

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**HOUSE BILL****No. 805** Session of  
2015

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INTRODUCED BY BLOOM, METCALFE, CUTLER, TRUITT, GROVE, MCGINNIS,  
SANKEY, KAUFFMAN, GRELL, HICKERNELL, MENTZER, FEE, GREINER,  
KNOWLES, TOPPER, TALLMAN, EVERETT, MACKENZIE, CHRISTIANA,  
MOUL, STAATS, SACCONI, DIAMOND, ZIMMERMAN, PHILLIPS-HILL,  
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LAWRENCE, MARSICO, DUSH, MALONEY, KRIEGER, ORTITAY, GINGRICH,  
SIMMONS, GABLER, RADER, B. MILLER, BENNINGHOFF, SCHEMEL,  
SAYLOR AND GILLESPIE, MARCH 23, 2015

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AS AMENDED ON THIRD CONSIDERATION, IN SENATE, APRIL 5, 2016

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## AN ACT

1 Amending the act of March 10, 1949 (P.L.30, No.14), entitled "An  
2 act relating to the public school system, including certain  
3 provisions applicable as well to private and parochial  
4 schools; amending, revising, consolidating and changing the  
5 laws relating thereto," in professional employees, further  
6 providing for temporary professional employees, for  
7 contracts, execution and form, for causes for suspension and  
8 for persons to be suspended and to receive tenure, for  
9 collective bargaining agreements and for timing of appeal of  
10 suspension; and making editorial changes.

11 The General Assembly of the Commonwealth of Pennsylvania  
12 hereby enacts as follows:

13 Section 1. Sections 1108 and 1121(b) of the act of March 10,  
14 1949 (P.L.30, No.14), known as the Public School Code of 1949,  
15 amended March 29, 1996 (P.L.47, No.16), are amended to read:

16 Section 1108. Temporary Professional Employees.--(a) It  
17 shall be the duty of the district superintendent to notify each  
18 temporary professional employe, at least twice each year during

1 the period of his or her employment, of the professional  
2 quality, professional progress, and rating of his or her  
3 services. No temporary professional employe shall be dismissed  
4 unless rated unsatisfactory, and notification, in writing, of  
5 such unsatisfactory rating shall have been furnished the employe  
6 within ten (10) days following the date of such rating. The  
7 rating of a temporary professional employe shall be done as  
8 provided in section one thousand one hundred twenty-three of  
9 this act.

10 (b) (1) A temporary professional employe initially employed  
11 by a school district prior to June 30, 1996, whose work has been  
12 certified by the district superintendent to the secretary of the  
13 school district, during the last four (4) months of the second  
14 year of such service, as being satisfactory shall thereafter be  
15 a "professional employe" within the meaning of this article.

16 (2) A temporary professional employe initially employed by a  
17 school district, on or after June 30, 1996, but prior to June  
18 30, 2015, whose work has been certified by the district  
19 superintendent to the secretary of the school district, during  
20 the last four (4) months of the third year of such service, as  
21 being satisfactory shall thereafter be a "professional employe"  
22 within the meaning of this article.

23 (2.1) A temporary professional employe initially employed by  
24 a school district, on or after June 30, 2015, whose work has  
25 been certified by the district superintendent to the secretary  
26 of the school district, during the last four (4) months of the  
27 third year of such service, or, in the case of a temporary  
28 professional employe whose temporary professional status was  
29 extended for one additional year by the district superintendent  
30 pursuant to paragraph (2.2), during the last four (4) months of

1 the fourth year of such service, as being satisfactory shall  
2 thereafter be a "professional employe" within the meaning of  
3 this article.

4 (2.2) The district superintendent may extend the temporary  
5 professional status of an employe by one additional year when,  
6 in the professional judgment of the district superintendent,  
7 further evaluation of the temporary professional employe is  
8 necessary prior to certifying the work of the temporary  
9 professional employe as satisfactory. To extend the temporary  
10 professional status of an employe under this paragraph, the  
11 district superintendent must provide the temporary professional  
12 employe, during the last four (4) months of the third year of  
13 the temporary professional employe's service, with a written  
14 statement, signed by the district superintendent, setting forth  
15 the specific reason for the extension.

