

## **Transfer of Entities**

### **24 P.S. §11-1113**

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**REPLACES:** Transfer of Entities,  
BEC 24 P.S. §11-1113 issued September 1, 1997

### **PURPOSE**

This document addresses the implications of §§ 1113 and 1418 when a program or class is transferred as a unit from one or more school entities to another school entity or entities, and the implications for professional employees.

### **EXPLANATION**

Set forth below are a series of questions about §§ 1113 and 1418 and the Department's response to those questions.

1. What is the role of the Pennsylvania Department of Education in implementing and enforcing §1113?

The Department does not play a formal role in implementing or enforcing §1113. Unlike statutes that call upon the Department to adjudicate any questions or compliance, §1113 does not invoke any formal Departmental procedure. Questions raised between a teacher and a school entity under §1113 would be resolved by the courts if the parties themselves cannot find a mutually acceptable answer.

Thus, the purpose of this BEC is not to advise interested parties of how the Department would rule when applying §1113. Rather, this BEC is intended to fulfill the more limited purposes of informing interested persons of their basic rights and obligations in this area, proposing useful solutions to problems, and suggesting how the courts might interpret the statute.

2. What are the Department's interests in this area?

The Department is not a regulator in this area. The Department's interest is in having education statutes respected and enforced and in minimizing the following:

- (1) the likelihood of conflict between teacher and school entities,
- (2) any unnecessary disruption and discontinuity in the education of the children of the Commonwealth, by having established groups of students and teacher stay together whenever possible, and
- (3) the negative personal impact on teachers, where possible, resulting from improvements in the organization of education in the Commonwealth.

3. Does §1113 protect all school employees?

No. Section 1113 applies only to "professional employees who are classified as teachers."

4. Under what circumstances are teachers given rights (and therefore school entities put under an obligation) through §1113?

Four things have to be true for §1113 to be applicable to a teacher (and thus to a school entity):

- a. A program or class is transferred between school entities. Such a transfer must be from one or more school entities to some other school entity or entities.
  - b. One or more teachers are suspended because of the transfer.
  - c. The services of an additional teacher, in an area of the suspended teacher's certification, are needed by a receiving school entity in order to sustain the program or class transferred.
  - d. There is no properly certificated teacher already suspended in the receiving entity and available to help sustain the program or class transferred.
5. When a program is transferred from one entity to another, must the receiving entity offer employment to properly certificated employees suspended by the sending entity due to the transfer?

Any question regarding the offer of employment must address four all factors (a, b, c and d) in Question and Answer 4, above. Thus, one would have to know more in order to answer the question. If the receiving entity needs additional personnel to sustain the program it receives by transfer, and if it has no properly certificated personnel already on suspension, the answer is yes: the employee has a right to an offer of employment.

If the receiving district does not need additional personnel to sustain the program, or if the receiving district has a properly certificated person on suspension, the employee who taught in the transferred class or program has no right to an offer of employment.

6. When the receiving entity already has a suspended employee who is certificated in the area needed for the class or program transferred, what are the receiving entity's obligations and options?

This situation is not affected by §1113, but is governed by §1125.1(d)(2) of the Public School Code, which requires the receiving entity to recall its own suspended employee before offering the position to an employee of the sending entity.

7. Can the receiving entity realign its programs and reorganize staff so as to not need to hire an additional teacher for the transferred program or class?

Yes, but school entities should be careful if they are considering such an action. Section 1113 does not forbid a transfer in which the receiving entity absorbs the class or program without needing to add staff. Also, a school may be realigning its staff at the same time that a transfer is taking staff. School districts should avoid, however, a realignment in which existing staff are upgraded to the detriment of the teacher who is suspended by the sending entity.

If the suspended teacher is not offered a job in the receiving entity because the receiving entity moved a teacher from part-time to full-time status, for example, the receiving entity will likely face a claim under §1113. Where the transfer of a program or class means that the receiving entity must hire an additional employee, a receiving entity may realign its existing staff or hire new employees to sustain a transferred program or class only after it has absorbed properly certificated employees suspended by the sending entity as a result of the transfer.

8. If a single sending entity transfers a program or class to several receiving entities, which of the receiving entities must offer positions to employee suspended by the sending entity as a result of the transfer?

Any and all receiving entities that fit the description in 4 (c) and (d), above, must offer a position. The suspended employee may accept whichever offer he or she prefers.

9. Does the teacher of a transferred class have a right to a suspension that will then trigger the right of an offer of employment from the receiving school entity?

Section 1113 does not address a right to be suspended, however, a consensus suspension that results in the class – including the teacher – staying together is entirely consistent with §1113 and should be pursued wherever possible.

10. If the sending entity suspends more than one employee as a result of transfers and the receiving entity needs only one employee to sustain the program or class transferred, on what basis should the receiving entity decide to whom to offer the position?

This is not addressed in the language of §1113. The Department's recommendation is as follows. Consistent with our responses to questions 2 and 9, where the class or program is to remain essentially intact under the auspices of the receiving school entity, a result that keeps the teacher with the children that he or she had been teaching is favorable. Thus, the first teacher offered a position would be the one that had been teaching the intact class.

