

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

ELEANOR JONES,	:	
Appellant	:	
	:	
v.	:	Teacher Tenure Appeal No. 03-04
	:	
PITTSBURGH BOARD OF EDUCATION,	:	
Appellee	:	

OPINION AND ORDER

Eleanor Jones (‘Appellant’) appeals to the Secretary of Education (the ‘Secretary’) from the decision of the Pittsburgh Board of Education (the ‘Board’) to demote her to the position of Assistant Principal.

Findings of Fact

1. Appellant served in the position of Principal at Burgwin Elementary School from October 1998, through the end of the 2001-2002 school year. (N.T.¹ Vol. IV, pp. 344-45).
2. Richard Mascari is the Executive Director of a group of thirty (30) elementary schools within the Pittsburgh School District including Burgwin Elementary. (N.T. Vol. I, pp. 11-12).
3. Among Mr. Mascari’s job duties as Executive Director is supervising and evaluating elementary school principals. At all times relevant to this appeal, Mr. Mascari was Appellant’s supervisor. (N.T. Vol. I, pp. 11-13).
4. Mr. Mascari’s evaluation of Appellant’s work included an annual rating of her job performance. (N.T. Vol. I, pp. 11-13).

¹ N.T. refers to the Notes of Testimony of the demotion hearing before the Pittsburgh Board of Education. Admin. refers to the Pittsburgh School District Administration, a party to that proceeding.

5. During the 2000-2001 school year, Mr. Mascari witnessed that the students at Burgwin Elementary were inadequately supervised and, as a result, were being noticeably disruptive, particularly during the lunch period. (N.T. Vol. I, pp. 23-27; Admin. Exhibit 1).
6. In August 2001, Mr. Mascari issued an Employee Improvement Plan to Appellant due to deficiencies in her work performance, which he had observed during the 2000-2001 school year. (N.T. Vol. I, p. 17; Admin. Exhibit 1).
7. Appellant signed the improvement plan on August 28, 2001 after discussing it with Mr. Mascari. (N.T. Vol. I, p. 17; Admin. Exhibit 1).
8. In the Employee Improvement Plan, Mr. Mascari listed Appellant's failure to manage a disciplined and positive school climate as an area of concern. (N.T. Vol. I, pp. 19, 24-28; Admin. Exhibit 1).
9. Appellant was required by the Employee Improvement Plan to submit a staffing plan for lunch, recess and other transition periods. Appellant did submit a staffing plan, but subsequent visits to Burgwin Elementary by Mr. Mascari revealed that the procedures Appellant prescribed were not being followed by staff under her supervision. (N.T. Vol. I, pp. 26-28; Admin. Ex. 1, p. 13).
10. After issuing the Employee Improvement Plan, Mr. Mascari visited Burgwin Elementary several times throughout the 2001-2002 academic year in order to monitor the implementation of the plan and provide further guidance regarding upgrading and enhancing the educational program at the school. (N.T. Vol. I, p. 34).

11. In June 2002, Mr. Mascari visited Burgwin Elementary and observed that the disorderly student behavior in the lunch period had not abated, and that there was an overall lack of attention and follow up in areas referenced in the Employee Improvement Plan. (N.T. Vol. I, pp. 62-68; Admin. Exhibit 1).
12. Appellant's failure to enforce the rules she drafted regarding transition periods had a significant impact on students and their ability to return to the classroom prepared to learn. (N.T. Vol I, p. 68).
13. Appellant's inadequate monitoring of student achievement was documented in the Employee Improvement Plan. (N.T. Vol. I, pp. 31-32; Admin. Exhibit 1).
14. Under the Employee Improvement Plan, Appellant was required to provide an attendance report including statistics and documents in support thereof by the 30th of each month throughout the 2001-2002 school year (N.T. Vol. I, pp. 45-46; Admin. Ex. 1 pp. 6-12).
15. By December 16, 2001, after the first three months of the 2001-2002 school year had elapsed, Appellant submitted her first attendance report for that school year. That attendance report was not merely untimely, but it also showed that Appellant had failed to comply with school district attendance policies. (N.T. Vol. I, pp. 48-54; Admin. Ex. 1 pp. 24-26, 28).
16. The untimely attendance report demonstrated that Appellant had been unable to effectively monitor attendance or comply with school district attendance rules by failing to regularly intervene in cases where a student had multiple absences. (N.T. Vol. I, pp. 48-54; Admin. Ex. 1 pp. 24-26, 28).

