

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 805 Session of
2015

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,
WARD, IRVIN, ROAE, RAPP, KILLION, JOZWIAK, REGAN, QUIGLEY,
LAWRENCE, MARSICO, DUSH, MALONEY, KRIEGER, ORTITAY, GINGRICH,
SIMMONS, GABLER, RADER, B. MILLER, BENNINGHOFF, SCHEMEL,
SAYLOR AND GILLESPIE, MARCH 23, 2015

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES,
JUNE 17, 2015

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 ~~fifth year of such service, as being satisfactory shall~~
28 ~~thereafter be a "professional employe" within the meaning of~~
29 ~~this article.~~

30 ~~(3) The attainment of the status under paragraph (1) [or],~~

1 ~~(2) or (2.1) shall be recorded in the records of the board and~~
2 ~~written notification thereof shall be sent also to the employe.~~
3 ~~The employe shall then be tendered forthwith a regular contract~~
4 ~~of employment as provided for professional employes. No~~
5 ~~professional employe who has attained tenure status in any~~
6 ~~school district of this Commonwealth shall thereafter be~~
7 ~~required to serve as a temporary professional employe before~~
8 ~~being tendered such a contract when employed by any other part~~
9 ~~of the public school system of the Commonwealth.~~

10 ~~(c) (1) Any temporary professional employe employed by a~~
11 ~~school district prior to June 30, 1996, who is not tendered a~~
12 ~~regular contract of employment at the end of two years of~~
13 ~~service, rendered as herein provided, shall be given a written~~
14 ~~statement signed by the president and secretary of the board of~~
15 ~~school directors and setting forth explicitly the reason for~~
16 ~~such refusal.~~

17 ~~(2) Any temporary professional employe employed by a school~~
18 ~~district after June 30, 1996, but prior to June 30, 2015, who is~~
19 ~~not tendered a regular contract of employment at the end of~~
20 ~~three years of service, rendered as herein provided, shall be~~
21 ~~given a written statement signed by the president and secretary~~
22 ~~of the board of school directors and setting forth explicitly~~
23 ~~the reason for such refusal.~~

24 ~~(3) Any temporary professional employe employed by a school~~
25 ~~district on or after June 30, 2015, who is not tendered a~~
26 ~~regular contract of employment at the end of five (5) years of~~
27 ~~service, rendered as herein provided, shall be given a written~~
28 ~~statement signed by the president and secretary of the board of~~
29 ~~school directors and setting forth explicitly the reason for~~
30 ~~such refusal.~~

1 ~~(d) Temporary professional employees shall for all purposes,~~
2 ~~except tenure status, be viewed in law as full time employees,~~
3 ~~and shall enjoy all the rights and privileges of regular full~~
4 ~~time employees.~~

5 ~~Section 1121. Contracts; Execution; Form. * * *~~

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

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

18 ~~(3) Each board of school directors in all school districts~~
19 ~~shall only hereafter enter into contracts, in writing, with each~~
20 ~~professional employe initially employed by a school district, on~~
21 ~~or after June 30, 2015, who has satisfactorily completed five~~
22 ~~(5) years of service in any school district of this Commonwealth~~
23 ~~and received overall performance ratings of "distinguished" or~~
24 ~~"proficient" on both of the professional employe's two most~~
25 ~~recent end of year performance evaluations pursuant to section~~
26 ~~1123 at the school district of current employment.~~

27 * * *

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

30 ~~Section 1124. Causes for Suspension. (a) Any board of~~

1 ~~school directors may suspend the necessary number of~~
2 ~~professional employes, for any of the causes hereinafter~~
3 ~~enumerated:~~

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

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

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

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

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

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

28 ~~(b) Notwithstanding an existing or future provision in a~~
29 ~~collective bargaining agreement or other similar employment~~
30 ~~contract to the contrary, suspension of a professional employe~~

