

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1722 Session of 2013

INTRODUCED BY KRIEGER, V. BROWN, SACCONI, GROVE, BLOOM, CUTLER, AUMENT, STERN, ROAE, EVERETT, COX, METCALFE, R. MILLER, HICKERNELL, GRELL, SWANGER, BARRAR, CLYMER, WATSON, TALLMAN, C. HARRIS, DENLINGER AND MENTZER, SEPTEMBER 30, 2013

AS REPORTED FROM COMMITTEE ON EDUCATION, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 4, 2014

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. Section 1121(b) of the act of March 10, 1949 <--
14 (P.L.30, No.14), known as the Public School Code of 1949,
15 amended March 29, 1996 (P.L.47, No.16), is amended to read:~~

16 SECTION 1. SECTIONS 1108 AND 1121(B) OF THE ACT OF MARCH 10, <--
17 1949 (P.L.30, NO.14), KNOWN AS THE PUBLIC SCHOOL CODE OF 1949,
18 AMENDED MARCH 29, 1996 (P.L.47, NO.16), ARE AMENDED TO READ:

19 SECTION 1108. TEMPORARY PROFESSIONAL EMPLOYEES.-- (A) IT
20 SHALL BE THE DUTY OF THE DISTRICT SUPERINTENDENT TO NOTIFY EACH

1 TEMPORARY PROFESSIONAL EMPLOYEE, AT LEAST TWICE EACH YEAR DURING
2 THE PERIOD OF HIS OR HER EMPLOYMENT, OF THE PROFESSIONAL
3 QUALITY, PROFESSIONAL PROGRESS, AND RATING OF HIS OR HER
4 SERVICES. NO TEMPORARY PROFESSIONAL EMPLOYEE SHALL BE DISMISSED
5 UNLESS RATED UNSATISFACTORY, AND NOTIFICATION, IN WRITING, OF
6 SUCH UNSATISFACTORY RATING SHALL HAVE BEEN FURNISHED THE EMPLOYEE
7 WITHIN TEN (10) DAYS FOLLOWING THE DATE OF SUCH RATING. THE
8 RATING OF A TEMPORARY PROFESSIONAL EMPLOYEE SHALL BE DONE AS
9 PROVIDED IN SECTION ONE THOUSAND ONE HUNDRED TWENTY-THREE OF
10 THIS ACT.

11 (B) (1) A TEMPORARY PROFESSIONAL EMPLOYEE INITIALLY EMPLOYED
12 BY A SCHOOL DISTRICT PRIOR TO JUNE 30, 1996, WHOSE WORK HAS BEEN
13 CERTIFIED BY THE DISTRICT SUPERINTENDENT TO THE SECRETARY OF THE
14 SCHOOL DISTRICT, DURING THE LAST FOUR (4) MONTHS OF THE SECOND
15 YEAR OF SUCH SERVICE, AS BEING SATISFACTORY SHALL THEREAFTER BE
16 A "PROFESSIONAL EMPLOYEE" WITHIN THE MEANING OF THIS ARTICLE.

17 (2) A TEMPORARY PROFESSIONAL EMPLOYEE INITIALLY EMPLOYED BY A
18 SCHOOL DISTRICT, ON OR AFTER JUNE 30, 1996, BUT PRIOR TO JUNE
19 30, 2014, WHOSE WORK HAS BEEN CERTIFIED BY THE DISTRICT
20 SUPERINTENDENT TO THE SECRETARY OF THE SCHOOL DISTRICT, DURING
21 THE LAST FOUR (4) MONTHS OF THE THIRD YEAR OF SUCH SERVICE, AS
22 BEING SATISFACTORY SHALL THEREAFTER BE A "PROFESSIONAL EMPLOYEE"
23 WITHIN THE MEANING OF THIS ARTICLE.

24 (2.1) A TEMPORARY PROFESSIONAL EMPLOYEE INITIALLY EMPLOYED BY
25 A SCHOOL DISTRICT, ON OR AFTER JUNE 30, 2014, WHOSE WORK HAS
26 BEEN CERTIFIED BY THE DISTRICT SUPERINTENDENT TO THE SECRETARY
27 OF THE SCHOOL DISTRICT, DURING THE LAST FOUR (4) MONTHS OF THE
28 FIFTH YEAR OF SUCH SERVICE, AS BEING SATISFACTORY SHALL
29 THEREAFTER BE A "PROFESSIONAL EMPLOYEE" WITHIN THE MEANING OF
30 THIS ARTICLE.

