

misrepresented the whereabouts of funds collected at a school fundraiser.¹ On appeal, Petitioner argues that: (1) the Secretary’s finding that his statements were made in an effort to mislead or misdirect is not supported by substantial evidence; (2) the Secretary erred by not requiring the District to produce evidence that his conduct would offend the morals of the local community and set a bad example for students; and (3) his due process rights were violated when he was not notified that the basis of his immorality charge included allegations of misrepresentations prior to the Board hearing on the matter. Although the incongruity between Petitioner’s conduct and the penalty imposed draws our sympathy for Petitioner given his many years of public service, we are constrained to affirm.

I. BACKGROUND

This case stems from the series of events that began on February 9, 2013 when Linton Middle School, of which Petitioner served as Building Principal, held a “Star Wars” themed fundraising event. (Secretary’s Op., Findings of Fact (FOF) ¶ 2.) Petitioner oversaw the event and was primarily assisted by Lou Borgia, the head teacher for the fifth and sixth grade, and Heather Hoolahan, a member of the Board. (FOF ¶ 3.) Borgia’s role was to collect money at the door and Hoolahan

¹ Petitioner was originally charged with three offenses: (I) immorality with respect to his failure to account for or return \$300 placed in Petitioner’s trust through his wife following a fundraising event held at the school; (II) willful neglect of duties with respect to failing to follow proper procedure pertaining to a bomb threat at the school; and (III) immorality with respect to alleged acts detailed in a protection from abuse petition. (Statement of Charges at 1-2, R.R. at 6a-7a.) The District failed to provide evidence to the Board on charge III and the Board terminated Petitioner on the basis of charges I and II. (Board Decision at 22, R.R. at 162a.) On appeal, the Secretary found that the Board’s decision with regard to charge II was not supported by substantial evidence and overruled the Board in this regard. (Secretary’s Op. at 20.) The Secretary affirmed the Board’s decision to terminate Petitioner solely on the basis of charge I; thus, that is the only charge before this Court on appeal.

was tasked with selling food at the event. (FOF ¶¶ 4-5.) Petitioner's wife (Mrs. Barnett) and a music teacher also assisted by relieving Borgia at the door when he left for lunch or other needed breaks. (FOF ¶ 7; Hr'g Tr. at 12, R.R. at 20a.) Upon returning from his lunch break, Borgia handed Mrs. Barnett \$300 that was collected at the door and instructed her to give the money to Petitioner. (FOF ¶ 8.) The \$300 has remained unaccounted for since that exchange. (FOF ¶ 17.)

Petitioner was approached multiple times by District staff about the whereabouts of the \$300, to which he gave conflicting answers. (FOF ¶¶ 15, 17, 19, 20, 26.) On May 17, 2013, Thomas K. Washington, the District's Superintendent of Schools, sent Petitioner a letter detailing numerous charges against him and advising that his conduct could be a basis for disciplinary action, including termination, pursuant to Section 1122 of the Public School Code of 1949² (School Code). (Letter from Superintendent Washington (May 17, 2013),

² Act of March 10, 1949, P.L. 30, as amended, 24 P.S. § 11-1122. Section 1122(a) of the School Code provides, in pertinent part, as follows:

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 willful violation of or failure to comply with school laws of this

(Continued...)

R.R. at 2a.) The letter directed Petitioner to appear for a pre-termination “Loudermill^[3] informal hearing” on May 22, 2013, and suspended Petitioner with pay pending the outcome of disciplinary proceedings. (Letter from Superintendent Washington (May 17, 2013), R.R. at 2a-3a.)

After the Loudermill hearing, of which no transcript was produced, Petitioner’s suspension was converted to a suspension without pay and the matter was referred to the Board. (Letter from Superintendent Washington (June 20, 2013) at 1, C.R. at Item 8.) The Board issued a Charging Statement charging Petitioner with “immorality” stemming from Petitioner’s “[f]ailure to account for or return \$300 placed in [Petitioner’s] trust through [Petitioner’s] wife following a fundraising event.” (Statement of Charges at 1, R.R. at 6a.) The Board held a hearing on the matter on September 10, 2013, at which Petitioner, Borgia, Hoolahan, Superintendent Washington, and Lindsay Pfister, the District’s Human Resources Director, testified.

