to the hearing officer on September 25, 2020.

37. The hearing officer issued findings of fact and conclusions of law on October 14, 2020, recommending that the Board of Education terminate Appellant's employment.

38. The District's Board of Education adopted a resolution on October 22, 2020, terminating Appellant's employment.

DISCUSSION

I. The Appellant received due process and was properly suspended without pay pending a final decision on the proposed termination of his employment.

The fundamental requirement of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). In this case, Appellant had an opportunity to be heard regarding the incident in question at the investigatory conference held on January 3, 2019, and at the second-level conference held on April 15, 2019. A memorandum

detailing the events of the January 3 conference shows that Appellant took the opportunity to tell his version of events. (Exhibit SDP-4).

After the two investigatory conferences, the District's Board of Education ("Board") approved a resolution on April 25, 2019, to issue a Statement of Charges for the possible termination of Appellant's employment. A complete Statement of Charges was then issued, and Appellant was suspended without pay and advised of his right to a Board hearing. (Jt. Exhibit 1). After Appellant requested a hearing, the Board hearing was held on August 25, 2020, offering Appellant yet another opportunity to be heard.

Section 1127 of the School Code sets forth the following procedure:

Before any professional employe having attained a status of permanent tenure is dismissed by the board of school directors, such board of school directors shall furnish such professional employe with a detailed written statement of the charges upon which his or her proposed dismissal is based and shall conduct a hearing. A written notice signed by the president and attested by the secretary of the board of school directors shall be forwarded by registered mail to the professional employe setting forth the time and place when and where such professional employe will be given an opportunity to be heard either in person or by counsel, or both, before the board of school directors and setting forth a detailed statement of the charges. Such hearing shall not be sooner than ten (10) days nor later than fifteen (15) days after such written notice. At such hearing all testimony offered, including that of complainants and their witnesses, as well as that of the accused professional employe and his or her witnesses, shall be recorded by a competent disinterested public stenographer whose services shall be furnished by the school district at its expense. Any such hearing may be postponed, continued or adjourned.

24 P.S. § 11-1127.

The District and the Board followed the above-quoted procedure. After resolving to dismiss Appellant, the Board forwarded to Appellant by registered mail a detailed written statement of the charges upon which his proposed dismissal was based, signed by the president and the secretary of the board of school directors. The statement set forth the time and place when and where Appellant would be given an opportunity to be heard either in person or by

counsel. After providing the requisite detailed written notice, the Board held a hearing on August 25, 2020. Appellant and his counsel attended the Zoom videoconference Board hearing and participated fully in the proceedings.

Based upon the facts of record, the District and the Board complied with all School Code requirements pertaining to the dismissal of professional employees. Appellant failed to produce any competent evidence to the contrary. Accordingly, there is no basis to overturn the procedures used in the termination of Appellant's employment. Because Appellant's conduct was potentially harmful to the safety of children, the District had the right to suspend Appellant without pay pending a final decision on the recommendation to terminate his employment. *Kaplan v. School Dist. of Phila.*, 130 A.2d 672 (Pa. 1957); *Bd. of Educ. of School Dist. of Phila. v. Kushner*, 530 A.2d 541, 542-43 (Pa. Cmwlth. 1987). The District provided Appellant with pre-deprivation process including two pre-termination conferences. Accordingly, I find that the Appellant was afforded due process, in accordance with the School Code.

Appellant erroneously relies upon *Vladimirsky v. School Dist. of Phila.*, 144 A.3d 986 (Pa. Cmwlth. 2016) to support his conclusion that his dismissal should be overturned. Appellant's reliance upon *Vladimirsky* is misplaced. That case and the present matter are not similar. The Court in *Vladimirsky* did not prohibit a tenured teacher from being suspended without pay where the teacher's alleged misconduct potentially presents a danger to students, as Appellant's misconduct did here. The Court in *Vladimirsky* found that the District committed multiple errors that are not present here. The initial statement of charges in *Vladimirsky* expressly stated that the teacher was "terminated effective immediately." In contrast, the statement of charges at issue in the present matter included a suspension, not a termination, of employment. The Appellant's statement of charges stated: "This is not a final determination on

the status of your employment. . . . You remain suspended without pay, but with health benefits, pending a final decision on the School District's recommendation of dismissal." (Jt. Exhibit 1).

Unlike Appellant, Mr. Vladimirsky was terminated as a professional employee without any pretermination hearing. The Appellant received two pretermination hearings. In *Vladimirsky* the District's governing body—four months after the termination date—held a hearing where it resolved belatedly to ratify the 4-month-old termination. In the present matter, the District suspended Appellant without pay and later terminated him by proper Board action. Unlike Appellant, Mr. Vladimirsky was not given a written statement of the charges against him before his termination. Mr. Vladimirsky was dismissed by administrative action—not by action of the District's governing body. Unlike Appellant's dismissal where there was a roll call vote by the Board to confirm that the charges against him had been sustained, no such vote occurred in *Vladimirsky*.

Having found that the present matter is dissimilar to *Vladimirsky*, I find that the Court's decision in that case does not mandate reversal of the Appellant's termination. Accordingly, I affirm the procedures used by the District and the Board in the dismissal of Appellant from employment.

II. Substantive grounds exist for Appellant's termination from employment.

Section 1122 of the School Code provides:

The only valid causes for termination of a contract heretofore or hereafter entered into with a professional employe 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[.]

24 P.S. § 11-1122(a).

Appellant argues that no grounds for his termination exist because he was just “attempting to defend himself.” (Brief of Petitioner at 2, 22-27). I disagree. At the hearing, credible evidence demonstrated that Appellant was angry that three students interrupted his class and had ignored his instructions to leave. Assistant Principal Sniezevage credibly testified that as the students were being ushered out of the classroom, Appellant intentionally picked up a hardbound chemistry textbook and threw it at one of the students, striking him in the lower back. Sniezevage further testified credibly that it was Appellant’s act of anger and frustration that precipitated the physical confrontation at issue here.

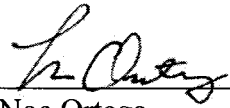
Appellant testified that the book hit the student on the calf rather than on his back. (N.T. 109-110). He also testified that he did not throw the book at the student, but rather that the student kicked the book as Appellant was reaching for it, causing the book to hit Appellant’s toe. Appellant testified: “I opened my arms and I tapped him as a reflex action on the calf . . . with the flat part of the book.” (*Id.*). Appellant’s version of events was directly contradicted by Assistant Principal Sniezevage’s testimony. Sniezevage testified that he witnessed Appellant intentionally throw a book at and exchange punches with a student. (N.T. 9-15, 25-27; Exhibit SDP-13). I find the testimony of Sniezevage to be credible. I do not find the Appellant’s testimony to be credible. I find credible that Appellant intentionally threw a book at a student and participated in a fistfight in his classroom on the day in question. These were not the actions of someone simply defending himself. In my opinion, it was the Appellant’s own anger and lack of self-control that caused the melee that ensued in his classroom. Appellant’s actions constitute intemperance justifying his termination under the School Code.

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	:	
SCHOOL DISTRICT OF PHILADELPHIA,	:	
Appellee	:	

ORDER

AND NOW, this 29th day of January 2021, the School District of Philadelphia's dismissal of Hugo Prieto is hereby affirmed.



Noe Ortega
Acting Secretary of Education

Date Mailed: January 29, 2021