17. The untimely attendance report showed twenty students with six or more absences over a three-month period and failed to show that interventions were being consistently implemented from teacher to developmental adviser, which was required in such cases by school district policy to help ensure that students were in class on a daily basis. (N.T. Vol. I, pp. 47-54; Admin. Ex. 1 pp. 24-26, 28).
18. The untimely attendance report also did not ascribe a failing grade to students with six or more absences, as school district policy required. (N.T. Vol. I, pp. 48-54; Admin. Ex. 1, pp. 24-26, 28).
19. Appellant submitted several additional attendance reports during the 2001-2002 school year, none of which were completed and delivered in a timely fashion to school district administrators. (N.T. Vol. IV, p. 458-60, 474; Admin Ex. 1 p. 42. Respondent's Exhibits K, M, N, Q).²
20. In the course of his supervision of Appellant during the 2001-2002 school year, Mr. Mascari observed that the previously identified strategies regarding student achievement were not being put into effect. In particular, Mr. Mascari noted that Appellant's reports submitted for that school year did not include required information such as whether certain low-performing students were receiving proper support in an effort to improve their academic performance. (N.T. Vol. I, pp. 36-37).
21. Mr. Mascari met with Appellant on February 26, 2002. During this meeting, Mr. Mascari communicated to Appellant that "most, if not all" of the strategies he had proposed in the Employee Improvement Plan had not been implemented in any significant way. (N.T. Vol. I, p. 37).

² Eleanor Jones was the Respondent in the demotion proceedings before the Board.

22. Because of the problems that Mr. Mascari observed, including the evidence that the Employee Improvement Plan was not being followed, Mr. Mascari rated Appellant as “unsatisfactory” for school year 2001-2002 on her annual rating as Principal. (N.T. Vol. I, pp. 13-16; Admin. Exhibit 1).
23. Due to her unsatisfactory performance and rating as Principal, it was recommended to the Board that Appellant be demoted to the position of Assistant Principal. (Joint Exhibit 1).
24. Appellant challenged the school district administration’s recommendation and a demotion hearing was held over several days before the Board. The Board appointed Randall Taylor, who acted as Hearing Officer for that proceeding. (Joint Exhibit 1).
25. Subsequent to the hearing before Hearing Officer Taylor, the Board adopted the recommendation of the school district administration and demoted Appellant to the position of Assistant Principal. (*See*, Board Resolution 1/6/04).

Discussion

Pursuant to 24 P.S. § 11-1131 and 22 Pa. Code § 351.1 *et seq.* Appellant Eleanor Jones contests the action taken by the Pittsburgh Board of Education to demote her from Principal to Assistant Principal. Appellant requests that the Secretary of Education reverse the Board’s decision. The Appellant and the Board have consented to waive oral argument and submit this matter to the Secretary on briefs. Both parties have submitted briefs in support of their respective positions.

In an appeal of a school board’s decision to demote a professional employee, the action of the board is presumptively valid and the demoted employee contesting the action before the

Secretary has the burden of proving it to be arbitrary, discriminatory or founded upon improper considerations. *Brownsville Area School Dist. v. Lucostic*, 6 Pa. Commw. 587, 297 A.2d 516 (1972). Courts have been reluctant to interfere with a school district's exercise of discretion in a demotion case unless the court is satisfied that the Appellant has met his or her burden of proving that the demotion was arbitrary or based upon inappropriate or discriminatory considerations. *Piazza v. Millville Area School Dist.*, 155 Pa. Commw. 176, 624 A.2d 788 (1993). This burden to prove that the demotion was arbitrary or improper has been described as “a very heavy one” by the Commonwealth Court. *Williams v. Abington School Dist.*, 40 Pa. Commw. 535, 537, 397 A.2d 1282, 1283 (1979). An arbitrary action is one “based on random or convenient selection rather than on reason.” *Board of Public Education of School Dist. of Pittsburgh v. Thomas*, 41 Pa. Commw. 490, 494, 399 A.2d 1148, 1150 (1979).