1 ~~due to the curtailment or alteration of the educational program~~
2 ~~as set forth in subsection (a) (2) may be effectuated without the~~
3 ~~approval of the curtailment or alteration of the educational~~
4 ~~program by the Department of Education, provided that, where an~~
5 ~~educational program is altered or curtailed as set forth in~~
6 ~~subsection (a) (2), the school district shall notify the~~
7 ~~Department of Education of the actions taken pursuant to~~
8 ~~subsection (a) (2). The Department of Education shall post all~~
9 ~~notifications received from a school district pursuant to this~~
10 ~~subsection on the Department of Education's publicly accessible~~
11 ~~Internet website.~~

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

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

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

28 ~~Section 1125.1. Persons to be Suspended. (a) Professional~~
29 ~~employes shall be suspended under section 1124 [(relating to~~
30 ~~causes for suspension) in inverse order of seniority within the~~

1 ~~school entity of current employment. Approved leaves of absence~~
2 ~~shall not constitute a break in service for purposes of~~
3 ~~computing seniority for suspension purposes.] in the following~~
4 ~~order within the area of certification required by law for the~~
5 ~~professional employe's current position:~~

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

10 ~~(2) After suspending professional employes under paragraph~~
11 ~~(1), each professional employe who received an overall~~
12 ~~performance rating of "needs improvement" on the professional~~
13 ~~employe's most recent end of year performance rating shall be~~
14 ~~suspended second.~~

15 ~~(3) After suspending professional employes under paragraph~~
16 ~~(2), each professional employe who received an overall~~
17 ~~performance rating of "proficient" on the professional employe's~~
18 ~~most recent end of year performance rating shall be suspended~~
19 ~~third.~~

20 ~~(4) After suspending professional employes under paragraph~~
21 ~~(3), each professional employe who received an overall~~
22 ~~performance rating of "distinguished" on the professional~~
23 ~~employe's most recent end of year performance rating shall be~~
24 ~~suspended last.~~

25 ~~(a.1) When more professional employes receive the same~~
26 ~~overall performance rating than there are suspensions, seniority~~
27 ~~within the school entity shall be used to determine suspensions~~
28 ~~among professional employes with the same overall performance~~
29 ~~rating on the employe's most recent performance evaluation~~
30 ~~pursuant to section 1123.~~

1 ~~(a.2) Seniority shall continue to accrue during suspension~~
2 ~~and all approved leaves of absence.~~

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

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

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

13 ~~(2) Suspended professional employes or professional employes~~
14 ~~demoted for the reasons set forth in section 1124 shall be~~
15 ~~reinstated on the basis of their [seniority] overall performance~~
16 ~~rating on their most recent performance evaluation within the~~
17 ~~area of certification required by law for the position held by~~
18 ~~the professional employe on the date the professional employe~~
19 ~~was suspended or demoted, with the highest rated employes~~
20 ~~reinstated first, except seniority within the school entity[.]~~
21 ~~shall be used to make reinstatement decisions among teachers~~
22 ~~with the same overall performance rating on their most recent~~
23 ~~end of year performance evaluation. No new appointment shall be~~
24 ~~made while there is such a suspended or demoted professional~~
25 ~~employe available who is properly certificated to fill such~~
26 ~~vacancy. For the purpose of this subsection, positions from~~
27 ~~which professional employes are on approved leaves of absence~~
28 ~~shall also be considered temporary vacancies.~~

29 ~~(3) To be considered available a suspended professional~~
30 ~~employe must annually report to the governing board in writing~~

1 ~~his current address and his intent to accept the same or similar~~
2 ~~position when offered.~~

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

7 ~~(e) Nothing contained in [section 1125.1(a) through (d)]~~
8 ~~this section shall be construed to:~~

9 ~~(1) limit the cause for which a temporary professional~~
10 ~~employe may be suspended; or~~

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

19 ~~(f) A decision to suspend in accordance with this section~~
20 ~~shall be considered an adjudication within the meaning of the~~
21 ~~"Local Agency Law."~~

22 ~~(g) (1) No collective bargaining agreement negotiated by a~~
23 ~~school district and an exclusive representative of the employes~~
24 ~~in accordance with the "Public Employe Relations Act" after the~~
25 ~~effective date of this subsection shall provide for suspending,~~
26 ~~reinstating or realigning professional employes based on~~
27 ~~seniority other than as provided for in this section.~~