16 (3) The attainment of the status under paragraph (1) [or],  
17 (2) or (2.1) shall be recorded in the records of the board and  
18 written notification thereof shall be sent also to the employe.  
19 The employe shall then be tendered forthwith a regular contract  
20 of employment as provided for professional employes. No  
21 professional employe who has attained tenure status in any  
22 school district of this Commonwealth shall thereafter be  
23 required to serve as a temporary professional employe before  
24 being tendered such a contract when employed by any other part  
25 of the public school system of the Commonwealth.

26 (c) (1) Any temporary professional employe employed by a  
27 school district prior to June 30, 1996, who is not tendered a  
28 regular contract of employment at the end of two years of  
29 service, rendered as herein provided, shall be given a written  
30 statement signed by the president and secretary of the board of

1 school directors and setting forth explicitly the reason for  
2 such refusal.

3 (2) Any temporary professional employe employed by a school  
4 district after June 30, 1996, but prior to June 30, 2015, who is  
5 not tendered a regular contract of employment at the end of  
6 three years of service, rendered as herein provided, shall be  
7 given a written statement signed by the president and secretary  
8 of the board of school directors and setting forth explicitly  
9 the reason for such refusal.

10 (3) Any temporary professional employe employed by a school  
11 district on or after June 30, 2015, who is not tendered a  
12 regular contract of employment at the end of three (3) years of  
13 service, or, in the case of a temporary professional employe  
14 whose temporary professional status was extended for one  
15 additional year by the district superintendent pursuant to  
16 subsection (b)(2.2), at the end of four (4) years of service,  
17 rendered as herein provided, shall be given a written statement  
18 signed by the president and secretary of the board of school  
19 directors and setting forth explicitly the reason for such  
20 refusal.

21 (d) Temporary professional employes shall for all purposes,  
22 except tenure status, be viewed in law as full-time employes,  
23 and shall enjoy all the rights and privileges of regular full-  
24 time employes.

25 Section 1121. Contracts; Execution; Form.--\* \* \*

26 (b) (1) Each board of school directors in all school  
27 districts shall hereafter enter into contracts, in writing, with  
28 each professional employe initially employed by a school  
29 district prior to June 30, 1996, who has satisfactorily  
30 completed two (2) years of service in any school district of

1 this Commonwealth.

2 (2) Each board of school directors in all school districts  
3 shall hereafter enter into contracts, in writing, with each  
4 professional employe initially employed by a school district, on  
5 or after June 30, 1996, but prior to June 30, 2015, who has  
6 satisfactorily completed three (3) years of service in any  
7 school district of this Commonwealth.

8 (3) Each board of school directors in all school districts  
9 shall only hereafter enter into contracts, in writing, with each  
10 professional employe initially employed by a school district, on  
11 or after June 30, 2015, who has satisfactorily completed three  
12 (3) years of service or, in the case of a temporary professional  
13 employe whose temporary professional contract is extended by the  
14 district superintendent for one additional year and who has  
15 satisfactorily completed four (4) years of service, in any  
16 school district of this Commonwealth and received overall  
17 performance ratings of "distinguished" or "proficient" on both  
18 of the professional employe's two (2) most recent end-of-year  
19 performance evaluations pursuant to section 1123 at the school  
20 district of current employment.