Where the class or program is not going to remain intact, a review of the related School Code provisions, leads to the conclusion that the determining factor should be seniority. In such a case, the receiving entity would offer the position first to the suspended employee of the sending entity who possesses the greatest seniority at the sending entity in the relevant area of certification. If that person does not accept the offer, the position should next be offered to the employee possessing the next greatest seniority at the sending entity in the relevant area of certification. See 24 P.S. §1125.1.

11. For how long does an employee suspended by the sending entity retain the right to a teacher in a program or class that has been transferred to a receiving entity?

The language of the statute does not answer this question. Where a program or class in the receiving entity is plainly the program or class from which the employee of the sending entity was suspended, the suspended employee's right to a position teaching that program or class appears to be indefinite. That is, each time the position in the transferred class or program becomes vacant, the suspended employee should be offered the position. By analogy to other statutes, the suspended employee's right to such a position would be extinguished, however, if the employee fails to provide the

receiving entity with annual written notice that he or she remains interested in the position and available to fill it. See 24 P.S. §1125.1.

The Commonwealth Court decision in *Hahn v. Marple Newtown School District* casts some doubt on this interpretation of the statute. The case is far from definitive on this point, however, because the court's primary conclusion was that there was no transfer of a class at stake. Parties may disagree over whether a position opening is caused by a transfer of a program or class or caused by some other event. In close cases, school entities should err on the side of caution and treat openings as caused by a transfer of a program or class.

12. May provisions of §1113 be altered through collective bargaining agreements?

The statute is more clear in some ways than others. Section 1113(c) states that the statute shall not be construed "to supersede or preempt any provision of a collective bargaining agreement..." It is clear, then, that §1113 does not supersede or preempt any provision of a collective bargaining agreement in effect when the statute went into effect on February 4, 1982.

The more difficult question is whether the Legislature intended §1113 to have the effect of forbidding contrary collective bargaining agreement provisions entered into after February 4, 1982. Since the purpose of §1113 was to protect employees of the sending entity, it would appear inconsistent with §1113 to allow the receiving entity and its employees to bargain away the statutory rights of an employee in the sending entity (who is not in the receiving entity's bargaining unit). Yet, it is recognized that the statute is not explicit on this point.

Given the uncertainty in this area, entities are advised to simply avoid the problem by not entering into agreements whose terms conflict with the terms of §1113.

13. Does §1113 affect suspension procedures in effect in transferring entities?

While the statute creates rights for teachers once they have been suspended by transferring entities, the suspension process itself remains unchanged and is still governed by §§ 1124 and 1125.1 of the Public School Code.

14. How does one tell whether a "transfer" of a program or class has occurred?

This is apt to be the most difficult question in applying the statute to various fact situations. Since it is possible that program shifts will occur in a variety of gradual ways, there is no simple litmus test.

However, the first question to be asked is whether, if there were no other personnel changes going on at a "receiving" entity, that entity would have to hire an additional person as a result of a shift in students away from the "sending" entity. The opinion in the *Marple Newtown* case also suggests that the analysis of whether a transfer has occurred must be based on the facts as they occur at the time of the arguable transfer, rather than including subsequent events as well.

15. When a teacher is transferred from one school entity to another pursuant to the transfer of entities law, must the teacher obtain an Act 34 criminal history background check and have a medical examination?

Yes. When a teacher is transferred pursuant to the transfer of entities law, that teacher is a new or prospective employee in the receiving school entity. As required by §111, the new teacher must obtain a criminal history background check. As required by §1418, the new employee must obtain a pre-employment medical examination.

The intent of §1113 is to protect teachers' rights. The intent of §§ 111 and 1418, however, are enacted to protect students. As such, teachers who are going from one school entity to another, even when that transfer is pursuant to a statute, are required to submit to a criminal history background check and pre-employment medical examination.

## REFERENCES:

### Purdon's Statutes

[24 P.S. §1-111](#)  
[24 P.S. §11-1113\(a\)](#)  
[24 P.S. §11-1124](#)  
[24 P.S. §11-1125.1](#)  
[24 P.S. §14-1418](#)

### State Board of Education Regulations

[22 Pa. Code §8.2\(a\)\(1\)](#)

### Other

- Public Employee Relations Act (P.L. 563, #195, July 23, 1970) *Hahn v. Marple Newtown School District*, 571 A.2d 1115 (Pa. Commonwealth 1990)
- *Allegheny Intermediate Unit No. 3 Educ. Ass'n v. Bethel Park School Dist.*, 654 A.2d 192 (Pa. Commonwealth 1995), affirmed 680 A.2d 827.
- *Luzerne Intermediate Unit No. 18 Educ. Ass'n v. Pittstown Area School Dist.*, 650 A.2d 1112, 168 (Pa. Commonwealth 1994)
- *Souderton Area School Dist. V. Souderton Area Educ. Ass'n.*, 639 A.2d 904, 162 (Pa. Commonwealth 1994), appeal denied 655 A.2d 519.

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