Standard of Review

The Secretary is required to review a teacher tenure appeal *de novo*. *Belasco v. Board of Public Education of School Dist. of Pittsburgh*, 510 Pa. 504, 515, 510 A.2d 337, 343 (1986). In such proceedings, the Secretary is the neutral fact-finder and may “conduct *de novo* review whether [s]he takes additional testimony or merely reviews the official record of the proceedings before the board.” 510 Pa. at 515, 510 A.2d at 343. The Secretary has the authority to determine the credibility of the witnesses, the weight of the evidence, and the inferences to be drawn therefrom. 510 Pa. at 513, 510 A.2d at 342; *Forest Area School Dist. v. Shoup*, 153 Pa. Commw. 423, 427, 621 A.2d 1121, 1124 (1993).

In support of her appeal, the Appellant relies primarily on three arguments. First, she objects to the Board’s adoption of the school district administration’s proposed findings of fact and conclusions of law. Additionally, she claims that the demotion was not proper because of a

lack of anecdotal records in support of her evaluation and unsatisfactory rating. Finally, she argues that the Board erred in its reliance on the unsatisfactory evaluation because it was based on the subjective opinion of her supervisor and was not properly supported. We address each of these arguments in detail below.

A. The Board did not err by adopting the proposed findings of fact and conclusions of law submitted by the school district administration.

There is no legal requirement mandating that a school board must create its own findings of fact and conclusions of law independent of those submitted by either party to a demotion proceeding. In adopting the proposed findings of the school district administrators, the Board went above and beyond what is required by the Commonwealth Court. The court has confirmed the validity of a school board adjudication on a tenure matter that did not contain any findings of fact and held that the section of the Local Agency Law requiring findings of fact was not applicable in teacher tenure cases. *Boehm v. Board of Education of the School Dist. of Pittsburgh*, 30 Pa. Commw. 468, 474-75, 373 A.2d 1372, 1375-1376 (1977).

Furthermore, in prior teacher tenure appeals, the Secretary has upheld the decision of a local school board even though the board did not make its own findings of fact or conclusions of law. *Pasekoff v. Armstrong School Dist.*, TTA 5-87, *Marinero v. Cheltenham Township School Dist. Board*, TTA 7-88. In *Marinero*, the Secretary found that unless the record demonstrates that there was actual prejudice in the decision of the school board, the school board may adopt the findings of the administration. *Id.* In Appellant's case, there is insufficient evidence to support a conclusion that the Board acted with prejudice. Therefore, we find unpersuasive Appellant's argument that the Board acted inappropriately by adopting the findings of facts and conclusions of law submitted by the administration.

B. The anecdotal records that accompany Appellant’s evaluation for the 2001-2002 school year are sufficient to support and substantiate the rating of ‘unsatisfactory’.

Appellant claims that the school district supplied inadequate anecdotal evidence in support of the unsatisfactory rating on which her demotion was premised. Anecdotal records are the essence of an unsatisfactory evaluation. *Hamburg v. North Penn School Dist.*, 86 Pa. Commw. Ct. 371, 375, 484 A.2d 867, 869 (1984). In order for an unsatisfactory rating to be effective, it must be accompanied by anecdotal evidence. *Mullen v. Board of School Directors of DuBois Area School Dist.*, 436 Pa. 211, 259 A.2d 877 (1969).

In the teacher evaluation context, anecdotal evidence has been defined as brief narrative[s] giving details of a specific incident or event, which must be specific in detail and contemporaneous in nature. *Augustine v. Turkeyfoot Valley Area School Dist.*, 9 D & C 3d 147, 172-74 (1977). Memoranda supporting an unsatisfactory rating can constitute anecdotal evidence in teacher tenure cases. *Mastro v. Pittsburgh School Dist.*, TTA 1-98.