1 (3) THE ATTAINMENT OF THE STATUS UNDER PARAGRAPH (1) [OR
2 (2)], (2) OR (2.1) SHALL BE RECORDED IN THE RECORDS OF THE BOARD
3 AND WRITTEN NOTIFICATION THEREOF SHALL BE SENT ALSO TO THE
4 EMPLOYEE. THE EMPLOYEE SHALL THEN BE TENDERED FORTHWITH A REGULAR
5 CONTRACT OF EMPLOYMENT AS PROVIDED FOR PROFESSIONAL EMPLOYEES. NO
6 PROFESSIONAL EMPLOYEE WHO HAS ATTAINED TENURE STATUS IN ANY
7 SCHOOL DISTRICT OF THIS COMMONWEALTH SHALL THEREAFTER BE
8 REQUIRED TO SERVE AS A TEMPORARY PROFESSIONAL EMPLOYEE BEFORE
9 BEING TENDERED SUCH A CONTRACT WHEN EMPLOYED BY ANY OTHER PART
10 OF THE PUBLIC SCHOOL SYSTEM OF THE COMMONWEALTH.

11 (C) (1) ANY TEMPORARY PROFESSIONAL EMPLOYEE EMPLOYED BY A
12 SCHOOL DISTRICT PRIOR TO JUNE 30, 1996, WHO IS NOT TENDERED A
13 REGULAR CONTRACT OF EMPLOYMENT AT THE END OF TWO YEARS OF
14 SERVICE, RENDERED AS HEREIN PROVIDED, SHALL BE GIVEN A WRITTEN
15 STATEMENT SIGNED BY THE PRESIDENT AND SECRETARY OF THE BOARD OF
16 SCHOOL DIRECTORS AND SETTING FORTH EXPLICITLY THE REASON FOR
17 SUCH REFUSAL.

18 (2) ANY TEMPORARY PROFESSIONAL EMPLOYEE EMPLOYED BY A SCHOOL
19 DISTRICT AFTER JUNE 30, 1996, BUT PRIOR TO JUNE 30, 2014, WHO IS
20 NOT TENDERED A REGULAR CONTRACT OF EMPLOYMENT AT THE END OF
21 THREE YEARS OF SERVICE, RENDERED AS HEREIN PROVIDED, SHALL BE
22 GIVEN A WRITTEN STATEMENT SIGNED BY THE PRESIDENT AND SECRETARY
23 OF THE BOARD OF SCHOOL DIRECTORS AND SETTING FORTH EXPLICITLY
24 THE REASON FOR SUCH REFUSAL.

25 (3) ANY TEMPORARY PROFESSIONAL EMPLOYEE EMPLOYED BY A SCHOOL
26 DISTRICT ON OR AFTER JUNE 30, 2014, WHO IS NOT TENDERED A
27 REGULAR CONTRACT OF EMPLOYMENT AT THE END OF FIVE (5) YEARS OF
28 SERVICE, RENDERED AS HEREIN PROVIDED, SHALL BE GIVEN A WRITTEN
29 STATEMENT SIGNED BY THE PRESIDENT AND SECRETARY OF THE BOARD OF
30 SCHOOL DIRECTORS AND SETTING FORTH EXPLICITLY THE REASON FOR

1 SUCH REFUSAL.

2 (D) TEMPORARY PROFESSIONAL EMPLOYEES SHALL FOR ALL PURPOSES,
3 EXCEPT TENURE STATUS, BE VIEWED IN LAW AS FULL-TIME EMPLOYEES,
4 AND SHALL ENJOY ALL THE RIGHTS AND PRIVILEGES OF REGULAR FULL-
5 TIME EMPLOYEES.

6 Section 1121. Contracts; Execution; Form.--* * *

7 (b) (1) Each board of school directors in all school
8 districts shall hereafter enter into contracts, in writing, with
9 each professional employe initially employed by a school
10 district prior to June 30, 1996, who has satisfactorily
11 completed two (2) years of service in any school district of
12 this Commonwealth.

13 (2) Each board of school directors in all school districts
14 shall hereafter enter into contracts, in writing, with each
15 professional employe initially employed by a school district, on
16 or after June 30, 1996, BUT PRIOR TO JUNE 30, 2014, who has <--
17 satisfactorily completed ~~three (3)~~ ~~five (5)~~ years of service <--
18 in any school district of this Commonwealth.