21 \* \* \*

22 Section 2. Section 1124 of the act, amended June 30, 2012  
23 (P.L.684, No.82), is amended to read:

24 Section 1124. Causes for Suspension.--(a) Any board of  
25 school directors may suspend the necessary number of  
26 professional employes, for any of the causes hereinafter  
27 enumerated:

28 (1) substantial decrease in pupil enrollment in the school  
29 district;

30 (2) curtailment or alteration of the educational program on

1 recommendation of the superintendent and on concurrence by the  
2 board of school directors, as a result of substantial decline in  
3 class or course enrollments or to conform with standards of  
4 organization or educational activities required by law or  
5 recommended by the Department of [Public Instruction] Education;

6 (3) consolidation of schools, whether within a single  
7 district, through a merger of districts, or as a result of joint  
8 board agreements, when such consolidation makes it unnecessary  
9 to retain the full staff of professional employees; [or]

10 (4) when new school districts are established as the result  
11 of reorganization of school districts pursuant to Article II.,  
12 subdivision (i) of this act, and when such reorganization makes  
13 it unnecessary to retain the full staff of professional  
14 employes[.]; or

15 (5) economic reasons that require a reduction in  
16 professional employes, provided that a professional employe who  
17 received an overall performance rating of "distinguished" on at  
18 least two (2) of the professional employe's most recent three  
19 (3) end-of-year performance ratings may not be suspended for  
20 economic reasons under this paragraph.

21 (a.1) A school district may not use an employe's  
22 compensation in determining which professional employes to  
23 suspend, but shall use the procedures in section 1125.1 to  
24 determine the order in which professional employes are  
25 suspended.

26 (b) Notwithstanding an existing or future provision in a  
27 collective bargaining agreement or other similar employment  
28 contract to the contrary, suspension of a professional employe  
29 due to the curtailment or alteration of the educational program  
30 as set forth in subsection (a) (2) may be effectuated without the

1 approval of the curtailment or alteration of the educational  
2 program by the Department of Education, provided that, where an  
3 educational program is altered or curtailed as set forth in  
4 subsection (a)(2), the school district shall notify the  
5 Department of Education of the actions taken pursuant to  
6 subsection (a)(2). The Department of Education shall post all  
7 notifications received from a school district pursuant to this  
8 subsection on the Department of Education's publicly accessible  
9 Internet website.

10 (c) The following shall apply in the case of a suspension  
11 under subsection (a)(5) in which a board of school directors  
12 suspends professional employes who are assigned to provide  
13 instruction directly to students:

14 (1) A board of school directors may suspend the necessary  
15 number of professional employes assigned to provide instruction  
16 directly to students only if the board of school directors also  
17 suspends at least an equal percentage proportion of  
18 administrative staff.

19 (2) The Secretary of Education may grant a board of school  
20 directors a waiver of paragraph (1) if the following apply:

21 (i) the Secretary of Education determines that the school  
22 district's operations are already sufficiently streamlined;

23 (ii) the Secretary of Education submits the determination to  
24 the State Board of Education; and

25 (iii) the State Board of Education approves the  
26 determination by a majority of its members.

27 (3) Any five administrative staff positions selected by the  
28 board of school directors shall be exempt from the requirements  
29 of paragraphs (1) and (2).

30 (d) In the case of a suspension under subsection (a)(5), a

1 board of school directors may suspend the necessary number of  
2 professional employes only by a majority vote at a public  
3 meeting of the board of school directors.

4 (e) Following the 2019-2020 school year, the Legislative  
5 Budget and Finance Committee shall conduct a study of the  
6 effectiveness of the provisions of sections 1124(a)(5), (c) and  
7 (d) and 1125.1 and shall deliver a written report of its  
8 findings, including whether these provisions of law are being  
9 used effectively by school districts to improve school district  
10 efficiency, to the Governor, the chairman and minority chairman  
11 of the Education Committee of the Senate and the chairman and  
12 minority chairman of the Education Committee of the House of  
13 Representatives by December 31, 2020.

14 (f) (1) A collective bargaining agreement negotiated by a  
15 school district and an exclusive representative of professional  
16 employes in accordance with the act of July 23, 1970 (P.L.563,  
17 No.195), known as the "Public Employe Relations Act," after the  
18 effective date of this subsection may not prohibit the  
19 suspension of professional employes for economic reasons other  
20 than as provided for in this section.