Borgia testified as follows. Funds were collected at the “Star Wars” fundraiser through door collections and food sales. (Hr’g Tr. at 12, R.R. at 20a.) Borgia collected the money at the door and placed all cash collected into a tin

Commonwealth (including official directives and established policy of the board of directors); on the part of the professional employe: . . .

24 P.S. § 11-1122(a).

³ Under Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985), a public employee has a property interest in his employment and must be afforded, by virtue of the Due Process Clause, at least notice and a pre-termination hearing.

money box. (Hr’g Tr. at 12-13, R.R. at 20a-21a.) Mrs. Barnett assumed the role of collecting money at the door when Borgia left for his lunch break. (Hr’g Tr. at 13, R.R. at 21a.) Upon his return from lunch, Borgia discovered that the box was full. (Hr’g Tr. at 14, R.R. at 22a.) Borgia removed three stacks of one hundred dollars each from the tin box and gave the stacks to Mrs. Barnett with instructions to give the money to Petitioner. (Hr’g Tr. at 14, R.R. at 22a.) Borgia saw Petitioner walking by about ten minutes after he gave the \$300 to Mrs. Barnett and notified Petitioner that he gave money collected at the door to his wife, to which Petitioner responded, “okay.” (Hr’g Tr. at 14-15, R.R. at 22a-23a.) Borgia could not recall if he told Petitioner the amount of money given to his wife and Borgia never saw Mrs. Barnett give the money to Petitioner. (Hr’g Tr. at 15, 27, R.R. at 23a, 35a.) Borgia continued to collect money at the door and gave Petitioner \$118.50 secured in an envelope at the end of the event. (Hr’g Tr. at 16, R.R. at 24a.) After the event, Borgia, Hoolahan, and two other individuals met in Petitioner’s office where it was discussed that about \$900 was raised at the event – about \$400 from door collections and \$500 from food sales. (Hr’g Tr. at 16-17, R.R. at 24a-25a.)

On February 15, 2013, Borgia received an e-mail from an editor of a local newspaper. (Hr’g Tr. at 18, R.R. at 26a.) The editor planned to publish an article on the fundraising event, asked how many people attended, how much money was raised, and the name of the charity to which the funds would be donated. (Hr’g Tr. at 18, R.R. at 26a.) Borgia asked Petitioner how he should respond to the inquiry. (Hr’g Tr. at 18, R.R. at 26a.) Petitioner told Borgia to tell the editor that roughly 300 people attended, \$900 was raised, and that the money was to be donated to the Multiple Sclerosis Research Society. (Hr’g Tr. at 19, R.R. at 27a.) Petitioner then

gave his secretaries two envelopes containing the cash raised at the event, which the secretaries proceeded to count. (Hr’g Tr. at 19, R.R. at 27a.) The secretaries counted \$621.50 and someone asked Petitioner about the \$300 given to his wife, which appeared to Borgia to be missing. (Hr’g Tr. at 19-20, R.R. at 27a-28a.) Petitioner responded that his wife had the money and that he would retrieve it. (Hr’g Tr. at 21, R.R. at 29a.)

According to exhibits submitted by the District, a District employee named Tracey Johnson contacted Petitioner on April 2, 2013 to inquire about the additional funds raised at the event that were not submitted. (FOF ¶ 22; E-mail from Tracey Johnson (April 2, 2013), S.R.R. at 10b.) The District also submitted an e-mail sent to Petitioner on May 3, 2013 from Lori McKay, the Assistant Director of Business Affairs for the District, “asking if there were any additional funds from the Fundraising Event to be deposited.” (FOF ¶ 23; E-mail from Lori McKay (May 3, 2013), S.R.R. at 11b.) Petitioner responded by writing: “There are no additional funds. Make check payable to National Multiple Sclerosis Society. i [sic] will attach a cover letter and mail check.” (FOF ¶ 23; E-mail from Petitioner (May 3, 2013), S.R.R. at 12b.)