19 (3) EACH BOARD OF SCHOOL DIRECTORS IN ALL SCHOOL DISTRICTS <--
20 SHALL ONLY HEREAFTER ENTER INTO CONTRACTS, IN WRITING, WITH EACH
21 PROFESSIONAL EMPLOYEE INITIALLY EMPLOYED BY A SCHOOL DISTRICT, ON
22 OR AFTER JUNE 30, 2014, WHO HAS SATISFACTORILY COMPLETED THREE
23 (3) YEARS OF SERVICE IN ANY SCHOOL DISTRICT OF THIS COMMONWEALTH
24 AND RECEIVED OVERALL PERFORMANCE RATINGS OF "DISTINGUISHED" OR
25 "PROFICIENT" ON BOTH OF THE PROFESSIONAL EMPLOYEE'S MOST RECENT
26 PERFORMANCE EVALUATIONS PURSUANT TO SECTION 1123 AT THE SCHOOL
27 DISTRICT OF CURRENT EMPLOYMENT.

28 * * *

29 Section 2. Section ~~1124(a)~~ 1124 of the act, amended June 30, <--
30 2012 (P.L.684, No.82), is amended to read:

1 Section 1124. Causes for Suspension.--(a) Any board of
2 school directors may suspend the necessary number of
3 professional employes, for any of the causes hereinafter
4 enumerated:

5 (1) substantial decrease in pupil enrollment in the school
6 district;

7 (2) curtailment or alteration of the educational program on
8 recommendation of the superintendent and on concurrence by the
9 board of school directors, as a result of substantial decline in
10 class or course enrollments or to conform with standards of
11 organization or educational activities required by law or
12 recommended by the Department of [Public Instruction] Education;

13 (3) consolidation of schools, whether within a single
14 district, through a merger of districts, or as a result of joint
15 board agreements, when such consolidation makes it unnecessary
16 to retain the full staff of professional employes; [or]

17 (4) when new school districts are established as the result
18 of reorganization of school districts pursuant to Article II.,
19 subdivision (i) of this act, and when such reorganization makes
20 it unnecessary to retain the full staff of professional
21 employes[.]; or

22 (5) economic reasons that require a reduction in
23 professional employes.

24 * * *

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25 A SCHOOL DISTRICT MAY NOT USE COSTS AS THE SOLE FACTOR IN
26 DETERMINING WHICH PROFESSIONAL EMPLOYES TO SUSPEND, BUT SHALL
27 USE THE PROCEDURES IN SECTION 1125.1 TO DETERMINE THE ORDER IN
28 WHICH PROFESSIONAL EMPLOYES ARE SUSPENDED.

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29 (B) NOTWITHSTANDING AN EXISTING OR FUTURE PROVISION IN A
30 COLLECTIVE BARGAINING AGREEMENT OR OTHER SIMILAR EMPLOYMENT

1 CONTRACT TO THE CONTRARY, SUSPENSION OF A PROFESSIONAL EMPLOYE
2 DUE TO THE CURTAILMENT OR ALTERATION OF THE EDUCATIONAL PROGRAM
3 AS SET FORTH IN SUBSECTION (A) (2) MAY BE EFFECTUATED WITHOUT THE
4 APPROVAL OF THE CURTAILMENT OR ALTERATION OF THE EDUCATIONAL
5 PROGRAM BY THE DEPARTMENT OF EDUCATION, PROVIDED THAT, WHERE AN
6 EDUCATIONAL PROGRAM IS ALTERED OR CURTAILED AS SET FORTH IN
7 SUBSECTION (A) (2), THE SCHOOL DISTRICT SHALL NOTIFY THE
8 DEPARTMENT OF EDUCATION OF THE ACTIONS TAKEN PURSUANT TO
9 SUBSECTION (A) (2). THE DEPARTMENT OF EDUCATION SHALL POST ALL
10 NOTIFICATIONS RECEIVED FROM A SCHOOL DISTRICT PURSUANT TO THIS
11 SUBSECTION ON THE DEPARTMENT OF EDUCATION'S PUBLICLY ACCESSIBLE
12 INTERNET WEBSITE.