21 (2) A provision in any agreement or contract in effect on  
22 the effective date of this subsection that prohibits the  
23 suspension of professional employes for economic reasons in  
24 conflict with this section shall be discontinued in any new or  
25 renewed agreement or contract or during the period of status quo  
26 following an expired contract.

27 Section 3. Section 1125.1 of the act, amended or added  
28 November 20, 1979 (P.L.465, No.97) and July 10, 1986 (P.L.1270,  
29 No.117), is amended to read:

30 Section 1125.1. Persons to be Suspended.--(a) Professional

1 employes shall be suspended under section 1124 [(relating to  
2 causes for suspension) in inverse order of seniority within the  
3 school entity of current employment. Approved leaves of absence  
4 shall not constitute a break in service for purposes of  
5 computing seniority for suspension purposes.] as follows, within  
6 the area of certification required by law for the professional  
7 employee's current position:

8 (1) (i) Each professional employe who received an overall  
9 performance rating of "failing" on the professional employe's  
10 most recent end-of-year performance rating shall be suspended  
11 first.

12 (ii) After suspending professional employes under subclause  
13 (i), each professional employe who received an overall  
14 performance rating of "needs improvement" on the professional  
15 employe's most recent end-of-year performance rating shall be  
16 suspended second.

17 (iii) When more professional employes receive the same  
18 overall performance rating than there are suspensions, seniority  
19 within the school entity shall be used to determine suspensions  
20 among professional employes with the same overall performance  
21 rating on the employe's most recent performance evaluation  
22 pursuant to section 1123, provided that approved leaves of  
23 absence shall not constitute a break in service for purposes of  
24 computing seniority for suspension purposes.

25 (2) After suspending professional employes under clause (1),  
26 each professional employe who received an overall performance  
27 rating of "proficient" or "distinguished" on the professional  
28 employe's most recent end-of-year performance rating shall be  
29 suspended in inverse order of seniority within the school entity  
30 of current employment, provided that approved leaves of absence

1 shall not constitute a break in service for purposes of  
2 computing seniority for suspension purposes.

3 (a.1) Seniority shall continue to accrue during suspension  
4 and all approved leaves of absence.

5 (b) Where there is or has been a consolidation of schools,  
6 departments or programs, all professional employes shall retain  
7 the seniority rights they had prior to the reorganization or  
8 consolidation.

9 [(c) A school entity shall realign its professional staff so  
10 as to insure that more senior employes are provided with the  
11 opportunity to fill positions for which they are certificated  
12 and which are being filled by less senior employes.]

13 (d) (1) No suspended employe shall be prevented from  
14 engaging in another occupation during the period of suspension.

15 (2) Suspended professional employes or professional employes  
16 demoted for the reasons set forth in section 1124 shall be  
17 reinstated [on the basis of their seniority within the school  
18 entity.] as follows:

19 (i) Professional employes who received an overall  
20 performance rating of "proficient" or "distinguished" on their  
21 most recent end-of-year performance evaluations shall be  
22 reinstated first in order of seniority within the area of  
23 certification required for the vacancy being filled and within  
24 the school entity.

25 (ii) After reinstating professional employes under subclause  
26 (i), professional employes who received an overall performance  
27 rating of "needs improvement" on their most recent end-of-year  
28 performance evaluations shall be reinstated second in order of  
29 seniority within the area of certification required for the  
30 vacancy being filled and within the school entity.

1 (iii) After reinstating professional employes under  
2 subclause (ii), professional employes who received an overall  
3 performance rating of "failing" on their most recent end-of-year  
4 performance evaluations shall be reinstated last in order of  
5 seniority within the area of certification required for the  
6 vacancy being filled and within the school entity.

7 No new appointment shall be made while there is such a suspended  
8 or demoted professional employe available who is properly  
9 certificated to fill such vacancy. For the purpose of this  
10 subsection, positions from which professional employes are on  
11 approved leaves of absence shall also be considered temporary  
12 vacancies.