Superintendent Washington testified on behalf of the District as follows. On May 9, 2013, he was notified by the District’s Business Manager that \$300 was unaccounted for and that there had been several failed attempts to get the money from Petitioner. (Hr’g Tr. at 36, R.R. at 44a.) After confirming details with Borgia, Superintendent Washington called Petitioner to inquire about the missing funds. (Hr’g Tr. at 36-37, R.R. at 44a-45a.) The District’s Business Manager and

Human Resources Director listened in on the call. (Hr’g Tr. at 37, R.R. at 45a.) During the conversation, Petitioner postulated that “there were some things that could have been paid for out of the funds,” including the costume he wore at the event, a tip for the pizza delivery, donuts, and the Star Wars DVD shown at the event. (Hr’g Tr. at 37-38, R.R. at 45a-46a.) Superintendent Washington then directed Petitioner to produce the receipts for those purchases. (Hr’g Tr. at 38, R.R. at 46a.)

Superintendent Washington met with Petitioner later that evening at a restaurant. (Hr’g Tr. at 40, 79, R.R. at 48a, 87a.) Upon being asked about the missing funds, Petitioner took out his wallet, showed Superintendent Washington money, and said “why would I need to steal \$300; I have \$300.” (Hr’g Tr. at 41, R.R. at 49a.) Petitioner then told Superintendent Washington that he did not want to reimburse the \$300 because people would then think he stole the money. (Hr’g Tr. at 51, R.R. at 59a.) As a follow-up from this meeting, Superintendent Washington sent Petitioner a letter on May 13, 2013 stating that the District expects receipts for all expenses taken from the funds by May 20, 2013. (Hr’g Tr. at 42, R.R. at 50a.)

Petitioner then began an approved leave of absence pursuant to the Family and Medical Leave Act⁴ on May 12, 2013. (Hr’g Tr. at 66, R.R. at 74a.) Superintendent Washington testified that Petitioner never produced any receipts. (Hr’g Tr. at 42, R.R. at 50a.) Superintendent Washington later checked a credit card issued to Petitioner by the District to pay for incidentals and discovered that a

⁴ 29 U.S.C. §§ 2601-2654.

costume rental, pizza, donuts, and a DVD were all paid for with Petitioner's procurement card. (Hr'g Tr. at 44-46, R.R. at 52a-54a.) Pfister, the District's Human Resources Director, testified immediately after Superintendent Washington and corroborated much of the aforementioned testimony. (Hr'g Tr. at 56-63, R.R. at 64a-71a.)

Petitioner testified at the hearing as follows. The first time he heard about missing money was when Borgia approached him about the newspaper article. (Hr'g Tr. at 78, R.R. at 86a.) His wife never told him that she was given \$300 from Borgia and never gave him any money. (Hr'g Tr. at 75-76, R.R. at 83a-84a.) When Borgia approached him about the newspaper article he understood that there was \$900 in proceeds locked in his desk, and when asked about additional money given to his wife, Petitioner was excited about the prospect of additional funds. (Hr'g Tr. at 79, R.R. at 87a.)

Petitioner stated that he confided with Superintendent Washington at their May 9, 2013 meeting at the restaurant that his family was in crisis and that he needed time off. (Hr'g Tr. at 80, R.R. at 88a.) Superintendent Washington responded by saying that he hated to spring this on him, but there were rumblings that Petitioner stole or misappropriated \$300. (Hr'g Tr. at 80, R.R. at 88a.) Petitioner responded to the allegation with disbelief and asked for an official statement of exactly what was missing and the date the receipts must be surrendered. (Hr'g Tr. at 80, R.R. at 88a.) Petitioner received a letter from Superintendent Washington on May 13, 2013, giving Petitioner until May 20, 2013 to produce the receipts. (Hr'g Tr. at 82, R.R. at 90a.)

Petitioner was not aware of any policy guidelines or any other guidance that applied to operating a fundraiser. (Hr'g Tr. at 70, R.R. at 78a.) He was told by Hoolahan that he could pay for things and then reimburse himself. (Hr'g Tr. at 70, R.R. at 78a.) According to Petitioner, the charge for a costume on the procurement card was for a costume he rented for a student who was a big Star Wars fan and facing a particularly troubling time at home, and that Petitioner paid for the costume he wore himself. (Hr'g Tr. at 71, 74, R.R. at 79a, 82a.) Petitioner reimbursed himself \$80 for the costume rental and \$10 for the pizza tip from the envelopes locked in his drawer. (Hr'g Tr. at 82, 89, R.R. at 90a, 97a.) Petitioner also stated that, because the person designated to bring in the DVD forgot to bring it, his wife left the fundraiser to go purchase a Blu-Ray and removed \$59 from the tin money box to pay for the film. (Hr'g Tr. at 74-75, R.R. at 82a-83a.) Petitioner produced receipts at the Board hearing for his costume and the Blu-Ray his wife purchased.⁵ (FOF ¶ 33.)