In the instant case, we believe that the Board has supplied sufficient “anecdotal evidence,” as that term has been defined by the courts and the Secretary. There are over forty pages of detailed documentation accompanying Appellant’s unsatisfactory rating including narratives of specific incidents in support of the evaluation. This evidence includes memoranda Mr. Mascari submitted regarding the deficiencies in Appellant’s work, an Employee Improvement Plan, communications between Mr. Mascari and Appellant, inadequate attendance reports filed by Appellant, and reports of student behavior problems to which Appellant paid inadequate attention.

These memoranda were written with information gathered by Mr. Mascari and compiled at the time of his observations of Appellant’s work performance. Mr. Mascari’s attachments to

the unsatisfactory rating provide a thorough and organized explanation of the events upon which the rating was based. Appellant's evaluation identifies several substandard areas in her work, which are clearly detailed in the anecdotal records. These records are more than adequate to support her unsatisfactory rating.

C. The evaluation and rating of Appellant by Mr. Mascari, her supervisor, did not result in an arbitrary, capricious, or otherwise improper demotion decision.

Appellant argues that the school district's evaluation procedures were arbitrary because they were subjective in nature and did not allow for an independent determination of degree or severity of the asserted shortcomings. She claims that the unsatisfactory rating that she received represents "little more than the subjective viewpoint of her supervisor [and] falls short of the standards that should apply under Pennsylvania law." (Appellant's Brief p. 9). We disagree and find Appellant's characterizations of the school district's evaluation procedures to be unfounded.

The rating process used by the school district in its evaluation of Appellant was that used throughout the Commonwealth to evaluate professional school employees. It is a state mandated process that outlines employee observation and evaluation. This process requires that unsatisfactory ratings be approved and signed by the district superintendent or intermediate unit director and be supported by anecdotal records. *See, Hamburg, supra.* 24 P.S. § 11-1123; 22 Pa. Code § 351.21-28. The State Board of Education Regulations require the teacher evaluation to be done by or under the supervision of the superintendent of schools or an individual who has supervision over the work of the professional employee being rated. 22 Pa. Code § 351.21. Further, the Pennsylvania Supreme Court has opined that with regard to a public official's completion of a teacher rating, "[i]t is the *discretion and judgment* of the official (who is vested

with discretionary power) which prevails and not that of a court . . . or a person aggrieved”.
Travis v. Teter, 370 Pa. 326, 331, 87 A.2d 177, 179 (1952) (emphasis added).

The rating system requires anecdotal evidence to be included in an unsatisfactory rating in order to avoid arbitrary ratings. However, the system clearly authorizes the discretionary analysis of trained supervisors. I find that Mr. Mascari had the proper legal and regulatory authority to evaluate Appellant and that his well-documented and substantiated evaluation of Appellant met the requirements of the Pennsylvania Public School Code and the State Board of Education Regulations.

The evidence submitted by the Board including the credible testimony of Mr. Mascari, Appellant’s direct supervisor, establishes that appellant was properly demoted. I find that the reasons set forth in Appellant’s evaluation were rational and supportive of the decision to demote her. Review of the record has revealed that there is ample evidence therein to show that the Board had sufficient cause to demote the Appellant.

Accordingly, the following order is entered:

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

ELEANOR JONES,	:	
Appellant	:	
	:	
vi.	:	Teacher Tenure Appeal No. 03-04
	:	
PITTSBURGH BOARD OF EDUCATION,	:	
Appellee	:	

ORDER

AND NOW, this 27th day of July 2004, it is hereby ordered and decreed that Eleanor Jones failed to meet her burden of proving that her demotion was arbitrary, capricious or based on improper considerations, and therefore, the decision of the Pittsburgh Board of Education to demote her from Principal to Assistant Principal is affirmed.

/s/
Vicki L. Phillips
Secretary of Education