28 ~~(2) Upon the expiration, amendment or adoption of any~~
29 ~~agreement or contract, a provision that provides for suspending,~~
30 ~~reinstating or realigning professional employes based on~~

1 ~~seniority in conflict with this section shall be discontinued in~~
2 ~~any new or renewed agreement or contract or during the period of~~
3 ~~status quo following an expired contract.~~

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

5 ~~Section 1131. Appeals to [Superintendent of Public~~
6 ~~Instruction] Secretary of Education. In case the professional~~
7 ~~employee concerned considers himself or herself aggrieved by the~~
8 ~~action of the board of school directors, an appeal by petition,~~
9 ~~setting forth the grounds for such appeal, may be taken to the~~
10 ~~[Superintendent of Public Instruction] Secretary of Education at~~
11 ~~Harrisburg. Such appeal shall be filed within [thirty (30)]~~
12 ~~fifteen (15) days after receipt by registered mail of the~~
13 ~~written notice of the decision of the board. A copy of such~~
14 ~~appeal shall be served by registered mail on the secretary of~~
15 ~~the school board.~~

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

21 ~~The [Superintendent of Public Instruction] Secretary of~~
22 ~~Education shall review the official transcript of the record of~~
23 ~~the hearing before the board, and may hear and consider such~~
24 ~~additional testimony as he may deem advisable to enable him to~~
25 ~~make a proper order. At said hearing the litigants shall have~~
26 ~~the right to be heard in person or by counsel or both.~~

27 ~~After hearing and argument and reviewing all the testimony~~
28 ~~filed or taken before him, the [Superintendent of Public~~
29 ~~Instruction] Secretary of Education shall enter such order,~~
30 ~~either affirming or reversing the action of the board of school~~

1 ~~directors, as to him appears just and proper.~~

2 ~~Section 5. This act shall take effect as follows:~~

3 ~~(1) The amendment or addition of sections 1124(c) and~~
4 ~~1125.1(g) of the act shall take effect immediately.~~

5 ~~(2) This section shall take effect immediately.~~

6 ~~(3) The remainder of this act shall take effect June 30,~~
7 ~~2015.~~

8 SECTION 1. SECTIONS 1108 AND 1121(B) OF THE ACT OF MARCH 10, <--
9 1949 (P.L.30, NO.14), KNOWN AS THE PUBLIC SCHOOL CODE OF 1949,
10 AMENDED MARCH 29, 1996 (P.L.47, NO.16), ARE AMENDED TO READ:

11 SECTION 1108. TEMPORARY PROFESSIONAL EMPLOYEES.--(A) IT
12 SHALL BE THE DUTY OF THE DISTRICT SUPERINTENDENT TO NOTIFY EACH
13 TEMPORARY PROFESSIONAL EMPLOYEE, AT LEAST TWICE EACH YEAR DURING
14 THE PERIOD OF HIS OR HER EMPLOYMENT, OF THE PROFESSIONAL
15 QUALITY, PROFESSIONAL PROGRESS, AND RATING OF HIS OR HER
16 SERVICES. NO TEMPORARY PROFESSIONAL EMPLOYEE SHALL BE DISMISSED
17 UNLESS RATED UNSATISFACTORY, AND NOTIFICATION, IN WRITING, OF
18 SUCH UNSATISFACTORY RATING SHALL HAVE BEEN FURNISHED THE EMPLOYEE
19 WITHIN TEN (10) DAYS FOLLOWING THE DATE OF SUCH RATING. THE
20 RATING OF A TEMPORARY PROFESSIONAL EMPLOYEE SHALL BE DONE AS
21 PROVIDED IN SECTION ONE THOUSAND ONE HUNDRED TWENTY-THREE OF
22 THIS ACT.

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

29 (2) A TEMPORARY PROFESSIONAL EMPLOYEE INITIALLY EMPLOYED BY A
30 SCHOOL DISTRICT, ON OR AFTER JUNE 30, 1996, BUT PRIOR TO JUNE