Petitioner was searching for additional receipts when he received the May 17, 2013 letter from Superintendent Washington outlining potential charges and calling him to appear at the Loudermill hearing. (Hr'g Tr. at 82-83, R.R. at 90a-91a.) Because the letter was sent prior to the May 20, 2013 deadline articulated in Superintendent Washington's May 13, 2013 letter, Petitioner felt something was amiss and decided to get an attorney. (Hr'g Tr. at 83, R.R. at 91a.)

⁵ According to the Secretary's Opinion, Petitioner submitted receipts into the record showing \$90.95 for the costume rental and \$57.77 for purchase of the Blu-Ray disc. (Secretary's Op. at 14 (citing Barnett Exs. A & B).) However, these exhibits do not appear in the certified record.

After Petitioner testified, Hoolahan removed herself from her role as a Board Member and testified on behalf of the District. Hoolahan testified that she was in charge of the food and told Petitioner that she would take care of paying for the food. (Hr’g Tr. at 108, R.R. at 116a.) She testified that it was “absolutely not true when [Petitioner] says that I said that we would reimburse ourselves out of the money.” (Hr’g Tr. at 108, R.R. at 116a.) According to Hoolahan:

I offered that we would take care of arranging for the purchase of the food; that we would purchase most of it through the school district so that it would be directly billed, and that anything that we would be seeking reimbursement for, we would turn receipts in after the event. . . . I know school district reimbursement policy. I know government reimbursement policy. At no point would I ever take money out of a cash box to reimburse myself for events [sic] at an event. I would turn the money in and then he would get a check requisition later for whatever money I needed back.

(Hr’g Tr. at 108-09, R.R. at 116a-17a.) Hoolahan testified that she gave Petitioner an envelope containing \$503 dollars at the end of the event when the group met in Petitioner’s office. (Hr’g Tr. at 113, R.R. at 121a.) Petitioner was very appreciative for the group’s participation and assistance with the event and gave each meeting participant a \$50 gift card to a popular chain restaurant. (Hr’g Tr. at 114, R.R. at 122a.)

On November 25, 2013, the Board adopted the findings of fact and conclusions of law prepared by the District and discharged Petitioner from his position. (Board Resolution, R.R. at 166a.) The Secretary conducted a *de novo* review without taking any new evidence. See *Belasco v. Board of Public Education of School District of Pittsburgh*, 510 A.2d 337, 343 (Pa. 1986) (vesting

the Secretary “with the authority to conduct *de novo* review whether [s]he takes additional testimony or merely reviews the official record of the proceedings before the board”). The Secretary issued her own findings of fact and affirmed the decision of the Board on the matters discussed herein based on her review of the record. Specifically, the Secretary reasoned:

[Petitioner]’s differing accounts of what happened to the \$300 [] Borgia gave Mrs. Barnett at the Fundraising Event is evidence of deliberate misrepresentations by [Petitioner]. On one occasion [Petitioner] stated that his wife had the money and he would get it from her; on another occasion [Petitioner] stated that his wife could have some of the money. In the May 3, 2013 email, [Petitioner] stated that there were no additional funds from the Fundraising Event. [Petitioner] also stated that he reimbursed himself for his costume and a tip for pizza out of money in envelopes given to him by [] Borgia and [] Hoolahan the night of the Fundraising Event. However, as stated previously, the same amount of money was in the envelopes when opened one or two weeks after the Fundraising Event so [Petitioner] could not have reimbursed himself from those funds. Other items he said might have been purchased with money collected at the Fundraising Event for which he believed he should receive reimbursement were actually purchased with his procurement card.

