

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 18

Session of
1995

INTRODUCED BY TANGRETTI, LEVDANSKY, PESCI, STABACK, BAKER, BUNT,
MARKOSEK, LAUGHLIN, CURRY, TRELLO, TIGUE, READSHAW, PETRONE,
ROBERTS, YOUNGBLOOD, STEELMAN, THOMAS, WALKO, KUKOVICH AND
LaGROTTA, JANUARY 19, 1995

AS REPORTED FROM COMMITTEE ON EDUCATION, HOUSE OF
REPRESENTATIVES, AS AMENDED, SEPTEMBER 24, 1996

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," further providing for transferred~~
6 ~~programs and classes. AMENDING THE ACT OF MARCH 10, 1949~~ <—
7 ~~(P.L.30, NO.14), ENTITLED "AN ACT RELATING TO THE PUBLIC~~
8 ~~SCHOOL SYSTEM, INCLUDING CERTAIN PROVISIONS APPLICABLE AS~~
9 ~~WELL TO PRIVATE AND PAROCHIAL SCHOOLS; AMENDING, REVISING,~~
10 ~~CONSOLIDATING AND CHANGING THE LAWS RELATING THERETO,"~~
11 ~~FURTHER PROVIDING FOR TRANSFERRED PROGRAMS AND CLASSES.~~

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

14 ~~Section 1. Section 1113 of the act of March 10, 1949~~ <—
15 ~~(P.L.30, No.14), known as the Public School Code of 1949,~~
16 ~~amended August 5, 1991 (P.L.219, No.25), is amended to read:~~

17 ~~Section 1113. Transferred Programs and Classes. (a) When a~~
18 ~~program or class is transferred as a unit from one or more~~
19 ~~school entities to another school entity or entities,~~
20 ~~professional employees who [were assigned to the class or program~~
21 ~~immediately prior to the transfer and are classified as teachers~~

~~as defined in section 1141(1) and are suspended as a result of the transfer and who are properly certificated shall be offered employment in the program or class by the receiving entity or entities when services of a professional employee are needed to sustain the program or class transferred, as long as there is no suspended professional employee in the receiving entity who is properly certificated to fill the position in the transferred class or program.] are classified as teachers as defined in section 1141(1) and who are properly certified and paraprofessional employees who were assigned to the class or program immediately prior to the transfer and who are suspended as a result of the transfer shall be offered employment in the program or class by the receiving entity or entities when services of professional or a paraprofessional employee are needed to sustain the program or class transferred as long as there is no suspended professional employee or paraprofessional in the receiving entity who is properly certificated or qualified to fill the position in the transferred class or program.~~

~~(a.1) Transfers under the provisions of this act shall only occur once a year at the beginning of each school year and shall be included in the district's special education plan if the receiving entity is a school district. Special education program transfers may not be implemented unless the transfers are approved by the Department of Education on or before March 31 of the year preceding the proposed transfer.~~

~~(b) Transferred professional and paraprofessional employees shall be credited by the receiving entity only for their sick leave accumulated in the sending entity and also for their years of service in the sending entity, the latter for purposes of~~

~~sabbatical leave eligibility and placement in the salary
schedule: [Provided, however, That such]~~

~~(1) Provided, That these employees shall not utilize the
sabbatical leave until they have taught in the receiving entity
for a period of three (3) years. [Such]~~

~~(2) Provided, That these employees shall transfer their
accrued seniority in the area of certification required for the
transferred program or class only[.] or, in the case of
paraprofessionals, seniority in the intermediate unit.~~

~~(3) Provided, That these employees shall not be paid less
than what their salary was in the sending entity. In the event
that, in order to satisfy this provision the receiving entity
must place the transferred employee on a higher step on its
salary schedule than the employee would otherwise have been
entitled, such placement may be maintained by the receiving
entity until the employee's years of service in the receiving
entity are sufficient to place the employee at the salary step at
which the employee was placed at the time of transfer.~~

~~(b.1) Professional employees who are classified as teachers
and paraprofessional employees who are not transferred with the
classes to which they are assigned or who have received a formal
notice of suspension shall form a pool of employees within the
school entity. No new professional employee who is classified as
a teacher or paraprofessional employee shall be employed by a
school entity assuming program responsibility for transferred
students while there is:~~