13 (C) A COLLECTIVE BARGAINING AGREEMENT NEGOTIATED BY A SCHOOL
14 DISTRICT AND AN EXCLUSIVE REPRESENTATIVE OF PROFESSIONAL
15 EMPLOYES IN ACCORDANCE WITH THE ACT OF JULY 23, 1970 (P.L.563,
16 NO.195), KNOWN AS THE "PUBLIC EMPLOYE RELATIONS ACT," AFTER THE
17 EFFECTIVE DATE OF THIS SUBSECTION MAY NOT PROHIBIT THE
18 SUSPENSION OF PROFESSIONAL EMPLOYES FOR ECONOMIC REASONS OTHER
19 THAN AS PROVIDED FOR IN THIS SECTION. A PROVISION IN ANY
20 AGREEMENT OR CONTRACT IN EFFECT ON THE EFFECTIVE DATE OF THIS
21 SUBSECTION THAT PROHIBITS THE SUSPENSION OF PROFESSIONAL
22 EMPLOYES FOR ECONOMIC REASONS IN CONFLICT WITH THIS SECTION
23 SHALL BE DISCONTINUED IN ANY NEW OR RENEWED AGREEMENT OR
24 CONTRACT OR DURING THE PERIOD OF STATUS QUO FOLLOWING AN EXPIRED
25 CONTRACT.

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

29 Section 1125.1. Persons to be Suspended.--(a) Professional
30 employes shall be suspended under section 1124 [(relating to

1 causes for suspension) in inverse order of seniority within the
2 school entity of current employment. Approved leaves of absence
3 shall not constitute a break in service for purposes of
4 computing seniority for suspension purposes.] ~~based upon the~~ <--
5 ~~professional employe's performance evaluations pursuant to~~
6 ~~section 1123 within the professional employe's areas of~~
7 ~~certification.~~ IN THE FOLLOWING ORDER WITHIN THE AREA OF <--
8 CERTIFICATION REQUIRED BY LAW FOR THE PROFESSIONAL EMPLOYE'S
9 CURRENT POSITION:

10 (1) EACH PROFESSIONAL EMPLOYE WHO RECEIVED AN OVERALL
11 PERFORMANCE RATING OF "FAILING" ON THE PROFESSIONAL EMPLOYE'S
12 MOST RECENT PERFORMANCE RATING SHALL BE SUSPENDED FIRST.

13 (2) AFTER SUSPENDING PROFESSIONAL EMPLOYEES UNDER PARAGRAPH
14 (1), EACH PROFESSIONAL EMPLOYE WHO RECEIVED AN OVERALL
15 PERFORMANCE RATING OF "NEEDS IMPROVEMENT" ON THE PROFESSIONAL
16 EMPLOYE'S MOST RECENT PERFORMANCE RATING SHALL BE SUSPENDED
17 SECOND.

18 (3) AFTER SUSPENDING PROFESSIONAL EMPLOYEES UNDER PARAGRAPH
19 (2), EACH PROFESSIONAL EMPLOYE WHO RECEIVED AN OVERALL
20 PERFORMANCE RATING OF "PROFICIENT" ON THE PROFESSIONAL EMPLOYE'S
21 MOST RECENT PERFORMANCE RATING SHALL BE SUSPENDED THIRD.

22 (4) AFTER SUSPENDING PROFESSIONAL EMPLOYEES UNDER PARAGRAPH
23 (3), EACH PROFESSIONAL EMPLOYE WHO RECEIVED AN OVERALL
24 PERFORMANCE RATING OF "DISTINGUISHED" ON THE PROFESSIONAL
25 EMPLOYE'S MOST RECENT PERFORMANCE RATING SHALL BE SUSPENDED
26 LAST.

27 (A.1) WHEN MORE PROFESSIONAL EMPLOYEES RECEIVE THE SAME
28 OVERALL PERFORMANCE RATING THAN THERE ARE SUSPENSIONS, SENIORITY
29 WITHIN THE SCHOOL ENTITY SHALL BE USED TO DETERMINE SUSPENSIONS
30 AMONG PROFESSIONAL EMPLOYEES WITH THE SAME OVERALL PERFORMANCE

1 RATING ON THE EMPLOYEE'S MOST RECENT PERFORMANCE EVALUATION
2 PURSUANT TO SECTION 1123.

3 (A.2) 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] ~~performance~~ <--

18 ~~evaluation within their areas of certification, followed next by~~

19 ~~seniority~~ OVERALL PERFORMANCE RATING ON THEIR MOST RECENT <--

20 PERFORMANCE EVALUATION WITHIN THE AREA OF CERTIFICATION REQUIRED

21 BY LAW FOR THE POSITION HELD BY THE PROFESSIONAL EMPLOYEE ON THE

22 DATE THE PROFESSIONAL EMPLOYEE WAS SUSPENDED OR DEMOTED, WITH THE

23 HIGHEST RATED EMPLOYEES REINSTATED FIRST, EXCEPT SENIORITY within

24 the school entity SHALL BE USED TO MAKE REINSTATEMENT DECISIONS <--

25 AMONG TEACHERS WITH THE SAME OVERALL PERFORMANCE RATING ON THEIR

26 MOST RECENT PERFORMANCE EVALUATION. No new appointment shall be

27 made while there is such a suspended or demoted professional

28 employe available who is properly certificated to fill such

29 vacancy. For the purpose of this subsection, positions from

30 which professional employes are on approved leaves of absence

1 shall also be considered temporary vacancies.