[Petitioner] acknowledged that [] Borgia gave his wife money at the Fundraising Event and his testimony only accounts for \$147.77; some being used to purchase a DVD and some to reimburse himself for his costume and a tip for the pizza. Thus, [Petitioner] failed to account for the remaining \$152.23 that should have been turned in from the \$300 [] Borgia gave to Mrs. Barnett. Although there is no direct evidence [Petitioner] ever had possession of the \$300 [] Borgia gave to Mrs. Barnett, he clearly received money from somewhere to reimburse himself for his costume and the tip for pizza. Since, as stated previously, he could not have reimbursed himself from money in the envelopes given to him by [] Borgia and [] Hoolahan, he deliberately misrepresented where he got the money to reimburse himself. In addition to deliberately misrepresenting where he got the money to reimburse himself, he deliberately misrepresented what happened to all of the money [] Borgia gave to his wife; one time stating that his wife had the money and he would bring it in, another

time stating his wife might have some of the money and then stating in an email that there were no additional funds from the Fundraising Event to be deposited.

There is no community that would embrace or accept deliberate misrepresentations as being representative of the morals of the community. . . . There is sufficient evidence that [Petitioner] made deliberate misrepresentations about the use of some of the money collected at the Fundraising Event. There is sufficient evidence by which a reasonable inference can be made that [Petitioner]’s deliberate misrepresentations offend the morals of the local community and that making deliberate misrepresentations about the use of money raised at a school event is a bad example to the youth whose ideals a teacher is supposed to foster and elevate. Therefore, [Petitioner]’s deliberate misrepresentations of what happened to some of the money collected at the Fundraising Event constitute immorality.

(Secretary’s Op. at 16-17.) This appeal followed.⁶

II. DISCUSSION

On appeal to this Court, Petitioner raises three issues: (1) that the Secretary’s finding that he deliberately misrepresented what happened to the money is not supported by substantial evidence; (2) that the Secretary’s legal conclusion that his action offended the morals of the community was not proved by the District; and (3) that his Due Process rights were deprived when he was discharged for immorality based on misrepresentations when he was never notified that making misrepresentations was the basis for his immorality charge.

⁶ Upon consideration of an appeal from the Secretary, we “must affirm the Secretary’s order unless there is a violation of constitutional rights, an error of law or if necessary findings of fact are unsupported by substantial evidence.” Lauer v. Millville Area School District, 657 A.2d 119, 120 (Pa. Cmwlth. 1995).

Petitioner first argues that the Secretary's conclusion that he acted immorally was not supported by substantial evidence. The charge of immorality is not defined in the School Code, but it has been "interpreted to be such a course of conduct as offends the morals of the community and is a bad example to the youth whose ideals a teacher is supposed to foster and elevate." Dohanic v. Department of Education, 533 A.2d 812, 814 (Pa. Cmwlth. 1987). Immorality has "three elements: (1) that the alleged immoral act actually occurred; (2) that the act offends the morals of the community; and (3) that the act sets a bad example for students." McFerren v. Farrell Area School District, 993 A.2d 344, 353-54 (Pa. Cmwlth. 2010). Here, Petitioner is arguing that substantial evidence does not support a finding that the first element – that the alleged immoral act actually occurred – is satisfied. Petitioner contends that because the Secretary found no evidence that he stole or ever had possession of the funds, a finding that he acted immorally by not accounting for the funds is nonsensical.

Whether an alleged immoral act actually occurred is a question of fact and our review of this question is limited to a determination of whether the Secretary's finding is supported by substantial evidence. Dohanic, 533 A.2d at 814. When conducting a substantial evidence review we search the entire record, including inferences taken from the evidence presented. Id. Even if we disagree with the Secretary's understanding of, and weight given to, particular pieces of evidence, we are bound to find that the Secretary's findings are supported by substantial evidence if relevant evidence was presented so that "a reasonable [person] acting reasonably might have reached the same conclusion" as did the Secretary. Id.