13 (3) To be considered available a suspended professional  
14 employe must annually report to the governing board in writing  
15 his current address and his intent to accept the same or similar  
16 position when offered.

17 (4) A suspended employe enrolled in a college program during  
18 a period of suspension and who is recalled shall be given the  
19 option of delaying his return to service until the end of the  
20 current semester.

21 (e) Nothing contained in [section 1125.1(a) through (d)]  
22 this section shall be construed to:

23 (1) limit the cause for which a temporary professional  
24 employe may be suspended; or

25 (2) supersede or preempt any provisions of a collective  
26 bargaining agreement negotiated by a school entity and an  
27 exclusive representative of the employes in accordance with the  
28 act of July 23, 1970 (P.L.563, No.195), known as the "Public  
29 Employe Relations Act"; however, no agreement shall prohibit the  
30 right of a professional employe who is not a member of a

1 bargaining unit from retaining seniority rights under the  
2 provisions of this act.

3 (f) A decision to suspend in accordance with this section  
4 shall be considered an adjudication within the meaning of the  
5 "Local Agency Law."

6 (g) (1) No collective bargaining agreement negotiated by a  
7 school district and an exclusive representative of the employes  
8 in accordance with the "Public Employe Relations Act" after the  
9 effective date of this subsection shall provide for suspending,  
10 reinstating or realigning professional employes based on  
11 seniority other than as provided for in this section.

12 (2) Upon the expiration, amendment or adoption of any  
13 agreement or contract, a provision that provides for suspending,  
14 reinstating or realigning professional employes based on  
15 seniority in conflict with this section shall be discontinued in  
16 any new or renewed agreement or contract or during the period of  
17 status quo following an expired contract.

18 (h) If a professional employe is suspended under this  
19 section, the professional employe's position shall remain vacant  
20 for at least one year, provided that the school entity may  
21 reinstate at any time the professional employe who was  
22 suspended.

23 Section 4. Section 1131 of the act is amended to read:

24 Section 1131. Appeals to [Superintendent of Public  
25 Instruction] Secretary of Education.--In case the professional  
26 employe concerned considers himself or herself aggrieved by the  
27 action of the board of school directors, an appeal by petition,  
28 setting forth the grounds for such appeal, may be taken to the  
29 [Superintendent of Public Instruction] Secretary of Education at  
30 Harrisburg. Such appeal shall be filed within [thirty (30)]

1 fifteen (15) days after receipt by registered mail of the  
2 written notice of the decision of the board. A copy of such  
3 appeal shall be served by registered mail on the secretary of  
4 the school board.

5 The [Superintendent of Public Instruction] Secretary of  
6 Education shall fix a day and time for hearing, which shall be  
7 not sooner than ten (10) days nor more than thirty (30) days  
8 after presentation of such petition, and shall give written  
9 notice to all parties interested.

10 The [Superintendent of Public Instruction] Secretary of  
11 Education shall review the official transcript of the record of  
12 the hearing before the board, and may hear and consider such  
13 additional testimony as he may deem advisable to enable him to  
14 make a proper order. At said hearing the litigants shall have  
15 the right to be heard in person or by counsel or both.

16 After hearing and argument and reviewing all the testimony  
17 filed or taken before him, the [Superintendent of Public  
18 Instruction] Secretary of Education shall enter such order,  
19 either affirming or reversing the action of the board of school  
20 directors, as to him appears just and proper.

21 Section 5. This act shall take effect as follows:

22 (1) The amendment or addition of sections 1124(f) and  
23 1125.1(g) of the act shall take effect immediately.

24 (2) The amendment of sections 1108 and 1121 shall take  
25 effect June 30, 2015.

26 (3) This section shall take effect immediately.

27 (4) The remainder of this act shall take effect June 30,  
28 ~~2016~~ 2018.

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