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

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

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

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

14 (2) supersede or preempt any provisions of a collective
15 bargaining agreement negotiated by a school entity and an
16 exclusive representative of the employes in accordance with the
17 act of July 23, 1970 (P.L.563, No.195), known as the "Public
18 Employe Relations Act"; however, no agreement shall prohibit the
19 right of a professional employe who is not a member of a
20 bargaining unit from retaining seniority rights under the
21 provisions of this act.

22 †(f) A decision to suspend in accordance with this section <--
23 shall be considered an adjudication within the meaning of the
24 "Local Agency Law."† <--

25 ~~(g) A collective bargaining agreement for professional~~
26 ~~employes which is entered into after the effective date of this~~
27 ~~subsection shall not include provisions prohibiting suspension~~
28 ~~of professional employes for economic reasons pursuant to~~
29 ~~section 1124(a)(5).~~

30 (G) NO COLLECTIVE BARGAINING AGREEMENT NEGOTIATED BY A <--

1 SCHOOL DISTRICT AND AN EXCLUSIVE REPRESENTATIVE OF THE EMPLOYEES
2 IN ACCORDANCE WITH THE ACT OF JULY 23, 1970 (P.L.563, NO.195),
3 KNOWN AS THE "PUBLIC EMPLOYE RELATIONS ACT," AFTER THE EFFECTIVE
4 DATE OF THIS SUBSECTION SHALL PROVIDE FOR SUSPENDING,
5 REINSTATING OR REALIGNING PROFESSIONAL EMPLOYEES BASED ON
6 SENIORITY OTHER THAN AS PROVIDED FOR IN THIS SECTION. UPON THE
7 EXPIRATION, AMENDMENT OR ADOPTION OF ANY AGREEMENT OR CONTRACT,
8 A PROVISION THAT PROVIDES FOR SUSPENDING, REINSTATING OR
9 REALIGNING PROFESSIONAL EMPLOYEES BASED ON SENIORITY IN CONFLICT
10 WITH THIS SECTION SHALL BE DISCONTINUED IN ANY NEW OR RENEWED
11 AGREEMENT OR CONTRACT OR DURING THE PERIOD OF STATUS QUO
12 FOLLOWING AN EXPIRED CONTRACT.

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

14 Section 1131. Appeals to [Superintendent of Public
15 Instruction] Secretary of Education.--In case the professional
16 employe concerned considers himself or herself aggrieved by the
17 action of the board of school directors, an appeal by petition,
18 setting forth the grounds for such appeal, may be taken to the
19 [Superintendent of Public Instruction] Secretary of Education at
20 Harrisburg. Such appeal shall be filed within [thirty (30)]
21 fifteen (15) days after receipt by registered mail of the
22 written notice of the decision of the board. A copy of such
23 appeal shall be served by registered mail on the secretary of
24 the school board.

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

30 The [Superintendent of Public Instruction] Secretary of

1 Education shall review the official transcript of the record of
2 the hearing before the board, and may hear and consider such
3 additional testimony as he may deem advisable to enable him to
4 make a proper order. At said hearing the litigants shall have
5 the right to be heard in person or by counsel or both.

6 After hearing and argument and reviewing all the testimony
7 filed or taken before him, the [Superintendent of Public
8 Instruction] Secretary of Education shall enter such order,
9 either affirming or reversing the action of the board of school
10 directors, as to him appears just and proper.

11 Section 5. This act shall take effect ~~immediately~~. AS <--
12 FOLLOWS:

13 (1) THE AMENDMENT OR ADDITION OF SECTIONS 1124(C) AND
14 1125.1(G) OF THE ACT SHALL TAKE EFFECT IMMEDIATELY.

15 (2) THIS SECTION SHALL TAKE EFFECT IMMEDIATELY.

16 (3) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT JULY 1,
17 2015.