

## Immorality Illustrated: Court Affirms Principal's Termination After Second DUI Arrest

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*Moffitt v. Tunkhannock Area School District*, 192 A.3d 1214 (Pa. Commw. Ct. Aug. 18, 2018). The Pennsylvania Commonwealth Court affirmed an elementary school principal's termination, because sufficient evidence supported termination on the basis of immorality after his second DUI conviction.

### BACKGROUND

Joseph P. Moffitt served as principal of two elementary schools in the Tunkhannock Area School District (District). While serving as principal, Moffitt was arrested twice for driving under the influence (DUI) – once in June 2010 and again in April 2014. His first arrest was resolved by an accelerated rehabilitative disposition program. But after his second arrest, Moffitt pled guilty to the DUI charge and received 90 days of house arrest, in addition to a twelve-month suspension of his driver's license and five years' probation.

Following his second conviction, the School District afforded Moffitt a pre-disciplinary hearing. After the hearing, the School Board notified Moffitt that the District had recommended for his dismissal from employment; an evidentiary hearing would be held to determine whether he would be dismissed; and he had been suspended without pay.

At the evidentiary hearings and via depositions, eight witnesses testified in support of the School District's position, including the District's Acting Superintendent, the District's middle school principal, a District teacher and resident, and two District parents. All of these witnesses echoed the sentiment that Moffitt's two DUI offenses constituted immorality, were unacceptable behavior for a principal, and rendered him unable to be a good role model for the District's students.

The Board voted to terminate Moffitt at its September 8, 2016 public meeting and forwarded him an adjudication by the Board's hearing officer which provided the reasons for his dismissal. Moffitt appealed the adjudication to the Pennsylvania Secretary of Education. On May 9, 2017, the Secretary issued an order denying Moffitt's appeal. The Secretary found the District had established grounds for termination on the basis of immorality, pursuant to Section 1122 of the School Code. The Secretary held that the District's eight witnesses' testimony supported the conclusion that Moffitt's DUIs offended the morals of the community and set a bad example for the District's students. Further, Moffitt had not presented any competent or credible evidence to rebut the School District's position.

Moffitt appealed the Secretary's decision to the Commonwealth Court, arguing that there was insubstantial evidence to support his termination. The Court affirmed the Secretary's decision and thereby upheld Moffitt's dismissal for immorality.

### DISCUSSION

The Commonwealth Court acknowledged that Section 1122(a) of the Pennsylvania Public School Codes provides that professional employees may be terminated, among other reasons, for "immorality." 24 P.S. § 11-1122(a). Although it is not explicitly defined by the School Code, Pennsylvania case law defines immorality as a course of conduct that offends the morals of a community and is a bad example to the youth whose ideals a professional educator is supposed to foster and elevate.

Moffitt argued before the Court that the Secretary lacked substantial evidence that his conduct offended the morals of the community. According to Moffitt, the witnesses' testimony focused less on whether his conduct offended the morals of the

community, and more on whether the loss of his driver's license rendered it impossible for him to do his job as principal. The Court disagreed, finding that the lengthy hearing and deposition records indicated otherwise. Because the Secretary had found the District's witnesses to be credible, the Court afforded great weight to their testimony. Given this extensive testimony by teachers and parents that Moffitt's conduct set a bad example for students and was offensive to the morals of their community, the Court affirmed the Secretary's decision to dismiss Moffitt for immorality.

Moffitt also argued that the School District's dismissal of him was an action of retaliation for an unrelated federal civil rights lawsuit which he filed against the District; that the District violated the Americans with Disabilities Act for dismissing him while he was in treatment for alcoholism; and that the decision to terminate him was contrary to findings of the Commonwealth's Professional Standards and Practices Commission. The Court dismissed all of these arguments, stating that there was no basis in the record to conclude that his employment was terminated for any other reason than those enunciated by the School Board and Secretary.

### **PRACTICAL ADVICE**

Multiple convictions for driving under the influence may seem like an obvious, ample justification to dismiss a school principal or any other professional school employee. However, school districts should take care to fully establish that dismissal of the employee is warranted for immorality under Section 1122 of the School Code. In this case, the District presented a range of witnesses, from parents of students through the Acting Superintendent, who consistently testified that the Moffitt's DUIs made him an inappropriate role model for the District's students. The Secretary and the Commonwealth Court placed great weight on the credibility and uniformity of the testimony of these witnesses. This case serves as a good example that school districts ought to build an extensive record, including the testimony multiple witnesses, to provide sufficient evidence to support termination of a professional employee for immorality.

For additional information contact Katie Janocsko.