~~(1) a properly certificated professional employee who is
classified as a teacher or paraprofessional employee suspended in
the receiving entity; or~~

~~(2) if no person is qualified under clause (1), a properly~~

~~certificated member of the school entity pool who is willing to accept employment with the school entity assuming program responsibility for transferred students. Members of the pool shall have the right to refuse employment offers from such school entity and remain in the pool. Refusal to accept work under this subsection shall not be grounds for denial of unemployment compensation under sections 401 and 402 of the act of December 5, 1936 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the "Unemployment Compensation Law."~~

~~(c) Nothing contained in this section shall be construed to supersede or preempt any provision of a collective bargaining agreement in effect on February 4, 1982, and negotiated by a school entity and an exclusive representative of the employees in accordance with the act of July 23, 1970 (P.L.563, No.195), known as the "Public Employe Relations Act."~~

~~(c.1) If a receiving entity returns a unit to the sending entity within two academic years of the first transfer, professional and paraprofessional employees assigned to the unit shall be given the opportunity to return with the unit.~~

~~(d) (1) As used in this section, the term "school entity" or "school entities" shall mean an intermediate unit and its participating school districts or an area vocational technical school and its sending school districts.~~

~~(2) As used in this section, the term "unit" shall mean a program or class whose membership falls within the minimum and maximum class size as defined in Department of Education standards and where the program or class can be identified as being substantially intact in accordance with standards of the department.~~

~~(3) As used in this section, the term "paraprofessional~~

~~employee" shall mean an instructional aide, classroom aide,
special education aide, teaching assistant or associate teacher
who is not defined as a professional employee.~~

~~Section 2. This act shall take effect in 60 days.~~

SECTION 1. SECTION 1113 OF THE ACT OF MARCH 10, 1949
(P.L.30, NO.14), KNOWN AS THE PUBLIC SCHOOL CODE OF 1949,
AMENDED AUGUST 5, 1991 (P.L.219, NO.25), IS AMENDED TO READ:

SECTION 1113. TRANSFERRED PROGRAMS AND CLASSES.--(A) WHEN A
PROGRAM OR CLASS IS TRANSFERRED AS A UNIT FROM ONE OR MORE
SCHOOL ENTITIES TO ANOTHER SCHOOL ENTITY OR ENTITIES,
PROFESSIONAL EMPLOYEES WHO [WERE ASSIGNED TO THE CLASS OR PROGRAM
IMMEDIATELY PRIOR TO THE TRANSFER AND ARE CLASSIFIED AS TEACHERS
AS DEFINED IN SECTION 1141(1) AND ARE SUSPENDED AS A RESULT OF
THE TRANSFER AND WHO ARE PROPERLY CERTIFICATED SHALL BE OFFERED
EMPLOYMENT IN THE PROGRAM OR CLASS BY THE RECEIVING ENTITY OR
ENTITIES WHEN SERVICES OF A PROFESSIONAL EMPLOYEE ARE NEEDED TO
SUSTAIN THE PROGRAM OR CLASS TRANSFERRED, AS LONG AS THERE IS NO
SUSPENDED PROFESSIONAL EMPLOYEE IN THE RECEIVING ENTITY WHO IS
PROPERLY CERTIFICATED TO FILL THE POSITION IN THE TRANSFERRED
CLASS OR PROGRAM.] ARE CLASSIFIED AS TEACHERS AS DEFINED IN
SECTION 1141(1) AND WHO ARE PROPERLY CERTIFIED AND
PARAPROFESSIONAL EMPLOYEES WHO WERE ASSIGNED TO THE CLASS OR
PROGRAM IMMEDIATELY PRIOR TO THE TRANSFER AND WHO ARE SUSPENDED
AS A RESULT OF THE TRANSFER SHALL BE OFFERED EMPLOYMENT IN THE
PROGRAM OR CLASS BY THE RECEIVING ENTITY OR ENTITIES WHEN
SERVICES OF PROFESSIONAL OR A PARAPROFESSIONAL EMPLOYEE ARE
NEEDED TO SUSTAIN THE PROGRAM OR CLASS TRANSFERRED AS LONG AS
THERE IS NO SUSPENDED PROFESSIONAL EMPLOYEE OR FURLOUGHED
PARAPROFESSIONAL IN THE RECEIVING ENTITY WHO IS PROPERLY
CERTIFICATED, IN THE CASE OF A PROFESSIONAL EMPLOYEE, OR