Although there is no proof that Petitioner received the money from his wife, there is ample credited evidence supporting the Secretary's finding that Petitioner deliberately misrepresented what happened to the money given to his wife by Borgia. According to Borgia's testimony, Petitioner initially admitted that his wife had the money when Borgia or one of the secretaries asked Petitioner where the additional money was located. (Hr'g Tr. at 19-20, R.R. at 27a-28a.) Then, on May 3, 2013, Petitioner told Lori McKay in an e-mail that there were no additional funds. (E-mail from Petitioner (May 3, 2013), S.R.R. at 12b.) One week later, Petitioner told Superintendent Washington on the phone that he paid for pizza, donuts, a costume rental, and the DVD/Blu-Ray with the money and that his wife may have additional funds. (Hr'g Tr. at 37-38, R.R. at 45a-46a.) However, evidence shows that the donuts and the pizza were paid for through Petitioner's procurement card. (Hr'g Tr. at 44-46, R.R. at 52a-54a.) The remaining expenses, totaling \$149 (\$80 for the costume rental, \$10 for the pizza tip, and \$59 for the DVD/Blu-Ray), could not have come out of the money collected and locked in his drawer because the envelopes contained \$621.50 weeks after the event, which was the same amount Borgia and Hoolahan testified they put into the envelopes. (Hr'g Tr. at 16, 113, R.R. at 24a, 121a.) Based on these facts, the Secretary's determinations that Petitioner misrepresented where he got the reimbursement money and deliberately misrepresented the whereabouts of all the money was supported by substantial evidence. (Secretary's Op. at 15-17.)

Next, Petitioner argues that the Secretary committed an error of law when she concluded that Petitioner's acts offended the morals of the community and set a bad example for students. Petitioner argues that whether particular conduct

would offend the morals of the community and set a bad example for students must be proved by substantial evidence and the record is devoid of any evidence on this point.

“Although it is the Secretary who determines whether a teacher’s conduct offends the moral standards of the community, this determination is a legal one and can only be sustained if legally correct and supported by substantial evidence.” Kinniry v. Abington School District, 673 A.2d 429, 432 (Pa. Cmwlth. 1996). Whether particular conduct would offend the morals of the community and set a bad example for students will generally not be presumed and must be proved by substantial evidence. McFerren, 993 A.2d at 354. However, our case law has held that certain conduct is *per se* offensive such that it offends the morals of every community. An example of such conduct is “lying and/or making false statements to school district staff.” Riverview School District v. Riverview Education Association, PSEA-NEA, 639 A.2d 974, 978 (Pa. Cmwlth. 1994); see id. (not requiring evidence of the morals of the community when substantial evidence supported a finding that petitioner lied and used sick time to go on a ski-trip); Balog v. McKeesport Area School District, 484 A.2d 198, 200 (Pa. Cmwlth. 1984) (not requiring evidence of the morals of the community in the situation where substantial evidence supported a determination that petitioner made false statements regarding, *inter alia*, his presence in an elementary school building); Bethel Park School District v. Krall, 445 A.2d 1377, 1378 (Pa. Cmwlth. 1982) (not requiring evidence of community moral standards when a teacher lied about being sick so she could attend a conference).

Although Petitioner is correct that no evidence was presented showing that the acts in question offended the morals of the local community and set a bad example for students, the present matter is similar to Balog and Krall where we found that substantial evidence supporting a finding that a petitioner lied to school district officials was sufficient to satisfy the second and third element of an immorality charge. Here, we conclude that the Secretary's finding that Petitioner deliberately misrepresented the whereabouts of the funds raised at the fundraising event was supported by substantial evidence. Because the Secretary's finding is supported by substantial evidence, the Secretary did not err by determining that "[t]here is sufficient evidence by which a reasonable inference can be made that [Petitioner's] deliberate misrepresentations offend the morals of the local community" and that such conduct "is a bad example to the youth whose ideals a teacher is supposed to foster and elevate." (Secretary's Op. at 17.)

As a final matter, Petitioner alleges that his due process rights were violated when the Secretary affirmed the Board's decision to dismiss Petitioner from his employment for "immorality" not based on "failing to account," as listed in the Charging Statement, but based on deliberate misrepresentations. Petitioner contends that the Board was unable to find him guilty of misappropriating funds and altered the charge to making deliberate misrepresentations without providing him with notice of the change.⁷

⁷ The District contends that Petitioner did not raise a due process argument in his appeal to the Secretary and, therefore, the argument is waived on appeal to this Court. We disagree. Although the term "due process" was never mentioned, the argument was raised in Petitioner's Petition to Appeal to the Secretary. (Petition to Appeal at ¶ 20, C.R. at Item 10) (arguing that "[t]here were no charges brought against [Petitioner] for such alleged 'obfuscation or misdirection in the Statement of Charges, or anywhere else in the proceedings'"). The argument
(Continued...)