1 EXPERIENCED, IN THE CASE OF A PARAPROFESSIONAL, TO FILL THE
2 POSITION IN THE TRANSFERRED CLASS OR PROGRAM. THE RECEIVING
3 ENTITY, HOWEVER, SHALL NOT BE REQUIRED TO HIRE A PROFESSIONAL OR
4 PARAPROFESSIONAL EMPLOYEE PURSUANT TO THIS SUBSECTION WHOSE
5 PERSONNEL FILE, INCLUDING SEALED PORTIONS THEREOF, IS NOT MADE
6 AVAILABLE TO THE RECEIVING ENTITY FOR INSPECTION AS A CONDITION
7 OF HIRING. RECEIVING ENTITIES MAY REFUSE TO EMPLOY AN INDIVIDUAL
8 WHO RECEIVED AT LEAST TWO UNSATISFACTORY RATINGS DURING THE
9 THIRTY-SIX (36) MONTHS PRIOR TO THE DATE OF TRANSFER.

10 (A.1) TRANSFERS UNDER THE PROVISIONS OF THIS ACT SHALL ONLY
11 OCCUR ONCE A YEAR PRIOR TO THE BEGINNING OF EACH SCHOOL YEAR AND
12 SHALL BE INCLUDED IN THE DISTRICT'S SPECIAL EDUCATION PLAN IF
13 THE RECEIVING ENTITY IS A SCHOOL DISTRICT. SPECIAL EDUCATION
14 PROGRAM TRANSFERS MAY NOT BE IMPLEMENTED UNLESS THE TRANSFERS
15 ARE APPROVED BY THE DEPARTMENT OF EDUCATION ON OR BEFORE MARCH
16 31 OF THE SCHOOL TERM PRECEDING THE PROPOSED TRANSFER.

17 (B) TRANSFERRED PROFESSIONAL EMPLOYEES SHALL BE CREDITED BY
18 THE RECEIVING ENTITY ONLY FOR THEIR SICK LEAVE ACCUMULATED IN
19 THE SENDING ENTITY AND ALSO FOR THEIR YEARS OF SERVICE IN THE
20 SENDING ENTITY, THE LATTER FOR PURPOSES OF SABBATICAL LEAVE
21 ELIGIBILITY AND PLACEMENT IN THE SALARY SCHEDULE: PROVIDED,
22 HOWEVER, THAT SUCH EMPLOYEES SHALL NOT UTILIZE THE SABBATICAL
23 LEAVE UNTIL THEY HAVE TAUGHT IN THE RECEIVING ENTITY FOR A
24 PERIOD OF THREE (3) YEARS. SUCH EMPLOYEES SHALL TRANSFER THEIR
25 ACCRUED SENIORITY IN THE AREA OF CERTIFICATION REQUIRED FOR THE
26 TRANSFERRED PROGRAM OR CLASS ONLY. TRANSFERRED PARAPROFESSIONAL
27 EMPLOYEES SHALL BE CREDITED BY THE RECEIVING ENTITY ONLY FOR
28 THEIR SICK LEAVE ACCUMULATED IN THE SENDING ENTITY AND ALSO FOR
29 THEIR YEARS OF SERVICE IN THE SENDING ENTITY, THE LATTER FOR THE
30 PURPOSE OF PLACEMENT IN THE SALARY SCHEDULE.

1 (B.1) PROFESSIONAL EMPLOYEES WHO ARE CLASSIFIED AS TEACHERS
2 AND PARAPROFESSIONAL EMPLOYEES WHO ARE NOT TRANSFERRED WITH THE
3 CLASSES TO WHICH THEY ARE ASSIGNED OR WHO HAVE RECEIVED A FORMAL
4 NOTICE OF SUSPENSION SHALL FORM A POOL OF EMPLOYEES WITHIN THE
5 SCHOOL ENTITY. NO SCHOOL ENTITY SHALL BE OBLIGATED TO HIRE FROM
6 THE POOL, ONCE THE POOL WHICH IS IN EFFECT AT THE TIME OF THE
7 TRANSFER HAS BEEN EXHAUSTED. NO NEW [PROFESSIONAL] EMPLOYEE WHO
8 IS CLASSIFIED AS A TEACHER OR A PARAPROFESSIONAL SHALL BE
9 EMPLOYED BY A SCHOOL ENTITY ASSUMING PROGRAM RESPONSIBILITY FOR
10 TRANSFERRED STUDENTS WHILE THERE IS:

11 (1) A PROPERLY CERTIFICATED PROFESSIONAL EMPLOYEE WHO IS
12 CLASSIFIED AS A TEACHER OR A PARAPROFESSIONAL EMPLOYEE SUSPENDED
13 IN THE RECEIVING ENTITY; OR

14 (2) IF NO PERSON IS QUALIFIED UNDER CLAUSE (1), A PROPERLY
15 CERTIFICATED MEMBER OF THE SCHOOL ENTITY POOL WHO IS WILLING TO
16 ACCEPT EMPLOYMENT WITH THE SCHOOL ENTITY ASSUMING PROGRAM
17 RESPONSIBILITY FOR TRANSFERRED STUDENTS. MEMBERS OF THE POOL
18 SHALL HAVE THE RIGHT TO REFUSE EMPLOYMENT OFFERS FROM SUCH
19 SCHOOL ENTITY AND REMAIN IN THE POOL[.]; PROVIDED, HOWEVER, THAT
20 THE POOL MEMBER SHALL NOT REMAIN IN THE POOL AFTER THREE
21 REFUSALS OF OFFERS OF FULL-TIME EMPLOYMENT AND PROVIDED FURTHER,
22 THAT ANY POOL MEMBER WHO CHANGES RESIDENCY FROM THIS

23 COMMONWEALTH TO ANOTHER RESIDENCY SHALL BE REMOVED FROM THE
24 POOL. REFUSAL TO ACCEPT WORK UNDER THIS SUBSECTION SHALL NOT BE
25 GROUNDS FOR DENIAL OF UNEMPLOYMENT COMPENSATION UNDER SECTIONS
26 401 AND 402 OF THE ACT OF DECEMBER 5, 1936 (2ND SP.SESS., 1937
27 P.L.2897, NO.1), KNOWN AS THE "UNEMPLOYMENT COMPENSATION LAW."

28 (C) NOTHING CONTAINED IN THIS SECTION SHALL BE CONSTRUED TO
29 SUPERSEDE OR PREEMPT ANY PROVISION OF A COLLECTIVE BARGAINING
30 AGREEMENT IN EFFECT ON FEBRUARY 4, 1982, AND NEGOTIATED BY A

SCHOOL ENTITY AND AN EXCLUSIVE REPRESENTATIVE OF THE EMPLOYEES IN
ACCORDANCE WITH THE ACT OF JULY 23, 1970 (P.L.563, NO.195),
KNOWN AS THE "PUBLIC EMPLOYE RELATIONS ACT."

(C.1) IF A RECEIVING ENTITY RETURNS A UNIT TO THE SENDING
ENTITY WITHIN TWO (2) ACADEMIC YEARS OF THE FIRST TRANSFER,
PROFESSIONAL AND PARAPROFESSIONAL EMPLOYEES ASSIGNED TO THE UNIT
SHALL BE GIVEN THE OPPORTUNITY TO RETURN WITH THE UNIT.

(D) (1) AS USED IN THIS SECTION, THE TERM "SCHOOL ENTITY"
OR "SCHOOL ENTITIES" SHALL MEAN AN INTERMEDIATE UNIT AND ITS
PARTICIPATING SCHOOL DISTRICTS OR AN AREA VOCATIONAL-TECHNICAL
SCHOOL AND ITS SENDING SCHOOL DISTRICTS.

(2) AS USED IN THIS SECTION, THE TERM "UNIT" SHALL MEAN A
PROGRAM OR CLASS WHOSE MEMBERSHIP FALLS WITHIN THE MINIMUM AND
MAXIMUM CLASS SIZE AS DEFINED IN DEPARTMENT OF EDUCATION
STANDARDS.

(3) AS USED IN THIS SECTION, THE TERM "PARAPROFESSIONAL
EMPLOYEE" SHALL MEAN AN INSTRUCTIONAL AIDE, CLASSROOM AIDE,
SPECIAL EDUCATION AIDE, TEACHING ASSISTANT OR ASSOCIATE TEACHER
WHO IS NOT DEFINED AS A "PROFESSIONAL EMPLOYEE."

SECTION 2. THIS ACT SHALL TAKE EFFECT IMMEDIATELY.