The School Code sets forth the procedures which must be followed when a school district seeks to dismiss a professional employee.⁸ Section 1127 states in relevant part:

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.

24 P.S. § 11-1127.

The procedures outlined in Section 1127 are mandatory and must be strictly followed. Covert v. Bensalem Township School District, 522 A.2d 129, 130 (Pa. Cmwlth. 1987). Strictly following the statutory procedures are of particular importance in the school context because the courts have long recognized the potential bias on the part of school boards in disciplinary proceedings. Id. at 131. “A deviation from these procedures constitutes a denial of due process.”

was further raised in his brief to the Secretary. (Petitioner’s Br. to the Secretary at 25, C.R. at Item 7.) As such, we will consider the merits of this argument.

⁸ Petitioner has due process rights by virtue of holding a tenured position with the District. The District does not dispute that Petitioner had a property interest in his position and the School Code provides tenured professionals, such as Petitioner, with a legitimate expectation of continued employment by “provid[ing] the greatest protection possible against dismissal.” McFerren, 993 A.2d at 353. The U.S. Supreme Court has held that under the Due Process Clause public employees are entitled to, at minimum, a pre-termination hearing, but not entitled to a full administrative hearing and judicial review. Loudermill, 470 U.S. at 545. These minimum due process requirements under the U.S. Constitution are a matter of federal law and “are not diminished by the fact that the State may have specified its own procedures that it may deem adequate for determining the preconditions to adverse official action.” Vitek v. Jones, 445 U.S. 480, 491 (1980). Yet, because Section 1127 of the School Code provides substantially more process than the minimum federal requirements outlined in Loudermill, we shall only consider if the statutory requirements are met.

Neshaminy School District v. Neshaminy Federation of Teachers, 84 A.3d 391, 397 (Pa. Cmwlth. 2014). The decision to terminate a tenured professional will be deemed an illegal act in the absence of “full compliance” with the statutory procedures. Neshaminy Federation of Teachers v. Neshaminy School District, 462 A.2d 629, 636 (Pa. 1983). With regard to Petitioner’s arguments, we have held that strictly complying with the notice provisions of the School Code requires that the employee is informed “of the basis for a proposed dismissal so as to enable him to present a proper defense.” Dohanic, 533 A.2d at 815.

Petitioner argues that, because he was not charged with misrepresentation, he was subjected to an element of surprise prejudicial to his efforts to prepare a defense on that charge. According to the Statement of Charges, Petitioner was charged with immorality related to his alleged “[f]ailure to account for or return \$300.00 placed in your trust through your wife following a fundraising event.” (Statement of Charges at 1, R.R. at 6a.) Absent from the Charging Statement, Petitioner contends, is any reference whatsoever to allegations of misrepresentation.

In response, the District argues that the phrase “failure to account for” in the Statement of Charges was used to describe the entire situation surrounding the missing funds, including a duty to provide an explanation for the missing funds. Petitioner’s failure to provide a truthful explanation and, instead, misrepresenting what happened to the missing funds is, per the District, “encased” within the “failure to account for” the funds.

We agree with the District. Petitioner was informed that he was being charged with immorality on the basis of his failure to account for the missing funds raised at the fundraising event. The charge of “failure to account for” funds includes not only Petitioner’s failure to provide receipts for the missing funds, but also his failure to account truthfully for the funds. The May 17, 2013 letter Superintendent Washington sent to Petitioner in advance of the Loudermill hearing made it clear that the District was concerned with Petitioner’s conflicting answers and wanted a full, and truthful, accounting of the missing funds. Although the Statement of Charges issued by the Board may have not been completely clear regarding all of the details of the charges, we conclude that Section 1127 of the School Code was satisfied and Petitioner’s defense was not prejudiced by being subjected to surprise charges.

For the foregoing reasons, we affirm the Order of the Secretary.

RENÉE COHN JUBELIRER, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Davaun Barnett,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 1412 C.D. 2014
	:	
Penn Hills School District,	:	
	:	
Respondent	:	

ORDER

NOW, May 28, 2015, the Order of the Acting-Secretary of Education, in the above-captioned matter, is **AFFIRMED**.

RENÉE COHN JUBELIRER, Judge